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## **CORRUPTION: IGNORANCE IS NOT INNOCENCE**

*The century that is coming to an end has seen the establishment of the idea of democracy as the 'normal' form of legitimate governance. Normality is judged here not entirely by frequency, but rather the way a 'normal eye-sight' is defined.*

*It was common in the nineteenth century to ask whether such and such a country was 'ready' for democracy yet, or whether such and such a nation was 'fit' for democracy at all. There has been a sea-change in the way claims to democracy are judged now--at the end of the twentieth century. Rather than asking which nation is fit for democracy, the central question now tends to be how and in what way a nation can succeed in political, social, and economic life by means of democracy. The query is no longer about being fit for democracy, but about ways and means of becoming fit, as it were, through democracy.*

*Amartya Sen, Things to Come: Predictions Sian Griffiths (ed.), Oxford University Press. New York. 1999. 222.*

### **1. Three questions**

There are three crucial questions we must answer when assessing Croatia's capacity to combat corruption. The first question is: **Does corruption exist in Croatia** and if so, how is it perceived? If the answer to this question is affirmative, a second question follows:

**How extensive is corruption** in Croatia and in which areas of society have its effects become most dangerous? Having answered to the first two questions, the third and most important question arises: **What should be done?**

This only seems to be a logical rather than a chronological conclusion. In Croatia, the perception of corruption has undergone a significant change and is characterised by significant dynamics.<sup>1</sup> The change has been from a perception that corruption is unavoidable to a perception that corruption is harmful. There has been a shift in public attitude from moral reprehension to a political awareness of the need for reform and for the prevention of corruption. The process of change has accelerated and the current dynamic has resulted in a significant split between a self-confident minority and an embittered majority. There has been a dramatic increase in the public's expectation that corruption will be eliminated and that those who are guilty of corrupt practices will be punished. We can distinguish three phases in the defining and perceiving of corruption in Croatia. In the first phase, the phase of recognition beginning with Croatia's independence until the end of the 1990s, corruption was looked upon as an important ethical rather than political issue. Apart from general condemnation and disapproval, not much was done and the dominant attitude was one of moral panic. "It seems that periodically societies undergo phases characterised by moral panic. An individual or a group would raise their voices as the result of some event but they would soon be described as a danger to society's interests and values and qualified in the media in a typical and stereotyped way. Quite often, the state of moral panic was provoked by a completely new phenomenon but sometimes it was caused by a long-existing problem which quite suddenly came to everybody's attention. Very often, the events causing a state of panic tend to disappear and fall into oblivion but they nevertheless remain as some kind of oral tradition and a part of collective memory. There have been cases where moral panic has brought about

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<sup>1</sup> Similarly – D. Schmidt, *Anti-corruption: What Do We Know? Research on Preventing Corruption in the Post-communist World*. *Political Studies Review* 5 (2), pp. 202-232.

serious and long-lasting consequences and led to amendments to laws, policies and society's identity".<sup>2</sup> The second phase started in 2000 and has lasted until today. It has been a phase of open recognition of the existence of the problem, however with only very weak and inappropriate attempts at prosecution and/or the imposition of preventative measures. Various plans have been made and programmes developed, prompting a belief that the laws, by their mere adoption, will have an effect on the extent of corruption. It has been a phase of legislative optimism and institutional engineering. A number of programmes have been published, many appropriate laws adopted and quite a few international obligations signed. However, what still prevails is a climate of mere words rather than actions. The given promises are still to be fulfilled. The changes that have been introduced are good and positive but they still lag behind people's expectations. The warning is a very serious one: after a period of worrying, feeling anger and trying to raise public awareness, we are now faced with the need to make a final choice: to channel our energy towards reform, or risk letting it flood into passivity and, ultimately, cynicism.

With a lot of pressure from abroad, Croatia now has a new deadline. Words are no longer sufficient, what is expected are concrete actions<sup>3</sup>. The country is faced with a new reality whereby it is not enough to merely pass laws, those laws must also be enforced; it is not enough to merely speculate, results must be measured and priorities established. Doing so requires appropriate tools and the right people to fulfil their tasks. Let us analyse in more detail the phases Croatia has gone through, as well as those challenges still ahead of it.

### *1.1. From moral panic to legislative optimism*

During the last decade of the previous century, the problem of corruption was finally openly raised in Croatia. There was a change in public attitudes, and then a stage during which the existence of

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<sup>2</sup> K. Thompson, *Moral Panic*, Routledge & Kegan Paul, London, 1998, 13.

<sup>3</sup> <http://www.liderpress.hr/Default.aspx?sid=1836>, ožujak, 2006.

corruption was first denied, then acknowledged, in individual cases or scandals. The problem of preventing corruption was addressed by two contrasting arguments. According to one, corruption is only a parenthetic phenomenon which can be explained by tradition and culture. The result of such an attitude is to underestimate the need to take measures against it. Those who advocate such a position believe that corruption is unavoidable because it makes things easier, and sometimes even compensates for bureaucratic inefficiency and insensitivity. Corruption is part of the country's tradition in a much deeper way than is the case with the structure of formal institutions and of legal norms: it is more an expression of social solidarity than a type of conduct that is harmful *per se*.

This was a period of relativism. The following statements were often made: *corruption is not a domestic problem; corruption is the consequence of war; corruption must be tolerated and understood and the important thing is not to exaggerate; corruption is a matter of political culture*. Such statements were embedded in a kind of social anomy. Moral values were seriously jeopardised, ambitions and expectations grew beyond possible fulfilment<sup>4</sup>, old values were no longer valid and the new ones were not yet fully established. New people of modest capacities and questionable moral values had emerged into the public arena and became examples to be followed. The consequence of such a phenomenon was some kind of Manichaeian division and a wartime vocabulary prevailed: expressions like *fight, elimination of corruption, zero tolerance and the evil of corruption* were used.<sup>5</sup> There was a wide-spread belief that corruption was the result of weak new democratic institutions. It was described as a deficit of democracy. The existing institutions were new and incompetent, the rules were

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<sup>4</sup> The author self-critically admits a certain level of naïveté regarding his overestimation of the importance of degraded values in society and of the importance of the problem of post-socialist and pre-democratic orders, J. Kregar, "Deformation of Organisational Principles: Corruption in Post-Socialist Societies", in D.V. Trang, *Corruption and Democracy*, COLPI, Budapest, 1994, 47-64.

<sup>5</sup> For example, a text by J. Kregar entitled *Zlo korupcije*, *HPC*, 1998, or J. Kregar, *The Evil of Corruption*, in *Corruption in Central and Eastern Europe at the Turn of Millennium*, 2000, 137-149.

vague and ambiguous, the system of government was autocratic and the consequences of the war and of predatory privatisation had created a new class of people.<sup>6</sup>

The process of privatisation, although it was neither as fast nor as radical as in some other transitional countries, destroyed Croatia's economy more than the war. It was a profitable business to minimize the value of an enterprise and to acquire valuable assets without changing the existing technology. With a stable exchange rate of HRK, it was more profitable to import goods than to export them. New taxes were levied upon all citizens at an equal rate rather than progressively, according to income and assets. An image of a completely ruined legal order was created.

It was believed that a **cure for non-democratic and corruptive deviations was a higher level of democracy**, that more democracy would result in more responsibility and would facilitate the removal of all top politicians. This was an optimistic dream. The evil of corruption was believed to be hiding among a small number of irresponsible people; or, to put it more objectively, there was a lack of social awareness of the damaging consequences of corruption.<sup>7</sup> Corruption is not the result of "insufficient awareness and weak and unsatisfactory regulations". Naively: **Better people and more legislation were considered to be the ways to improve the situation (?)**.

Fighting corruption was a civil society initiative. Civil society initiatives (UDD, CLC, Transparency International) were supported by the media and by the public, based upon agitated emotions that accompanied mass feelings of injustice. Such initiatives were successful because of their rhetoric (requesting more justice and equality), not because of qualitative proposals or ideas about what needed to be changed. Criminal charges were not very effective.<sup>8</sup>

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<sup>6</sup> J. Kregar, *Nastanak predatorskog kapitalizma i korupcija* (The Emergence of Predatory Capitalism and Corruption), RFIN, Zagreb, 2000.

<sup>7</sup> A. Štulhofer, *Percepcija korupcije i erozija društvenog kapitala u Hrvatskoj 1995-2003* (Perception of Corruption and the Erosion of Social Capital in Croatia 1995-2003), *Politička misao*, 41 (2004), 3; pp. 156-169.

<sup>8</sup> D. Derenčinović: *Mit o korupciji* (The Myth of Corruption). NOCCI, Zagreb, 2001, 361; Sačić, *Organizirani kriminalitet u Hrvatskoj i sredstva borbe protiv njega* (Organ-

## *1.2. Limits of legislative optimism*

The second phase began when awareness increased of the dangers and systematic character of corruption, and when its structural causes<sup>9</sup> and its systemic links<sup>10</sup> to structural models of organisation. The transitional model of the “weak or rotten” State became obvious. The new findings and application of different methodically sophisticated research induced comparative analysis.

Many ideas emerged on how to introduce preventative measures against corruption in a systematic way.

At the end of this phase, a change occurred in the treatment of corruption; it was seen as a political rather than a technical or a criminal law problem. Various proposals and some concrete measures emerged for the prevention of corruption.<sup>11</sup>

Corruption was rarely minimised as a problem and the words used to describe it were mostly those of strong moral condemnation. Its existence was only sporadically denied. Measuring corruption and issuing data on its extent became important components of the citizens’ knowledge and awareness.

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ised Crime in Croatia and the Means to Combat it), *Hrvatski ljetopis za kazneno pravo i praksu*, Zagreb, 2/1996; Sačić, *Korupcija i njezino suzbijanje u svijetu i Hrvatskoj* (Corruption and Its Prevention in the World and in Croatia), *Policija i sigurnost*, 1-2/98.

<sup>9</sup> “In a very peculiar way, corruption is a phenomenon that is contrary to the Christian call to solidarity and sensitivity towards our fellow creatures and it destroys and poisons all areas of public and private lives. This epidemic has become a great concern because it has spread all over Croatia. It is a phenomenon which requires serious ethical evaluation and consideration because it undermines the basic values of human relationships such as trust, integrity, justice and equality and it is a threat to non-discrimination, solidarity and the security of citizens”. J. Božanić, *Nije li došlo vrijeme povezivanja u duhu odgovornosti? (Isn’t it High Time to Get Together in a Spirit of Responsibility?)* *Glas Koncila* 52 (1592), *BOŽIĆ*, 21/12/2004.

<sup>10</sup> An inspiration is the book by J. Pope, *TI Sourcebook*, which brings lists of possible measures to prevent or combat corruption. <http://www.transparency.org/publications/sourcebook>

<sup>11</sup> Following, as an example, J. Kregar, *Zlo korupcije (The Evil of Corruption)*, Hrvatski pravni centar, 1999 (mimeo) latter J.Kregar, *The Evil of Corruption*, G.Meško (ed.), OSI, Ljubljana, 2000, 137 -149.

Corruption was no longer a local and/or isolated problem but a regional one<sup>12</sup>, and global efforts were aimed at its prevention and abolishment. With a delay of two or three years, Croatia followed global trends in adopting anti-corruption strategies and occasionally it served as an example for the region (e.g., Bosnia and Herzegovina, Macedonia, Montenegro), as well as an impetus for other transitional countries in areas such as the regulation of conflict of interest and the financing of political parties.

A typical example of anti-corruption measures was the adoption of the national strategies and programmes for the prevention of corruption<sup>13</sup>. Other examples are the amendments to the criminal law provisions on corruption, the establishment of USKOK (Office for the Suppression of Corruption and Organised Crime), the adoption of rules on the prevention of conflict of interest, access to information, financing of political parties and financing political campaigns.

The first national strategy for the fight against corruption was more the result of good intentions than a systematic effort to develop a national policy. It came into existence only incidentally, as admission of the existence of corruption rather than as a systematic list of preventative measures. Its task and main goal were clear: the recognition of the existence of corruption as a serious phenomenon, one which impairs economic relations, undermines the political system, seriously jeopardises free market competition and undermines the legitimacy and credibility of the political elite. Originally, the strategy had emerged as a document developed by the Croatian Law Centre in cooperation with the Croatian Employers' Association.<sup>14</sup> A more developed version of this document was presented at the VI World Congress TI and was published as well.<sup>15</sup> After the elections

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<sup>12</sup> <http://www.spai-rslo.org>

<sup>13</sup> This can be seen as an illustration and characterisation of a specific phase of anti-corruption activities.

<sup>14</sup> At that time, the competent Ministry did not approve of the activities of Transparency International Croatia, and it then operated within the remit of the Croatian Law Centre and the Association for Democratic Society (ADD). J. Kregar, *Zlo korupcije (The Evil of Corruption)*, HPC, op. cit.

<sup>15</sup> J. Kregar, *The Evil of Corruption*, in *Corruption in Central and Eastern Europe at the Turn of Millenium*, 2000, 137-149, see also [chapterzone.transparency.org/content/download/TI+Annual+Report+2001.pdf](http://chapterzone.transparency.org/content/download/TI+Annual+Report+2001.pdf)

and the change of government, conditions changed. In 2001, within the Ministry of Justice, Administration and Local Self-Government, a commission was established<sup>16</sup> which developed a draft adopted by Parliament (01/04/2002 Official Gazette NN).

In the process of developing this document, the usual rules of developing a strategic document and defining strategic management were clearly not applied<sup>17</sup>, and the document only anticipated the experience of about one hundred countries which had already adopted similar documents.<sup>18</sup> It was judged that **the document served its purpose by the political recognition of the systemic nature of corruption in Croatia**, and by its specifying an inventory of possible measures to eliminate it. The political will at the time the Strategy was adopted was insufficient for its realisation, not only with respect to the politically difficult, systematic measures of decentralisation (changing the model of elections, territorial rationalisation), but also with respect to the establishment of USKOK and the adoption of various technical obligations such as a special police squad, additional training and specialisation of judges, equipping and staffing of different services, enhanced administrative supervision and other matters.

The accomplished tasks included the ratification of international documents (GRECO, PACO, SPAI, UN Convention)<sup>19</sup> as well as drafts and the final version of The Conflict of Interest Prevention Act and The Right of Access to Information Act.

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<sup>16</sup> The Commission was officially called Commission for Development of the National Strategy for the Fight Against Corruption and Prevention of Conflicts of Interest. Its very name indicates the ambiguity of its task and the lack of clear goals. The members of the Commission were the following: D. Palijaš, S. Petrović, D. Derenčinović, M. Blažanović, Ž. Ivančević, D. Pavliček-Patak, Ivan Plevko, O. Mittermayer, S. Bujas Juraga, M. Munjin Vertag, D. Jurić, I. Barac, I. Maros. The leader of the working group was J. Kregar.

<sup>17</sup> There have been very clear questions regarding the methodology of developing such a document: [www.worldbank/publicsector/anticorrupt/topic2.htm](http://www.worldbank/publicsector/anticorrupt/topic2.htm)

<sup>18</sup> There was a certain similarity with the documents developed by Slovakia and Georgia.

<sup>19</sup> With the exception of the OECD Convention, which was perhaps the most important document containing the international monitoring measures. However, the right moment to manifest the political readiness of the country was lost for a longer period to come.

In the meantime, two entirely new events took place. First, there was a change of the governing coalition in Parliament and second, there was **important pressure from international forces**. Many international obligations became enforceable as a result of the ratification and publication of United Nations Conventions adopted by Croatia.<sup>20</sup> There was a need for a new programme act.<sup>21-22</sup> After a lot of work<sup>23</sup>, on March 10, 2006 the National Programme for the Prevention of Corruption was presented to the public.<sup>24</sup>

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<sup>20</sup> See: Corruption: Compendium of International Legal Instruments on Corruption, UN, New York, 2005, or [www.undoc.org/undoc/corruption.html](http://www.undoc.org/undoc/corruption.html), Criminal Law Convention, Civil Law Convention of the United Nations Against Corruption (Merida Convention), NN-MU, 2/2005.

<sup>21</sup> The obligation is not only political but also legal. Croatia has ratified and published the UN Convention for the Prevention of Corruption (and the Criminal Law Convention on the Prevention of Corruption of the CE). In Article 5, it sets forth the following: "Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.

Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

<sup>22</sup> A working group was organised, and it was initially composed of the following members: Hajrija Novoselec, Dragan Novosel, Željko Žganjer, Neven Vučković, Zlatko Zaplatić, Goran Sirovec, Krešimir Sikavica, Orsat Miljenić, Đuro Popijač. The leader of the working group was: J. Kregar.

Ms. S. Bagić and Ž. Horvatić also actively participated in the work of the working group.

<sup>23</sup> 19 different versions of the National Programme for the Prevention of Corruption 2006-2008 were developed. Its draft was radically amended twice, once in order to adjust it to the political circumstances (V.Škare-Ožbolt) and the second time, its definitive version was changed after the meeting of the working group in November. However, even after that, the programme was amended at least 9 times by the Ministry. The changes were minimal in the main part but were very good and useful with respect to making the tasks as precise as possible. This speaks of the sensitivity of the topic. See, I. Sanader, discussion, in the National Programme of Combating Corruption, HAZU, 2006, 32.

<sup>24</sup> There are seven unwritten elements of the National Programme which the author considers extremely important. First, the mere fact that the Programme exists in writing constitutes a political obligation and a promise. Second, it is a legal obligation of Croatia and an important element on the basis of which the country's institutional stability must be assessed. Third, the fact that it has been put down on paper does not mean that it has already been accomplished. Many similar programmes have remained dead letters only. This must not be the case with this one. Fourth, it is desirable to set forth

However, no programme becomes effective by its mere presentation.

Three crucial questions arose here: first, was this programme, or the future one, supposed to be an omnibus programme? It was a question of whether any special, added value existed if we “packed our actions against corruption into an omnibus programme”<sup>25</sup> without identifying the priority areas that were endangered by corruption, the type of corruption we wanted to fight against, and who the actors were in such a fight. The initial intention for the programme to include all sections of society and all institutions and government agencies disappeared in its final version. The emphasis was put on the most important activities, such as the identification and prosecution of corruption (USKOK, judiciary) and its prevention. Indeed, a much better idea would have been to recommend only a few concrete and achievable goals. Another important issue was the monitoring of such a programme.

The programme provides for the establishment of a National Council for the suppression of corruption, composed of members of Parliament and representatives of employers’ associations, trade unions, non-governmental organisations, the media, as well as independent experts. The Council was intended to be a public forum, and a place where the issues of responsibility for the implementation of the programme were to be raised, where new ideas would emerge and where critical decisions would be made. It was supposed to provide a venue where the different positions of the Government, the opposition, the public and civil society were to be addressed. This, however, has not been completely the case.<sup>26</sup> The National Council was not even

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only the measures that are likely to be fulfilled. Fifth, the prevention of corruption is not a very common topic at academic meetings but an issue that always provokes political arguments and disagreements. The prevention of corruption has become a well adopted topic among politicians. The sixth and the seventh elements are the most important ones: programmes are not assessed on the basis of their words and formulations but on the basis of the results of their implementation. J. Kregar, A Discussion, Nacionalni program suzbijanja korupcije, HAZU, 2006, 28.

<sup>25</sup> D. Smilov, M. Tisne, *From the Ground Up*, CEU, 2004, 76.

<sup>26</sup> This has not only been the case in Croatia. See G. Klemenčić, J. Stusek, I. Gaika, *Specialised Anti-Corruption Institutions Review of Models*, OECD, 2007. The following evaluation is even harsher: “In a largely corruption-free environment, anti-corruption

mentioned during the first cycle of evaluation, although it had been formed and it never publicly presented itself. The provision setting forth that the National Council was to be led by a representative of the opposition did not become effective either. After some time, it became noticeable, such ignorance was counter-productive. The shift in public opinion urged the political elite to reconsider its own tameness.

After 2008, and after the establishment of a new National Council under president Željko Jovanović, and in spite of the disruptive efforts of HDZ delegates, the National Council appeared to be an important factor in the public struggle against corruption. The third crucial question is: how much had actually been done with regard to the implementation and critical evaluation of the Programme? The deadline, although very short, passed quietly, but the goals and tasks had not been reviewed.

This phase was characterised by the chaotic adoption of measures reflecting good intentions but without determination or sufficient political will. The current situation is characterised by an attempt to create a coherent and integrated policy, but with insufficient mechanisms to focus on their enforcement. Expectations were obviously great, but capacities were unsatisfactory. What was missing was a strong and continuous series of examples to prove that the fight against corruption was both a political and a social priority.

On June 19 2008, the Parliament of the Republic of Croatia adopted a strategy for the prevention of corruption. This strategy revised the National Anticorruption Programme 2006-2008. Based on the experience acquired during the implementation of the National Programme, the Strategy and the Action Plan was adopted, with clearly prescribed measures, deadlines, responsible institutions and the necessary re-

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agencies, ethics offices and ombudsmen strengthen the standards of accountability. In countries with endemic corruption, however, the same institutions function in form but not in substance; under a best-case scenario such institutions might be helpful, but the more likely outcome is that they help to preserve social injustice. J. Huther, A. Shah, *Anti-Corruption Policies and Programs; A Framework for Evaluation*, World Bank Policy Research Working Paper 2501, [www.worldbank.org](http://www.worldbank.org)

sources, which aimed to enhance all forms of the fight against corruption. The revision took into account the recommendations from the Report of the Screening for Chapter 23 (Judiciary and Fundamental Rights), the recommendation from the Annual Report of the European Commission on the Progress of the Republic of Croatia in the Process of Accession to the EU for 2007, the recommendation of the accession partnership and the recommendations of the second assessment of the GRECO group of the Council of Europe.

The Strategy defines as priorities: strengthening the legal and institutional framework for combating corruption, enhancing all forms of prevention, and increasing cooperation with civil society and international institutions.

Some bodies were also established to monitor the implementation of the Strategy. A campaign for combating corruption was initiated.<sup>27</sup> All this was meant to demonstrate a strong determination to accomplish the stated goals.

Numerous bodies are involved in combating corruption in Croatia, in particular the Committee for Monitoring the Implementation of Anti-corruption Measures and the National Council. The Committee consists of high level representatives of competent authorities, including the Supreme Court, the State Attorney's Office (USKOK), ministries and government offices. The Minister of Justice coordinates the work of the Committee in the role of national coordinator. The Committee is a government body coordinating and developing anti-corruption measures at a political level. In order to ensure the efficiency of the Committee's work, in addition to the co-ordination performed by it at a political level, a parallel co-ordination of the same bodies was also established at a professional level. The Government has instructed all bodies to entrust the performance of anti-corruption activities to a particular unit within its organizational structure. In order to support the work at both levels of co-ordination, an Anti-corruption Unit was established within the Ministry of Justice.

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<sup>27</sup> <http://www.antikorupcija.hr/Default.aspx?sec=2>

The task of monitoring the implementation of the Strategy is within the competence of the National Council, founded as a separate body of the Croatian Parliament. The Council is headed by a Member of Parliament from the opposition, both in the previous and the current composition of the Croatian Parliament. Based on a Decision by the Croatian Parliament and in direct co-operation with the national coordinator, the National Council will establish a more direct communication with the authorities who directly implement the tasks arising from the Strategy and the Action Plan, and will provide more efficient control of their activities aimed at implementing the anti-corruption policy<sup>28</sup>.

It is suggested that there is strong political will to prevent corruption: “The prevention of corruption is the key to the success of any anti-corruption policy.” Even without thorough analysis, it is clear that Croatia has failed to achieve key measures in this area. Actions announced a long time ago (for example, the prevention of conflict of interest) have not yet been completed. Problems have increased when large numbers of entrepreneurs have entered the political arena. Amendments regulating the financing of political parties and election campaigns have not been made. Political scandals have revealed the existence of enormous funds in the hands of party leaderships (HDZ in particular). Regarding the observance of the Access to Information Act, independent research and monitoring activities have detected major deficiencies.<sup>29</sup>

Corruption in the field of public procurement has been highlighted by a series of lengthy investigations of exposed cases (HAC, ‘Autoceste’) that are still ongoing.

Taking into consideration the fact that in 2009 and 2010 corruption scandals were discovered at the top levels of government, it is clear how this new strategy, just like the previous ones, merely simulates political will and organised action. The measures needed to end corruption will have to wait for better times for their implementation.

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<sup>28</sup> Suzbijanje korupcije/ Suppression of the Corruption, Ministarstvo pravosuđa, Zagreb, 2008., XVI.

<sup>29</sup> <http://www.gong.hr/page.aspx?PageID=69>

This was also confirmed in the conditions specified in the decisions of the Tenth Meeting of the Accession Conference at the Ministerial Level with Croatia held in Brussels on June 30, 2010<sup>30</sup>, where it was stated <sup>31</sup> that Croatia had to increase the efficiency of its judiciary and to establish a track record of results in the fight against organised crime and corruption at all levels, including high level corruption and particularly, corruption in vulnerable sectors such as public procurement and conflict of interest.

**The impression that Croatia has been given a political concession for its attempts to act against corruption or that it has been given an award for exposing corruption scandals at the highest levels of government only means that the success of the necessary measures must still be proven, and that Europe wants to see, rather than accusations and suspicions, trials to be adjudicated and new cases initiated.**<sup>32</sup>

### *1.3 Institutional stabilisation and progress as targets*<sup>33</sup>

We have entered a new phase of dealing with corruption in Croatia, one that requires strong political and public will to implement the programmes that have been developed to curb corruption. It is not enough to have ideas about how to solve the problem of corruption but to manifest a strong will for implementation. What we need is a clear political message that the government is determined to combat corruption.

If we want to solve this problem, we must first admit that it exists rather than twist and turn, search for big words, blame the circum-

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<sup>30</sup> Document 11670/10-1.

<sup>31</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/er/115569.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/115569.pdf)

<sup>32</sup> Although they are still only scandals occupying the media, the HYPO bank scandal and the financing of the HDZ party by putting pressure on public companies and the existence of slush funds are signs that the process of opening cases at the top policy level are only beginning and not ending.

<sup>33</sup> An allusion to the expression “L’amour pour principe et l’ordre pour base; le progres pour but” by August Comte.

stances, history and other people. When the Croatian government took some concrete measures leading to resignations and changes because of serious accusations and disputable decisions, it all reverberated strongly in the international community. The determination manifested by the government was more powerful than words. It is always difficult for politicians to admit that a mistake has been made. Decisions by elected officials that are courageous and appropriate gain the respect and trust of people. When government delays taking actions due to political expediency, and extensive damage can be wrought on the public and to its trust (when they deny the negative findings of research studies about corruption). Corruption in Croatia does not exist because of methodical errors in its measuring, or because of the malevolence of researchers.<sup>34</sup> Several relevant evaluations confirm such a conclusion.

**The situation has gradually improved**, but few people would ascribe this success to systematic measures and action plans. The main instigators of the change are not the competent bodies – regardless of how positive, necessary and unavoidable their activities might be – but the open media and, to a lesser degree, the non-governmental organisations, employers’ associations, trade unions and the academic community.

**What should we do now? The time of plans and strategies is behind us. There is not much use in passing laws; what we expect are results. The public, prone to various cycles of enthusiasm and moral panic, has already manifested signs of irritation.**<sup>35</sup> **What people want is to catch a “big fish”, but such expectations give rise to the possible injustice, false accusations and actions, and the political instrumentalism of the bodies responsible for the prevention of, or the fight against, corruption. The international scene is not passive and neutral. Documents and obligations have been adopted by Croatia and that are not laws without teeth or mere**

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<sup>34</sup> J. Kregar, a Discussion on the National Programme of Prevention of Corruption, HAZU, 2006, 30.

<sup>35</sup> J. Kregar, Suzbijanje korupcije: tektonske promjene i dugoročna promjena klime (Prevention of Corruption: Tectonic Changes and a Long-Term Change of Climate) Ekonomska politika Hrvatske in 2007. Inženjerski biro, Zagreb, 2006, 339-354.

**political declarations, but dramatically important documents for Croatian economic progress and political stabilisation: in short, for Croatia's Europeanization.**

There are, however, many more questions to be addressed than those so far mentioned. For example, what is the basis for our statement that the situation has gradually been improving? What can objectively be achieved in the given circumstances? This leads us to the second question posed at the beginning of this article: How extensive is corruption in Croatia and in which areas of society have the effects of corruption become most dangerous?

## **2. The Extent of Corruption in the Republic of Croatia**

Empirical research on corruption is not scarce. In the last decade empirical research on corruption and the phenomenon itself have expanded. The problems associated with empirical research on corruption are standardisation<sup>36</sup>, the ability to conduct comparisons of identical phenomena and above all, its limited exploratory effect.<sup>37</sup>

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<sup>36</sup> A separate type of research activity is based on standardised monitoring procedures. International documents provide a basis for such procedures. GRECO reports have the longest tradition.. GRECO reports for Croatia have been highly critical but also very challenging in terms of legislative changes. With time, the focus in these reports has moved from the control of legislation, definition of criminal offences to the questions of the functioning of institutions, the use of the budget, i.e. questions concerning the implementation of international obligations regarding the fight against corruption. See [www.oecd/antibribery.org](http://www.oecd/antibribery.org)

<sup>37</sup> Exploratory research activities are those where there is insufficient knowledge of the phenomenon. The research focuses on finding appropriate measures and often produces only random data that cannot be considered either right or wrong *per se*. Research does not only imply asking respondents for their opinions. Opinions are viewpoints and only indirectly also facts. The results will depend on numerous circumstances, including the present situation, an idea of socially acceptable answers and the like. The research concerning corruption mostly consists of exploratory research activities. The Croatian public follows them with great interest but frequent limiting factors are the questions to which there are no answers. Naturally, a major problem arises when a widespread opinion is discovered but it is not clear what can be done. The public is undoubtedly convinced that there is widespread corruption in Croatian society so future research cannot deal with that finding only. Although the data, because of different methods, samples and methodologies, are hardly comparable, more than two thirds, or almost

The public and many professionals are much less familiar with research which is not based on public opinion surveys. These are primarily comparative research activities, where comparisons among different countries are made on the basis of various types of empirical research: research into public opinion, evaluation by experts, or content analyses. Public opinion surveys on corruption are not only synthetic, frequently highlight only certain aspects of the phenomenon of corruption, such as the *cause of corruption*: the links between various cultural factors and corrupt practices, levels of development, GDP/PPP data, possible connections with foreign investments and the like. Other public opinion surveys on corruption seek to investigate its *consequences*: the connection between poverty and corruption, the functioning of institutions, economic damage, equality before the law, the use of grants. Particularly important is the question of the relationship between political corruption and the functioning of institutions like the police, the judiciary, various financial bodies etc.

Since the mid-1990's, research activity in legal, economic and political sciences has become a component part not only of academic scientific practice and science<sup>38</sup>, but also of the process of formulating policy. A particular impetus has been the idea of **good governance**, which has become the backbone of the structure and functioning of public and state administration. Good governance implies not only strict observance of the law, open and accountable authorities, a firm framework of respect for individual and collective rights, efficacy and efficiency of the government, but also specific moral and ethical components in government. Different methods have been developed in research carried out by the World Bank<sup>39</sup>, the OECD<sup>40</sup> and the

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three fourths, of all respondents are aware of corruption. Apart from the usual abstract question about how the public perceives corruption, respondents are sometimes also asked whether they have personally given or taken bribes. Only very few surveys include questions concerning the areas, situations and institutions suspected of corruption. In such an indirect way, the respondents are asked more about their trust in institutions than about the risk of corruption.

<sup>38</sup> T. Kuhn, *The Structure of Scientific Revolutions*, Chicago University Press, 1962.

<sup>39</sup> World Bank Institute (WBI): <http://wbi.worldbank.org/wbi/>

<sup>40</sup> OECD Working Group on Bribery; <http://www.oecd.org/dataoecd/23/20/45460981.pdf>

IMF (International Monetary Fund). New research institutions have been established (WBI, PUMA/SIGMA, TIRI<sup>41</sup>) which were meant to be more than just data collection centres or places where reliable methodologies were developed: they actually started to develop or publish or collect data on the economic consequences of corruption. Economic research activities (Kaufmann<sup>42</sup>, Tanzi<sup>43</sup> Rose-Ackerman<sup>44</sup>, Klitgaard<sup>45</sup>) have been complemented by legal research activities (Pieth<sup>46</sup>, Langseth<sup>47</sup>), political analyses (Johnson, LaPalombara<sup>48</sup>,

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<sup>41</sup> TIRI: [http://www.tiri.org/index.php?searchword=Corruption&option=com\\_search&Itemid=5](http://www.tiri.org/index.php?searchword=Corruption&option=com_search&Itemid=5)

<sup>42</sup> Research on Corruption: Critical Issues, The Political Economy of Corruption, (A. Jain, ed.), London, New York: Routledge, 2001. <http://www.voxprof.com/eden/Publications/Uhlenbruck-et-al-OS-2006.pdf>

“Myths and Realities of Governance and Corruption”, World Economic Forum, October 2005. [http://www.worldbank.org/wbi/governance/pdf/21\\_Governance\\_and\\_Corruption\\_Kaufmann.pdf](http://www.worldbank.org/wbi/governance/pdf/21_Governance_and_Corruption_Kaufmann.pdf)

‘Corruption and the Global Financial Crisis’, Forbes, January 2009, [http://www.brookings.edu/opinions/2009/0127\\_corruption\\_kaufmann.aspx](http://www.brookings.edu/opinions/2009/0127_corruption_kaufmann.aspx); ‘Corruption: The Facts’, Foreign Policy, No. 107, Summer 1997. <http://www.worldbank.org/wbi/governance/pubs/corrfacts.html>

<sup>43</sup> Tanzi, Vito; Davoodi Hamid R.: „Corruption, Growth and Public Finances“, International Monetary Fund, 2000.; Tanzi, Vito; Davoodi Hamid R.: „Corruption, Public Investment and Growth“, International Monetary Fund, 1997.; Tanzi, Vito: „Corruption and the Budget: Problems and Solutions“, in „Economics of Corruption“, Jain, Arvind K. (ed.), p. 111-128, 1998., Kluwer Academic Publishers

<sup>44</sup> Tanzi, Vito; Davoodi Hamid R.: „Corruption, Growth and Public Finances“, International Monetary Fund, 2000.; Tanzi, Vito; Davoodi Hamid R.: „Corruption, Public Investment and Growth“, International Monetary Fund, 1997.; Tanzi, Vito: „Corruption and the Budget: Problems and Solutions“, in „Economics of Corruption“, Jain, Arvind K. (ed.), p. 111-128, 1998., Kluwer Academic Publishers

<sup>45</sup> R. Klitgaard, Controlling Corruption, Berkely Press, 1992; [http://www.icgg.org/downloads/contribution02\\_klitgaard.pdf](http://www.icgg.org/downloads/contribution02_klitgaard.pdf)

<sup>46</sup> Mark Pieth.; Lucinda A. Low; Peter J. Cullen (eds.): „The OECD convention on bribery: a commentary“, Cambridge University Press, 2007.; Mark Pieth (ed.): „Recovering stolen assets“, Peter Lang, 2008.

<sup>47</sup> Peter Langseth, Rick Stapenhurst, Jeremy Pope. „National Integrity Systems“ in „Curbing corruption: toward a model for building national integrity“, Rick Stapenhurst, Sahr J. Kupndeh (eds.), EDI Development Studies, p. 127-150, 1999.

Pope, J „Elements of a successful anticorruption strategy“ in „Curbing corruption: toward a model for building national integrity“, Rick Stapenhurst, Sahr J. Kupndeh (eds.), EDI Development Studies, p. 97-104, 1999.

<sup>48</sup> Mark Pieth.; Lucinda A. Low; Peter J. Cullen (eds.): „The OECD convention on bribery: a commentary“, Cambridge University Press, 2007.  
Mark Pieth (ed.): „Recovering stolen assets“, Peter Lang, 2008.

Pinto Dushinski) and by the creation of new models of administrative science (Riggs, Etzioni, Ward). Corruption is researched as the consequence of a number of causes and as the systemic effect of the relationship between different models of government and the economic, social and political environment.

Very important anthropological research on corruption and measurements of its scope have been carried out (Lambsdorff<sup>49</sup>, Galtung<sup>50</sup>), as well as action-oriented analyses of the possibilities of its prevention (J. Pope). In the researchers' point of view, the problem lies in the fact that there is no firm factual basis, and the data are unreliable, or even fallacious (Galtung, Pope). From the point of view of organisational development, the prevention of corruption is still such a crucial variable that the existing difficulty constitutes a real challenge for all researchers. Despite the complexity of this phenomenon, significant moves have been made in research concerning the aetiology of corruption, not only with regard to general risks and causes, but also in diagnosing appropriate areas for anti-corruption efforts. Ten years ago such research activities were quite rare. Today, there are large numbers of research activities and extensive data (one can easily access the existing U4 Anticorruption<sup>51</sup> data base or the TI Resource Book). Corruption is undoubtedly considered a priority issue and a

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<sup>49</sup> Lambsdorff, Johan Graf: „Corruption in Comparative Perception“ in *Economics of Corruption*, Jain, Arvind K. (ed.), p. 81-110, 1998., Kluwer Academic Publishers

Lambsdorff, Johan Graf: „The Institutional Economics of Government and Reform: Theory, Evidence and Policy“, Cambridge University Press, 2007.

Lambsdorff, Johan Graf; Taube, Markus: „The New Institutional Economics of Corruption, Routledge“, 2005.

Lambsdorff, Johan Graf: „Measuring Corruption – The Validity and Precision of Subjective Indicators“, p. 81-100 in „Measuring Corruption“, Sampford, Charles; Shacklock, Arthur; Connors, Carmel; Galtung, Ferderick (eds.), Ashgate Publishing Limited, 2006.

Lambsdorff, Johan Graf: „An Empirical Investigation of Bribery in International Trade“, *European Journal for Development Research* 10, p. 40-59, 1998.

Lambsdorff, Johan Graf: „Framework Document to the 2004 corruptions perception indeks, Transparency International Background Paper, ICGG.org , 2004.

<sup>50</sup> C. Sampford, A. Shacklock, C. Connors, F. Galtung, *Measuring Corruption* , Ashgate, 2006.

<sup>51</sup> <http://www.u4.no/>

legitimate subject for empirical research. Such a development partly reflects an increased political demand for more reliable foundations for a prevention policy to combat corruption and the legislation necessary to give effect to public policy. Nowadays, there are a number of possible approaches to research corruption: an economic approach (research into both causes and consequences), measurement studies, politico-scientific aspects of the phenomenon of corruption, sociological analyses of the culture of corruption and legal analyses of international and domestic laws and their application.

### *2.1. Research on corruption: international comparisons and Croatia*

Despite current experience there is quite a lot of scepticism with regard to the possibilities of measuring corruption. There is an opinion that we can at least measure perception, which then narrows down the interpretation, and draws our attention to research on public opinion. In the meantime, there have been hundreds of research studies<sup>52</sup> measuring corruption by way of different methods and assessing the risks. Even a basic analysis of institutions and the existing regulations become significant indicators. Perceptions are also important because they result in some material effects (e.g. trust in institutions results in fewer claims and appeals). Moreover, the research questions have become more and more standardised, because of temporal and other special comparisons, and because of the measurement of the effects of anti-corruption policy.

There are many standardised research activities investigating corruption which are not solely based on public opinion. Some of the most important ones are described below.

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<sup>52</sup> D. Kaufmann, A. Kraay, M. Mastruzzi, *Measuring Corruption: Myths and Realities*, World Bank, May 1, 2006, [www.worldbank.org](http://www.worldbank.org) (governance matters).

## 2.2. Corruption perception Index (CPI) and Corruption Barometer

The *TI Corruption Perception Index (CPI)*<sup>53</sup> is a research study which brings together a list of countries ranked according to the extent of corruption. This is a composite index based on secondary research activities (18-20 different research activities in more than 12 independent institutions). To put it simply, other research activities are used to provide data for a complex process of analysing the results. Although some original data and its reliability is lost, but the CPI constitutes a relatively reliable comparison of corruption among similar countries.

The question of perception is usually regarded as a measurement deficiency because of the difficulty of making comparisons. However, it would be very difficult not to admit that the CPI expresses opinions relating to trust in institutions, and it brings together the positions of experts and business people, and only marginally the opinions of citizens. The compilation of data is not merely statistical manipulation; it also contains elements of expert evaluation of the reliability of sources. The lack of a composite index lies in the fact that different areas are not diagnosed, that the causes and the links of corruption with indices of social progress and economic indicators are not analysed, and that there is no distinction between levels and types of corruption (*administrative and political corruption; petty and grand corruption*). Regardless of these objections, CPI is a very solid measuring instrument, although criticism of it is getting stronger by the day.

When results are interpreted, it is unimportant what number a country ranks, in complete contrast to how the media see it. The first measure is the **average result corrected by a standard deviation** according to the differentials in different sources of information. Countries which do not have a sufficient number of research activities are not included in the list but experience has shown that the credibility of the results is much higher. The basic, original research results can be used for three years after which they are considered dated. In the

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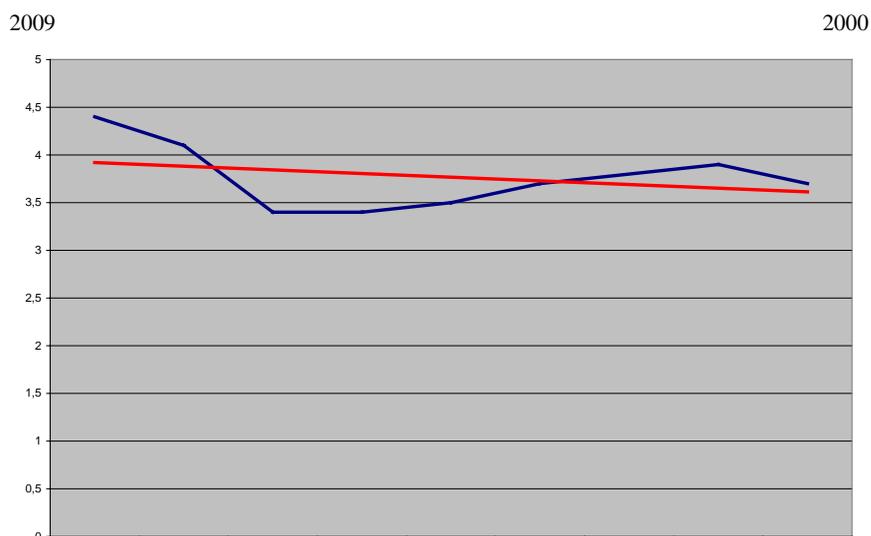
<sup>53</sup> <http://www.transparency.org/surveys/#cpi> or [www.icgg.org](http://www.icgg.org)

diagnostic sense, this may be a problem because, through inertia, countries are evaluated equally regardless of possible changes; this excludes the use of CPI as a monitoring instrument. Its diagnostic value is additionally minimised by the selection of methodology and an emphasis on the role of experts and on statistical manipulation (for example, experts have less insight into the real extent of petty corruption than the population). To a lesser extent, the CPI also uses research on public opinion.

### **CPI Index Croatia 2000 – 2009**

	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000
<b>CPI</b>	<b>4.1</b>	<b>4.4</b>	<b>4.1</b>	<b>3.4</b>	<b>3.4</b>	<b>3.5</b>	<b>3.7</b>	<b>3.7</b>	<b>3.9</b>	<b>2.7</b>
Rank	66	62	64	70	69	67	59	52	47	77
R/No	0.34	0.34	0.33	0.42	0.44	0.45	0.44	0.51	0.51	0.86

As we can see from the table, the values of the CPI Index oscillate a little, except in 2000. However, stagnation is noticeable, as well as a slight decrease of index value. The maximum was reached in 2001.



If we take into account Croatia's general position on the scale, i.e. in comparison with other countries (what the public usually perceives as important), the oscillations are small but suggest some improvement (sic!). The reason for this lies in the fact that as new countries are added to the list they are in the grip of corruption much more than Croatia. This can best be seen if we look at the third number, which indicates the number of countries included in the graph and where some progress can be seen.

For the sake of a better presentation of data, we have decided to reduce the number of countries for which these data are given. Large tables are inconvenient for the reader and we decided to make them smaller. We can justify our final decision by stating that the table still shows major trends, and makes relevant comparisons with the situation in Croatia. Therefore, we have chosen several developed democracies, not necessarily the most successful ones (Germany, Austria, Great Britain, France, the USA, Spain, Italy and Greece); several countries that are 'new democracies' and members of the EU (Slovenia, Estonia, the Czech Republic, Slovakia and Hungary), a couple of countries from the region (Bulgaria, Romania) being member states of the EU, as well as those wanting to join the EU (Serbia, Montenegro, Macedonia, Bosnia and Herzegovina, Albania) and belonging to what is called the SEEU or Western Balkans. The entire CPI Index, corresponding databases<sup>54</sup> and country list can be reviewed on the Transparency International website. However, the data for 22 countries are sufficient for making many important conclusions.

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<sup>54</sup> [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009](http://www.transparency.org/policy_research/surveys_indices/cpi/2009)

## CPI Index- selected countries

	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000
HR	4.1	4.4	4.1	3.4	3.4	3.5	3.7	3.8	3.9	3.7
SLO	6.6	6.7	6.6	6.4	6.1	6.0	5.9	6.0	5.2	5.5
BG	3.8	3.6	4.1	4.0	4.0	4.1	3.9	4.0	3.9	3.5
ROM	3.8	3.8	3.7	3.1	3.0	2.9	2.8	2.6	2.8	2.9
FYRM	3.8	3.6	3.3	2.7	2.7	2.7	2.3	-	-	-
BiH	3.0	3.2	3.3	2.9	2.9	3.1	3.3	-	-	-
SRB/YU	3.5	3.4	3.4	3.0	2.8	2.7	2.3	-	-	-
ALB	3.2	3.4	2.9	2.6	2.4	2.5	2.5	2.5	-	-
I	4.3	4.8	5.2	4.9	5.0	4.8	5.3	5.2	5.5	4.6
D	8.0	7.9	7.8	8.0	8.2	8.2	7.7	7.3	7.4	7.6
A	7.9	8.1	8.1	8.6	8.7	8.4	8.0	7.8	7.8	7.7
H	5.1	5.1	5.3	5.2	5.0	4.8	4.8	4.9	5.3	5.2
MG	3.9	3.4	3.3	2.8	2.8	2.7	2.3	-	-	-
EST	6.6	6.6	6.5	6.7	6.4	6.0	5.5	5.6	5.6	5.7
PL	5.0	4.6	4.2	3.7	3.4	3.5	3.6	4.0	4.1	4.1
CS	4.9	5.2	5.3	4.8	4.3	4.2	3.9	3.7	3.9	4.3
SK	4.5	5.0	4.9	4.7	4.3	4.0	3.7	3.7	3.7	3.5
F	6.9	6.9	7.3	7.4	7.5	7.1	6.9	6.3	2.8	6.7
SP	6.1	6.5	6.7	6.8	7.0	7.1	6.9	7.1	7.0	7.0
GR	3.8	4.7	4.6	4.4	4.3	4.3	4.3	4.2	4.2	4.9
UK	7.7	7.7	8.4	8.6	8.6	8.6	8.7	8.7	8.3	8.7
USA	7.5	7.3	7.2	7.3	7.6	7.5	7.5	7.7	7.6	7.8

The CPI index analysis indicates a global trend towards its increase (i.e. a decrease in corruption), but although corruption is decreasing there are some exemptions like Italy, Greece, Spain and Portugal. This is particularly clear when we bear in mind that, traditionally, other European countries have always been at the top of the list: Sweden, Finland, Denmark, Switzerland - or New Zealand, Singapore, Australia, Canada - as well as Germany, Austria and Great Britain, which are on our list.

The reduction of the existing difference may be ascribed to the methodological imperfection of the measures, but it is evident that there is a clear correlation between the index and the level of development and stability of a country.

### CPI Index- selected developed countries

	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000
HR	4.1	4.4	4.1	3.4	3.4	3.5	3.7	3.8	3.9	3.7
I	4.3	4.8	5.2	4.9	5.0	4.8	5.3	5.2	5.5	4.6
D	8.0	7.9	7.8	8.0	8.2	8.2	7.7	7.3	7.4	7.6
A	7.9	8.1	8.1	8.6	8.7	8.4	8.0	7.8	7.8	7.7
F	6.9	6.9	7.3	7.4	7.5	7.1	6.9	6.3	2.8	6.7
SP	6.1	6.5	6.7	6.8	7.0	7.1	6.9	7.1	7.0	7.0
GR	3.8	4.7	4.6	4.4	4.3	4.3	4.3	4.2	4.2	4.9
UK	7.7	7.7	8.4	8.6	8.6	8.6	8.7	8.7	8.3	8.7
USA	7.5	7.3	7.2	7.3	7.6	7.5	7.5	7.7	7.6	7.8

When we compare changes in the perception of corruption with those in developed democracies, we should acknowledge Croatia's trend in getting closer to these countries, as opposed to others (Greece, Italy). However, Croatia is still lagging behind average results.

If we compare Croatia with the **neighbouring countries**, we discover the real meaning of these data as well as the fact of Croatia falling relatively behind them. A comparison with the new members of the European Union shows that the countries Croatia used to compare itself with and which were close on the scale, are now doing much better: Slovenia (6.6), Estonia (6.6), Hungary (5.1), Poland (5.0) and the Czech Republic (4.9), and then Lithuania (4.8), Latvia (4.8) and Slovakia (4.5). Croatia's position is a little worse than that of Poland (4.2). It shares its position with Bulgaria (3.8) but is ranked significantly higher than Romania (3.8), Serbia (3.5), Bosnia and Herzegovina (3.0), the Republic of Macedonia (3.8) or Albania (3.2.). Croatia is in a slightly worse situation than Italy (4.3) and better than Greece (3.8).

### CPI Index- Croatia and other selected new democracies

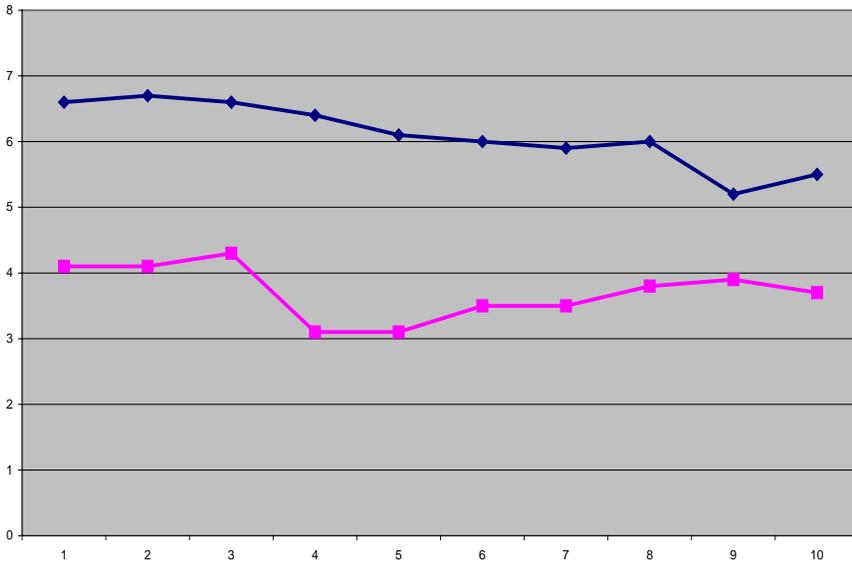
	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000
HR	4.1	4.4	4.1	3.4	3.4	3.5	3.7	3.8	3.9	3.7
SLO	6.6	6.7	6.6	6.4	6.1	6.0	5.9	6.0	5.2	5.5
BG	3.8	3.6	4.1	4.0	4.0	4.1	3.9	4.0	3.9	3.5
ROM	3.8	3.8	3.7	3.1	3.0	2.9	2.8	2.6	2.8	2.9
H	5.1	5.1	5.3	5.2	5.0	4.8	4.8	4.9	5.3	5.2
EST	6.6	6.6	6.5	6.7	6.4	6.0	5.5	5.6	5.6	5.7
PL	5.0	4.6	4.2	3.7	3.4	3.5	3.6	4.0	4.1	4.1
CS	4.9	5.2	5.3	4.8	4.3	4.2	3.9	3.7	3.9	4.3
SK	4.5	5.0	4.9	4.7	4.3	4.0	3.7	3.7	3.7	3.5

When compared with the new democracies in this table, Croatia's situation shows the following characteristics:

- a. Similar to other countries, there has been **slight progress** in countering corruption in Croatia, during the past ten years however, less than that in some other countries (the Czech Republic, Slovakia). The interpretation of such a trend can be far-reaching. **The changed rankings may well be the result of slow social progress rather than conscious and planned policies.**
- b. **The pace of Croatia's progress in combating corruption and the overall results do not match those of countries which have introduced better structural economic reforms (e.g. privatisation), and where there are efficient institutions and the climate (political will) to combat corruption.** This item of data diverges dramatically from the self-perception of Croatia's economic and political progress. An average Croatian citizen still considers other comparable post-socialist countries as inferior. Recently, however, this delusion seems to be diminishing as a result of the recession and the economic crisis.
- c. Despite the fact that progress cannot be denied, a comparison of the initial and present results shows that changes in other countries do not come faster after accession to the European Union.

### CPI Index- Croatia and Slovenia

	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000
HR	4.1	4.4	4.1	3.4	3.4	3.5	3.7	3.8	3.9	3.7
SLO	6.6	6.7	6.6	6.4	6.1	6.0	5.9	6.0	5.2	5.5



A comparison between Croatia and Slovenia is particularly interesting and requires a deeper analysis. Their similarities are many: both countries used to be part of the SFRY, both have similar historical developments, political cultures institutional and legislative frameworks. Both countries have had a series of major corruption scandals: Slovenia (Casino, Insurance, Oman, Laska pivovara, Patria) and Croatia (the supply of trucks, Kutle, Gruppo, Brodosplit, Podravka, INA). In both countries, there are similar problems regarding the operation of free media and civil society,<sup>55</sup> the process of privatisation has been carried out with great difficulties, and the political parties are inclined to be exclusive in their personnel, and they have penetrated into the sphere of business. The institutions of parliamentary democracy suffer from major deficiencies.

<sup>55</sup> In Slovenia, for example, Transparency International was not founded!

Nevertheless, the difference is still very significant!

It can be explained by the better functioning of investigative institutions, a higher level of political accountability, the democratic and political culture, and an independent and responsible judiciary. Even very small differences bring about a major difference in perception, and probably also in the real level of corruption. In addition, Croatia is suffering from the heavy burden of the corruption network developed by the trade in arms, predatory privatisation, the obstruction of proposed anti-corruption measures, and organised crime. To put it simply: the risk of corruption in Slovenia has been minimised, whereas in Croatia corruption has become an insurmountable problem.

Two European countries, Bulgaria and Romania, are a special case for comparison. In the circles of European political institutions, they are often criticised because of widespread corruption, the abuse of European Union funds, inefficient public administration, and corruption both in everyday life and among high-ranking politicians. In these two countries, political corruption scandals are also very frequent. It is necessary to remind readers of the fact that these two countries were admitted to EU membership after a period of postponement, and under an obligation to reform the judiciary and suppress corruption.<sup>56</sup> In order to show their compliance to European standards, these countries appointed competent and non-corrupt persons to high positions with investigative and judicial functions, carried out investigations at the highest political levels, adopted the necessary legislation, and actively worked on the prevention of corruption.

When compared with these two countries, Croatia has better results both in terms of the indices of perception of corruption and the dynamics of introducing changes. In the last few years, Bulgaria and Romania have stagnated while Croatia has shown marked progress.

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<sup>56</sup> The date of accession, 1 January 2007, was set at the Thessaloniki Summit in 2003 and confirmed in Brussels on 18 June 2004. Bulgaria, Romania and the EU-25 signed the Treaty of Accession on 25 April 2005 at Luxembourg's Neumuenster Abbey. The 26 September 2006 monitoring report of the European Commission confirmed the entry date as 1 January 2007. The last instrument of ratification of the Treaty of Accession was deposited with the Italian government on 20 December 2006 thereby ensuring it came into force on 1 January 2007.

Despite their rankings, Bulgaria and Romania are members of the European Union and Croatia is not. This leads to public frustration and a feeling of discrimination because the general public believes that unequal benchmark criteria are being used to decide upon Croatia's accession to the EU. In a situation where support for European integration is decreasing in Croatia, these beliefs negatively affect the average citizens' support for accession to the European Union.

### CPI Index - Croatia, Bulgaria and Romania

	2009	2008	2007	2006	2005	2004	2003	2002	2001	2000
HR	4.1	4.4	4.1	3.4	3.4	3.5	3.7	3.8	3.9	3.7
BG	3.8	3.6	4.1	4.0	4.0	4.1	3.9	4.0	3.9	3.5
ROM	3.8	3.8	3.7	3.1	3.0	2.9	2.8	2.6	2.8	2.9

**It is surprising how rarely these temporal and geographic comparisons are used in political discussions or in the negotiations regarding Croatia's accession to the European Union.**

The reason these comparisons are unused is not serious methodological objections<sup>57</sup> becoming increasingly vocal and directed to Transparency International and Passau University (Graf Lambsdorf)<sup>58</sup>. The main critic of the CPI Index, Frederik Galtung (a co-creator of the CPI), gives several reasons for not using the CPI:

- (1) the rank-list includes only the fact of receiving and not giving, bribes;
- (2) the conditions of comparison of countries and research are irregular;
- (3) the selection of countries is not of a representative quality;
- (4) imprecise and sometimes even unreliable sources are used;

<sup>57</sup> The aggregation of them implies a reduction in conceptual precision. But in this case, there is no increase in uncertainty over what is being measured, because the data user selects the indicators to include them in the index and the weights assigned to each indicator. However, data users have no way of knowing exactly what the indicators are even attempting to measure.

S. Knack Measuring Corruption in Eastern Europe and Central Asia: a Critique of the Cross-Country Indicators, World Bank Policy Research Working Paper 3968, July 2006.

<sup>58</sup> J.G. Lambsdorff, Measuring the Dark Side of Human Nature: The Birth of the Corruption Perception Index; [www.icgg.org/corruption.cpi\\_childhooddays.html](http://www.icgg.org/corruption.cpi_childhooddays.html); Lambsdorff, Johann Graf, The Methodology of the 2005 Corruption Perceptions, Indeks, [www.icgg.org/downloads/CPI\\_Methodology.pdf](http://www.icgg.org/downloads/CPI_Methodology.pdf);

(5) a narrow definition of corruption is used;

(6) inappropriate manifestation of the trend - reformists are not acknowledged;

(7) the measuring interferes with the activity of offering assistance<sup>59</sup>.

The criticism of the CPI Index offered by World Bank experts, T. Thomson and A. Shah is very disturbing. "We find that there are many limitations to corruption indicators due to the methodologies used in aggregating or averaging, the reliability of the sources on which they are based, and the varying definitions of corruption utilized. In particular, we find the large standard errors of the aggregate corruption indices problematic. This lack of precision of the scores leads one to question the feasibility of compiling meaningful rankings across countries or trends across time. Regardless of the accuracy of the corruption ratings, it is unclear what the corruption ratings actually tell us, since corruption is such a broad concept." <sup>60</sup>

### *2.3. Global Corruption Barometer (GCB)*

In order to compensate for the aforementioned deficiencies and to increase the diagnostic value of the research, Transparency International developed a Global Corruption Barometer as a measuring device of the level, extent and risk areas of corruption.<sup>61</sup> While the CPI is focused on trying to establish the level of corruption by comparing individual countries, the GCB aims to differentiate the perception of different social groups and to distinguish between various risk areas for corruption. The first research study, carried out in cooperation with Gallup 2003, pointed to some surprising phenomena in the evaluation

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<sup>59</sup> F. Galtung, *Measuring the Immeasurable: Boundaries and Functions of (Macro) Corruption Indices*, [www.inegradepublica.org.mz](http://www.inegradepublica.org.mz)

<sup>60</sup> T- Thomson, A. Shah, *Transparency International Corruption Perception Index: Whose Perceptions are They Anyway?* [www.worldbank.org/wbi/governance/pubs/governancematters.htm](http://www.worldbank.org/wbi/governance/pubs/governancematters.htm)

<sup>61</sup> <http://www.transparency.org/surveys/#barometer>

of such areas. It was established that **the perception of the public was mostly influenced by trust in institutions and their efficacy**<sup>62</sup>.

For example, a high level of mistrust in political parties turned out to be the basis for the evaluation of risks in that particular area. GCB is by no means the only research activity of its kind. Similar research activities, although never at a global level, have been carried out in individual countries. Indeed, this very method is mostly used in empirical research activities despite the fact that it offers relatively meagre data.

- a. Transparency International, aware of the methodological weakness and inadequacy of data used in the CPI Index, also publishes a Global Corruption Report, a study based on qualitative case analyses;
- b. The BPI (Bribe Payers Index)<sup>63</sup> is an index that evaluates countries according to their export of corruption, i.e. the practice of trying to get jobs by offering bribes in other countries. The BPI was established after strong lobbying by developing countries who blamed large international corporations offering bribes (the 'supply side' of corruption) for their problems. The findings of the BPI correspond somewhat with the CPI because some countries, large exporters and investors have been evaluated similarly on that scale. However, these research activities have revealed yet another phenomenon, which is the emergence of China, India and Russia as economic giants which do not stick to proper business practices.

#### *2.4. Business Environment and Enterprise Performance Survey (BEEPS)*

BEEPS is a research activity carried out by the World Bank and the European Bank for Reconstruction and Development (EBRD). The EBRD has systematically carried out research on corruption since 1996 that is statistically sophisticated and of very high qual-

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<sup>62</sup> [http://josip-kregar.com/fileadmin/Dokumenti/Predavanja/Skupovi/corruption\\_barometer\\_1\\_.2004.ppt](http://josip-kregar.com/fileadmin/Dokumenti/Predavanja/Skupovi/corruption_barometer_1_.2004.ppt)

<sup>63</sup> [www.transparency.org/surveys/#bpi](http://www.transparency.org/surveys/#bpi)

ity. Subjective perceptions are measured on the basis of the attitudes towards objective indices of business transactions.<sup>64</sup> The sample includes local officials, lawyers, bankers, and experts who evaluate the situation mostly within the area of formal legal regulation and its implementation (extensiveness and effectiveness). The data have shown corruption to be present and extensive in countries belonging to the same region. However, when compared to other countries of the region, Croatia has shown permanent progress.<sup>65</sup>

**BEEPS 2005<sup>66</sup>**

	<b>Rank Frequency of Corruption</b>	<b>Rank State Capture</b>	<b>Increase Frequency of Corruption</b>	<b>State Capture</b>
Croatia	18	8	-0.10	-0.05
BiH	21	24	0.01	0.05
Hungary	9	15	-0.35	0.01
Slovenia	1	7	-0.30	0.06
Bulgaria	5	1	-0.60	-0.16
Romania	4	11	-0.72	-0.02
Serbia	27	18	0.50	0.03

In relation to other connected problems, the column showing the frequency of corruption is much higher than any other columns representing other problems. The data showing the intensity of corruption in the comparative years of 2002 and 2005 point to a very

<sup>64</sup> European Bank for Reconstruction and Development (EBRD), [www.ebrd.org](http://www.ebrd.org)

<sup>65</sup> “In South-Eastern Europe, the findings are mixed. The good news is that the two countries that have recently joined the EU, Bulgaria and Romania, both showed significant improvement in decreasing corruption, although their levels are still high –about half of the Romanian firms in the survey indicated that corruption is a problem for the operation and growth of their business. **Croatia’s results were also better in 2005 than in 2002.** However, the survey showed a worsening situation in Serbia and Montenegro and the slight improvement in Bosnia and Herzegovina still leaves it at a high level (with nearly 50 percent of firms saying corruption is a problem), similar to Romania and Serbia and Montenegro. Albania remains the worst performer among all transitional countries, that is, the country where the most firms (about two thirds) reported corruption to be a problem. J.H. Anderson, C. Gray, *Anticorruption in Transition 3.*”

<sup>66</sup> J.H. Anderson, C. Gray, *Anticorruption in Transition 3.*

slight change in Croatia. Progress was in the right direction, but it was much smaller than in many other countries (e.g. Georgia). Changes in Croatia are slow in comparison to other countries but they are going in a positive direction.

## *2.5. World Bank Institute – Governance Matters*

Even more significant is the continuous work of the World Bank Institute, it being the main global archive of knowledge and experience in the area of measuring corruption. The Kaufmann-Kraay-Mastruzzi<sup>67</sup> methodology of measuring corruption<sup>68</sup> was developed on the basis of an extremely large number of indicators relating to quality of governance, public administration and judiciary, all compared to thousands of data on economic and other conditions. In these research activities, the emphasis has not been on the variation of data to develop comparative lists, but on the search for correlations and causal links of the data on corruption with structural institutional and social variables, all aimed at monitoring the efficiency of the prevention of corruption. The new reports<sup>69</sup> are examples of refined methodologies of monitoring indicators and are more precise instruments than the CPI in comparing and monitoring changes.

These research activities are multi-dimensional and they clearly connect the problem of corruption with other indicators. It is necessary to connect the efficiency indicators of public administration with the problem of corruption,<sup>70</sup> primarily to monitor the long-term trends.

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<sup>67</sup> D. Kaufmann, *Myths and Realities of Governance and Corruption*. Global Competitiveness Report 2005-2006: Policies Underpinning Rising Prosperity. Houndmills, UK: Palgrave Macmillan for the World Economic Forum; D. Kaufmann, A. Kraay, M. Mastruzzi *Governance Matters IV: Governance Indicators for 1996-2004*. " World Bank Policy Research Working Paper 3630.

<sup>68</sup> D. Kaufmann, A. Kraay, M. Mastruzzi, *Governance Matters IV, Governance Indicators for 1996-2004* and D. Kaufmann, A. Kraay, P. Zoido-Lobaton, *Governance Matters*, [www.worldbank.org/wbi/governance/pubsgovernancematters.htm](http://www.worldbank.org/wbi/governance/pubsgovernancematters.htm)

<sup>69</sup> J. Anderson, C. Gray, *Anticorruption in Transition*, World Bank, Washington, 2006.

<sup>70</sup> A.M. Boromisa, *Trends in the Reform of Croatian Public Administration*.

### Governance Matters 2007<sup>71</sup> <sup>72</sup>

	2008	2007	2006	2005	2004	2003	2002	2000	1998	1996	
Voice and Accountability	60.1	60.1	59.1	61.4	60.4	59.9	62.8	55.1	37.7	31.3	↑▲
Political Stability	66.5	64.4	59.1	58.0	60.4	55.7	55.2	51.4	52.4	44.8	▲
Government Effectiveness	69.7	68.7	70.1	67.5	65.6	62.7	63.6	62.7	66.5	48.1	▲
Regulatory Quality	66.7	64.6	62.9	65.3	65.0	63.1	60.1	55.2	55.7	43.6	▲
Rule of Law	55.0	55.2	52.9	53.6	55.8	55.3	55.3	55.8	51.9	32.1	▲
Control of Corruption	61.8	59.4	60.2	59.1	58.3	56.9	62.3	56.4	42.6	33.7	▲

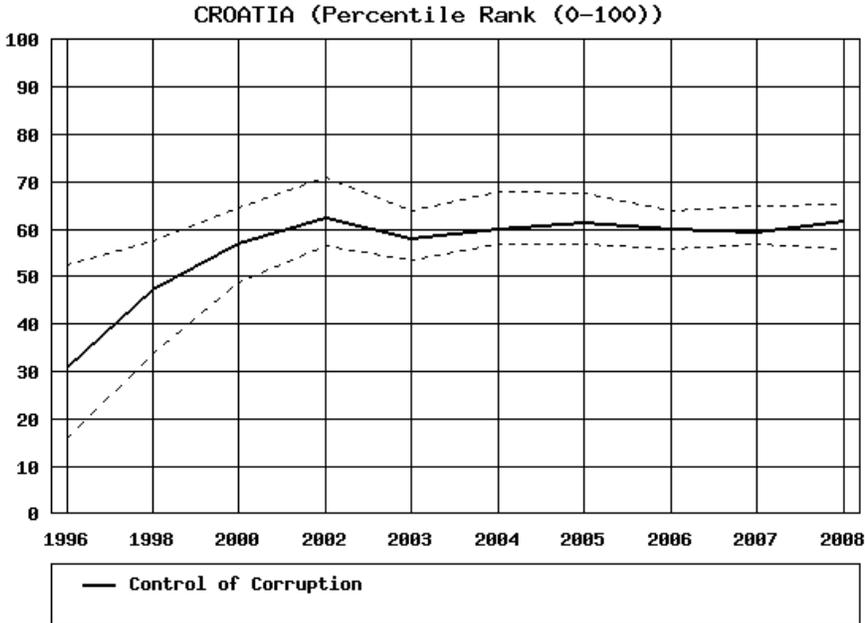
The importance of these measurements lies in the related variables measuring the indicators of good governance, law (quality of regulation, rule of law), the efficiency and efficacy of government, and the stability of the legal process in general. This is important because it constitutes the basis of the main idea concerning the necessary changes in public administrations and judiciaries in countries undergoing transition (the Washington Consensus) by emphasising the need to stabilise them by reducing their state activities from well-being to the classical functions of maintaining law and order, i.e. from the idea of reducing the scope of state activities in favour of the better management of a smaller number of tasks ('smaller but stronger').<sup>73</sup>

Here is a graph depicting the changes and the progress in combating and controlling corruption.

<sup>71</sup> [http://info.worldbank.org/governance/kkz2005/country\\_report.asp?countryid=99](http://info.worldbank.org/governance/kkz2005/country_report.asp?countryid=99)

<sup>72</sup> [http://info.worldbank.org/governance/wgi2007/sc\\_chart.asp](http://info.worldbank.org/governance/wgi2007/sc_chart.asp)

<sup>73</sup> F. Fukuyama, *State Building: Governance and the World Order in the 21st Century*, Profile Books, 2005, 6-7, 20, 23.



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2009: Governance Matters VIII: Governance Indicators for 1996–2008

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

## 2.6. Nations in Transit

The organisation Freedom House<sup>74</sup> has carried out a number of similar research activities. “Freedom in the World” (FRH) is a re-

<sup>74</sup> Freedom House is a non-governmental organisation promoting democratic values through various forms of supporting research, publications, seminars and projects. It was founded in 1941, and since 1955 it has published various research activities on freedoms which they measure and express by various indices. Since 1978, it has been publishing annual reports covering 192 countries. The project Nations in Transit is a collection of research activities which started in 1995 and includes 28 post-communist countries. Part of these research activities include measurements of corruption. The Countries at the Crossroads is a new research programme which started in 2004 and which includes the new democracies and contains issues regarding corruption. The evaluations of corruption are based on the viewpoints of expert groups and local reporters and are checked by monitoring procedures and at large conferences prior to their publication ([www.freedomhouse.org](http://www.freedomhouse.org)).

search activity which ended in the development of a rank-list and data on the situation concerning democratic institutions. Every element of institutional and legal process is evaluated according to certain specific questions regarding their functioning. These evaluations are given by local and regional experts, and in the central analysis they are assessed, their consistency is checked and the results are analysed. The most relevant research for Croatia is called “Nations in Transit” (FTN)<sup>75</sup>, which in its annual publications brings various elements of the functioning of societies (the legal system and the rule of law, the judiciary, public administration, corruption) and offers many possibilities for comparison. A similar but more detailed methodology has been used in the research study called “Countries at the Crossroads” (CCR). Their tables contain some very interesting data. As far as Croatia is concerned, they also record some oscillations, but also slight progress.

### **Nations in Transit: Croatia 1997-2009<sup>76</sup>**

	2009	2008	2007	2006	2005	2004	2003	2002	2001	1999	1998	1997
Elections	3.25	3.25	3.25	3.25	3.00	3.25	3.25	3.25	3.25	4.25	4.25	4.00
Central Government	3.50	3.25	3.50	3.50	3.50	3.75	3.75	3.50	3.50	4.00	4.00	4.00
Independent Media	4.0	3.75	4.0	3.75	3.75	3.75	3.75	3.50	3.50	5.00	4.75	4.75
Judiciary	4.25	4.25	4.25	4.25	4.50	4.50	4.25	3.75	3.75	4.75	4.75	4.75
Corruption	<b>4.50</b>	<b>4.50</b>	<b>4.75</b>	<b>4.75</b>	<b>4.75</b>	<b>4.75</b>	<b>4.75</b>	<b>4.50</b>	<b>4.50</b>	<b>5.25</b>	-	-
Σ	3.71	3.64	3.75	3.64	3.75	3.83	3.79	3.54	3.54	4.46	4.25	4.20

It is equally important (and research makes it possible) to compare results for other variables of good governance, where it is obvious that the results, and the progress, are worse than average in the category of assessment of the extent of corruption. If we also take into consideration

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<sup>75</sup> “Nations in Transit“ covers 27 countries in transition, excluding Turkey.

<sup>76</sup> The ranking is given on a scale from 1 to 7 whereby 1 is the best and 7 the worst rank. A democratic score is an average of all evaluations in a year.

the data<sup>77</sup> on the election process (a change from 4.25 in 1999 to 3.25 in 2009), on civil society (from 3.50 in 1999 to 2.75 in 2009), and on free media, (a change from 5.00/1999 to 4.00/2009), which are at the level of EU countries, and if we compare them to corruption indicators, the progress is positive but almost insignificant. We can be even less satisfied if we compare Croatia with other transitional countries.

### **Nations in Transit: 1999-2010<sup>78</sup>**

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
<b>Croatia</b>	<b>5.25</b>	<b>4.50</b>	<b>4.50</b>	<b>4.75</b>	<b>4.75</b>	<b>4.75</b>	<b>4.75</b>	<b>4.75</b>	<b>4.75</b>	<b>4.50</b>	<b>4.50</b>	<b>4.50</b>
BiH	6.00	5.75	5.50	5.00	4.75	4.50	4.25	5.00	4.25	4.25	4.50	4.50
Hungary	2.50	3.00	3.00	2.75	2.75	2.75	3.00	3.00	3.00	3.00	3.25	3.50
Slovenia	2.00	2.00	2.00	2.00	2.00	2.00	2.25	2.25	2.25	2.25	2.50	2.50
Bulgaria	4.75	4.75	4.50	4.25	4.25	4.00	3.75	3.75	3.75	3.50	4.00	4.00
Romania	4.25	4.50	4.75	4.50	4.00	4.25	4.25	4.00	4.00	4.00	4.00	4.00
Serbia	6.25	6.25	5.25	5.00	5.00	6.25	5.25	5.00	5.00	5.00	4.75	4.50

The research discussed above indicates that Croatia has not deviated from the situation in other countries. This research has shown that there are no major differences in the entire group of transitional countries (Bulgaria, Bosnia and Herzegovina, Croatia and Serbia). Indeed, in countries like Slovenia and Hungary, for example, there has been an increase in corruption.

### *2.7. Other research activity on corruption*

Gallup International<sup>79</sup> (GAL, GMS) is the most important global institution monitoring of public opinion. It was founded in 1947 and has 55 branch offices worldwide. Its advantage lies in the fact that it guarantees technical competence and excellence. The new research

<sup>77</sup> [www.freedomhouse.hu/NIT2007](http://www.freedomhouse.hu/NIT2007)

<sup>78</sup> The ranking is made on a scale from 1 to 7, where 1 is the best and 7 the worst rank. A democratic score is an average of all evaluations made in a year. [www.freedomhouse.hu/nation-in-transit/2010](http://www.freedomhouse.hu/nation-in-transit/2010).

<sup>79</sup> [www.gallup-international.com](http://www.gallup-international.com)

study, Gallup International Millennium Survey, included 57,000 respondents in 60 countries and was a continuation of previous research activities. It provides an opportunity to make a comparison in time and with a comparative perspective. This research activity has been a very valuable one because of possible comparisons with research into social values, trust in institutions and the like. Gallup also conducts GBS Research (Global Barometer Survey).

The question: “Have you personally ever bribed an official?” had a high percentage of positive answers in the whole region. Although this research on public opinion did not cover the whole country but only a sample of citizens in the capital, **Croatia was assessed as more or less the best. A comparison with some previous surveys also showed significant progress.**

The Bertelsmann Transformation Index (BTI)<sup>80</sup> is a less well known instrument that attempts to measure success in transition, economic growth, free market competition (MI), and the activity of democratic institutions (SI). A component part of the research is also the situation in relation to corruption. The BTI measures data from 116 countries and since 2004 permanently monitors all changes in those countries. The BTI is a significant quantified indicator and possible basis for the evaluation of the success of policy. The report very precisely analyses the consistency of policies and of the political will to carry out reforms (BRI, QLM).

Business Environment Risk Intelligence (BERI)<sup>81</sup> is a qualitative research project which uses 57 criteria in assessing the stability of a particular country and its institutions. The level of corruption is one of the risk factors of a country’s political and economic situation. One hundred and sixteen (116) countries are evaluated based on the composite security index from 1 to 100.

Columbia University<sup>82</sup> is carrying out the State Capacity Survey (CUD) using a standardised questionnaire filled in by 164 experts for about one hundred countries. The value and respectability of that in-

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<sup>80</sup> [www-bertelsmann-transformation-index.de](http://www-bertelsmann-transformation-index.de)

<sup>81</sup> [www.beri.com](http://www.beri.com)

<sup>82</sup> [www.columbia.edu](http://www.columbia.edu)

strument must be ascribed to the tradition of conducting such research at the University and its independence from special interests, from the influence of governments or from centres of financial power.

The World Economic Forum<sup>83</sup> is most probably one of the most influential global centres of regulation of world processes. Established as a non-profit and a non-governmental organisation situated in Davos, WEF gathers the most influential people of the day: politicians and leaders, scientists, influential business people, experts of different kinds. Since the very beginning of its operation (1971), the WEF has discussed the stability and efficacy of political and state institutions. In that context, corruption has very often been raised as a topic. In cooperation with the Harvard Institute for International Development (HIID), the WEF has prepared empirical foundations for such a discussion. In 1996, the WEF started an initiative of developing competition reports known as Global Competitiveness Survey/Report, which became an annual publication covering the most important aspects of corporate life and the situations in different countries. One of the aspects included among corporate life is corruption. In its research on competitiveness, the GCS, GCSA has relied on evaluations by business people and experts.

The American Heritage Foundation (HER)<sup>84</sup> supports research and education. Once a year, since 1995, it publishes the Index of Economic Freedom. The Index of Economic Freedom includes information from 161 countries and provides measures of economic freedom and an assessment of the possibilities of growth and inclusion in the global economy. Methodologically speaking, the combination of a survey, an interview, and an expert opinion, is applied in relation to numerous economic indicators.

## *2.8. Final remarks regarding research*

This extensive presentation on the research on corruption had two main goals. First, to point to the existence of many indicators and

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<sup>83</sup> [www.weforum.org](http://www.weforum.org)

<sup>84</sup> [www.heritage.org](http://www.heritage.org)

methods of measurement. Research long ago exceeded the negative image of previous ideas.<sup>85</sup> It has become very sophisticated, and is carried out by professionals who work for permanent institutions and research centres. Their goal has ceased to be merely a comparison of data, and of the positions of countries on the basis of general and aggregated data. The goal of research has become to formulate policy, to identify and to analyze different dimensions of corruption: according to sectors, victims, damage and costs.<sup>86</sup> Research activities have become much more than public opinion surveys using simple questions to gauge the citizens' perception of corruption. Research on corruption now provides a comparison of different countries over time. It has shown that globally, the level of corruption is decreasing, but it is dangerously high in a large number of transitional or developing countries. The last two rounds of EU enlargement have shown that the issue of corruption was key to issues concerning political criteria, the rule of law, and the judiciary. As far as the new Member States are concerned, the pressure towards reforms has not ceased. It has also become clear that the political will, measured not only by capacities but also by example, has played a very important role.<sup>87</sup>

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<sup>85</sup> Klitgard.

<sup>86</sup> If as a criterion of the importance of confidence, we take the institutions in which more than 50% of respondents have a lot of confidence, or quite a lot of confidence, we come to the conclusion that only the Church, the military and the police satisfy it. A little less than 70 % of respondents have expressed their confidence in the first two institutions and a little more than 50% of respondents in the police. By far the least confidence goes to political parties in which only about 14% of respondents have quite a lot or a lot of confidence. Trade unions are in a better position because more than 40% of respondents have expressed confidence in them. Around 30% of respondents have expressed confidence in the Government and the Parliament. D. Sekulić , Ž. Šporer, *Povjerenje u institucije građana Hrvatske (Confidence in Institutions of Croatian Citizens)*, in *U kakvu EU želimo? (What Kind of EU Do We Want?)*, Heinrich Böll Stiftung, Zagreb, 2006, 83-103.

<sup>87</sup> Finally, individuals matter, and strong leadership is essential in shaping and pushing reform. Every country that has achieved some success on the anticorruption front has had leaders who have tenaciously pushed the reform agenda. Romanian leaders strengthened the asset declaration law immediately upon taking office and have worked to support prosecutors who are also keen to tackle corruption. Slovak leaders have been instrumental in pursuing far-reaching tax and budget reforms. The Georgian government has doggedly pursued fundamental reforms in many areas since the Rose Revolu-

The second goal is more important for the theme of this paper. We have posed three questions: Does corruption exist in Croatia and if so how is it perceived? How extensive is corruption in Croatia and in which areas of society have its effects become most dangerous? Here are the answers: corruption does exist and its extent can be measured<sup>88</sup>. And research has been the basis for determining priorities. Several research activities (Global Corruption Barometer, BEEPS, Governance Indicators) **placed the priorities on state captures and political corruption (e.g conflict of interest)<sup>89</sup>, and highlight the problem of the connection between corruption and public administration (particularly lack of transparency), and the financing of political parties and their campaigns.** The third question remains: What should be done?

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tion in late 2003. On the other hand, a lesson from countries with less success to date is that reforms will not achieve the desired results unless there is real support from the leadership and a strong push on implementation. Leaders cannot expect to eliminate corruption, but the experience of the countries of Europe and Central Asia shows that those with strong commitment, courage and support can make an important difference in a relatively short period of time. <http://siteresources.worldbank.org/intwbigovantcor/measure.pdf>

<sup>88</sup> A few years ago, the author wrote that although it was not precisely known, corruption was measurable by its serious and harmful consequences (a decrease of market competition, fewer investments, etc.): “it is irrelevant whether it is inherited or created, whether it constitutes an erosion of morality, or who is to be blamed for its existence; it is important to know what is being done against it“. *Nacionalni program za suzbijanje korupcije*, 2003, taken from J. Kregar, *The Evil of Corruption*, *op.cit.* 2000, 138.

<sup>89</sup> The assessment of the European Commission is very similar: “Some first results are appearing in the fight against *corruption*. The anti-corruption programme 2006-2008 is being implemented. The legal framework to combat corruption has been further improved. The Office for the Fight against Corruption and Organised Crime (USKOK) has become more active and become involved in the investigation of some important corruption cases. However, corruption remains widespread. There is a need for greater efforts to prevent, detect and prosecute corruption. No indictment or verdict has been issued in any high-level corruption case. The concept of conflict of interest is little understood. Implementation of the anti-corruption programme lacks strong coordination and efficient non-partisan monitoring.” *Croatia 2007 Progress Report Brussels*, 6/11/2007; SEC (2007), 1431.

### **3. What Should Be Done?<sup>90</sup>**

#### *3.1. Corruption and trust in institutions*

The strategy has set up a framework for the adoption of decisions to address the question of what to do about corruption in Croatia and how to achieve its reduction/elimination. At the beginning, it was important to know what had to be achieved. Eventually, the questions of priorities and ways of achieving goals became more important. We hope that these goals have finally become very clear because they have been defined in various political decisions (e.g. the National Programme), and they have been confirmed by the results of research on public opinion. They have also been proposed as parts of the economic programme<sup>91</sup>, and have satisfied a very important additional criterion. The measures to be undertaken must be chosen very carefully, and the action must be focused on priorities that will have direct effects. Not everything can be done at the same time, and it is therefore crucial to concentrate on actions for which there are the people and the knowledge necessary for their accomplishment. It is not enough to want to do things; we must make sure that they can really be achieved. Attention has been given to the following three groups of proposals: the prevention of conflict of interest, the funding of political parties, and access to information.

**Therefore, priority is given to measures of prevention and reduction of the risks of corruption and to measures which change the nature and the logic of a realistic political system and open up the need for a reform.**

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<sup>90</sup> This part has been developed on the basis of the text *Demokracija kroz pravo: potrebne izmjene u zakonodavstvu: konflikt interesa, dostupnost informacija i financiranje političkih stranaka* (Democracy Through Law: Necessary Amendments in the Legislation: Conflict of Interest, Access to Information and Financing of Political Parties) written by Josip Kregar, Đorđe Gardašević, Viktor Gotovac, *Informativnik* 5641, 29 March 2008, 1-4.

<sup>91</sup> The National Strategic Development Framework for 2006-2013, a document developed by the Croatian Government, sets forth some priorities such as minimizing the role of the State in the sphere of economy, a reform of the judicial and public administration sectors. According to this document, **public administration must become fully open and transparent and conflicts of interest must be prevented.** (p. 66).

The means of political control of the authorities are not only those of a typically organisational nature (decentralisation, separation of powers, collectiveness). They are neither the elections nor direct democracy, but a series of new functional methods that are considered to be a standard component of democracy.<sup>92</sup> Their purpose is to increase responsibility and public control over political authorities. Therefore, the necessary reform of these instruments is not only a simple technical change of organisation, people or budgetary funds. It is not only a change of regulations, a deceptive measure of changing the names of bodies or positions or a modification in the composition of staff. We need substantial political reforms, as requested by the EU in their reports and assessments of the level of democracy in Croatia. We are not asked to introduce mere cosmetic changes, but to meet required benchmarks.

## *2.2 Prevention of conflict of interest*

Conflict of interest is an unavoidable and normal situation which requires proper regulating. It is a situation where the interest of a public official is in conflict with his or her private interests, which can then have an improper impact on the performance of official duties and responsibilities.<sup>93</sup> There is nothing wrong in finding oneself in a conflict situation but it is then necessary to make choices and to properly regulate existing relationships. A public official's uncertainty about the ethical correctness and interests of a public official should not last too long because it diminishes trust in the performance of his or her duty.

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<sup>92</sup> M. Weber, *Wirtschaft und Gesellschaft*, Mohr, Berlin, 1964, 201-211; E. Pusić uses the expression 'organisational and functional means of political control' in a similar way and mentions its formal forms: decentralisation, separation of functions (separation of powers), collectiveness, direct decision-making by citizens, the elections, representation and participation. E. Pusić, *Nauka o upravi*, Školska knjiga, Zagreb, 1993, 98-117.

<sup>93</sup> A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities. OECD Forum on Implementing Conflict of Interest Policies in the Public Service, 5-6 May 2004, Rio de Janeiro, Brasil; [www.oecd.org/dataoecd/0/56/31772731](http://www.oecd.org/dataoecd/0/56/31772731)

These were the reasons for the adoption of The Prevention of Conflict of Interest Act, in 2003, to deal with the performance of public service. Conflicts have not ceased to exist, but it is necessary to take into consideration the changed circumstances in which this Act must now be implemented. There are several reasons why this piece of legislation should be amended. The first is the experience regarding its implementation, the second is the lack of secondary regulations to complete the legislation on the protection of public interest, and the third is the existence of new obligations on the Republic of Croatia.

**3.2.1.** In the implementation of this piece of legislation, the focus of operation has not yet been found. The competent Commission has been neither proactive nor preventative in its actions. The effective communication with the public has not been established. With much hesitation and resistance, the public have been given limited access to the data contained in the declarations of assets.<sup>94</sup> The principles of operation have remained unknown to high-ranking officials as described in Article 3 of the act. Nobody has reminded them of these principles. Decisions have not been made public at the expense of these officials. Several articles of the Act have remained vaguely worded: Article 6 (Prohibited Officials' Actions), Article 8 (Receiving of Gifts), Article 10 (Performance of Other Officials' Tasks), Article 12 (Registration of Compensations to Which Officials are Entitled), Article 13 (Officials' Other Income). The ambiguities and weaknesses of the legislation have not been compensated for by the essential commentaries.

The election campaign demonstrated that it was completely justified to prohibit the participation of high-ranking public officials in companies, their boards of management, and in their supervisory boards (Article 11). At the time of the elections, everybody recognised the need for a corresponding provision and advocated such an approach. It only remains to be seen how this is going to be accomplished.<sup>95</sup> It

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<sup>94</sup> All these facts are confirmed by the following data: only ¼ of proceedings have involved state officials, ¾ local self-government members: 28% refer to preliminary opinions and 72% to subsequent decisions.

<sup>95</sup> It is the responsibility of those who changed the provision providing for this permission immediately before the adoption of the Act in 2003 according to which high-ranking

turned out that the intention to expand the definition of officials to almost 2,000 did not make much sense (rectors, vice-chancellors, military commanders, ombudsman for children (*sic!*), ombudsman for gender equality).<sup>96</sup>

Although it was intended to include specific provisions in separate regulations providing for the prevention of conflicts of interest, this has not been done. The Act was supposed to establish principles of conduct, basic principles on prohibited types of conduct by state officials, and other general issues concerning giving and receiving gifts. Separate laws for various professions, were to contain specific rules governing health-care, education, construction, etc.

Something was done with regard to judges (declarations of assets), but practically nothing in the area of regional and local authorities was achieved. An unfortunate circumstance whereby mayors and heads of local government were taken advantage of in order to diminish the application of the Act in high political spheres<sup>97</sup> has resulted in the complete absence of effective action. The very fact that the Commission is dealing with such cases, but with inappropriate procedural considerations, speaks for itself. It is now necessary to adopt some rules on the prevention of conflict of interest at the local level.<sup>98</sup>

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state officials could not be members of management or supervisory boards into a conditional one (Article 11, para. 5) containing some seemingly firm restrictions ('special interest of the State', 'the Croatian Parliament provides a list of companies...at the Government's proposal'). However, these firm restrictions have disappeared as a result of self-serving party political appointments. Only seemingly strict is the provision providing for compensation for such work (voluntary work). Such membership is not motivated by a modest compensation but by power. The implementation of this provision has not been monitored so it is very easy to get around it.

<sup>96</sup> The actual intention was to widen the circle of officials set forth in the Act in order to diminish its rigidity. Indeed, the system of central state administration includes 281 officials (all of them set forth in Article 2, para. 1, ps 17 and 22) and several hundreds of persons performing managerial positions within central state administration.

<sup>97</sup> "A possibility for the implementation of the provision concerning conflicts of interest when dealing with high-ranking state officials is inversely proportionate to the circle of state officials to which it relates", D. Derenčinović, *Komentar Konvencije Ujedinjenih naroda protiv korupcije* (A Commentary to the UN Convention on Corruption, Faculty of Law, University of Zagreb, Zagreb 2005, 25.

<sup>98</sup> In some towns in Croatia, councils for the prevention of corruption are emerging without any special legislative impetus (Varaždin, Pula). In others, non-governmental or-

**3.2.2.** In the meantime, a new wave of international activity regarding the adoption of new rules on the prevention of conflicts of interest has taken place.<sup>99</sup> The basic rules introduced in Croatia regarding ethical conduct in the performance of public service<sup>100</sup> have their legal foundation in the UN Convention Against Corruption.<sup>101</sup> At the same time, almost all countries in the region<sup>102</sup> have adopted laws for the prevention of conflict of interest. The progress has been gradual but significant. The only exception was the Republic of Slovenia where different governments obstructed the implementation of measures for the prevention of conflicts of interest, and where they actually abolished the operation of the competent commission and thus damaged their international credibility. The OECD<sup>103</sup> and the World Bank<sup>104</sup> have been particularly active in their dealings with issues of the prevention of conflicts of interest. Following previous activities and guidelines, which had encouraged the first series of legislative provisions in transitional countries, some new rules were adopted providing for the prevention of conflicts of interest.<sup>105</sup> For the purpose of this paper, particularly relevant is a document which provides guidelines<sup>106</sup> for the necessary improvement of existing practices. These guidelines

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rganisations initiate movements and protests, which is an indication of the existence of local problems but not the best way of combating corruption. The same rule applies here, as well: lack of trust in institutions results in scandalising the political life at the local level (Zagreb, Dubrovnik) which is bad and should have been prevented.

<sup>99</sup> Compare: Corruption, Compendium of International Legal Instruments on Corruption, UN, New York, 2005.

<sup>100</sup> Summary of the Nolan Committee's First Report on Standards in Public Life, [www.archive.official-documents.co.uk/document/parliament/nolan](http://www.archive.official-documents.co.uk/document/parliament/nolan)

<sup>101</sup> The Republic of Croatia ratified the Convention (18 February 2005) and published it in its official gazette (NN-MU 2/2005).

<sup>102</sup> See, for example, Anticorruption Measures in South Eastern Europe, OECD, 2002; Anticorruption Measures in South Eastern Europe, SPAI;

<sup>103</sup> No Longer Business as Usual, OECD, 2000.

<sup>104</sup> [www.worldbank.org/anticorruption](http://www.worldbank.org/anticorruption)

<sup>105</sup> Recommendation of the OECD Council on Guidelines for Managing Conflict of Interest in the Public Service, 5-6 May 2004; Rio De Janeiro, Brazil; [www.oecd.org/dataoecd/0/56/31772731](http://www.oecd.org/dataoecd/0/56/31772731)

<sup>106</sup> "Implementation Focus" As the Way Forward to Manage Conflict of Interest; Brasil; [www.oecd.org/dataoecd/0/56/31772731](http://www.oecd.org/dataoecd/0/56/31772731)

contain descriptions of specific instances of unacceptable conflict of interest situations and insist on clear leadership and commitment. The guidelines provide for strict rules to be enforced and awareness of risk areas for the purpose of prevention. The following step would be appropriate disclosure and effective management of conflicts and finally, the adjustment of existing rules to new situations.

**3.2.3.** To prevent conflicts of interest at the highest level of state officials is a priority. Their number must decrease in accordance with the new Act. Special rules must be adopted for local self-government officials. In addition, the rules regulating health care, higher education and science, and public media, need to be incorporated into law. Furthermore, rules regulating the impact of economic lobbyists and interest groups on state officials (i.e. rules on lobbying) must be adopted. Members of Parliament and Government Officials must express their political will to enforce the Act by issuing clear statements and signing personal declarations whose form and content must be determined in advance (Article 19 of the Act). The hearings held by the bodies deciding on conflicts of interest must be open to the public, except where facts are established and corroborated. These bodies must be equipped with the necessary information technology. The Commission's decisions regarding the existence of conflicts of interest must be enforceable. It is essential to educate and train state officials, the media and the public on the principles, legislative solutions, procedures and models of operation at the local level. The rules and provisions of the existing laws must be amended with regard to the following: the circle of officials (Article 2); prohibited activities by officials (Article 6); declaration of assets and income (Articles 7, 12); adoption of implementation laws containing provisions on gifts and the procedures of declaration in relation thereto. Apart from their regular salaries, state officials are not allowed to receive any other compensation (with the exclusion of those set forth in Article 10, paras 2,3). State officials must not be allowed to be members of companies and their management and supervisory boards. Blind trust contracts (Article 11, para 1) must

be examined by the Commission, whose members must not be state, party or public officials.

### *3.3. Funding political parties – present situation and perspectives<sup>107</sup>*

The Act on Funding Political Parties, Independent Lists and Candidates<sup>108</sup> provides for the ways and conditions of acquiring funds for political parties' activities and the supervision and transparent acquisition and ways of spending these funds. This Act, whose adoption is connected with preventative measure 4.1<sup>109</sup> concerning the

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<sup>107</sup> This analysis is based on the works dealing with the financing of political parties and election campaigns. J. Kregar, *Izgleđi Hrvatske u borbi protiv korupcije (Croatia's Prospects in the Fight Against Corruption)*, Yearbook of the Faculty of Law Forums, 2003, 121-145; J. Kregar, *Financiranje političkih stranaka (Financing of Political Parties and Election Campaigns)*, Collected papers of the Faculty of Law, 54, 2004,5; J. Kregar, J. Marko, *Financiranje političkih stranaka (Financing of Political Parties)*, 83-106; in I. Prpić (ed.), *Država i političke stranke (The State and Political Parties)*, official gazette Narodne novine, Zagreb, 2004; J. Kregar, *Corruption in Croatia: Risks and Actions*, 274-280; Josip Kregar, Đ. Gardašević, Zdravko Petak (ed.), *Novac u politici (Money in Politics)*, Transparency International Croatia, Zagreb, 2003, 1-32; *Financiranje političkih stranaka u društvenom i pravnom kontekstu (Financing of Political Parties in the Social and Legal Context)*, 13-15; J. Kregar, *Komparativni prikaz financiranja političkih stranaka (A Comparative Review of the Financing of Political Parties)*, 15-20; J. Kregar, Đ. Gardašević, *Europski standardi – od madridske deklaracije do preporuke European Standards – from Madrid Declaration to a Recommendation (2003)* 4, Committee of Ministers of the Council of Europe, 20-29; Josip Kregar, *Zajedničke karakteristike (Common Characteristics)*, 29-31; J. Kregar (ed.) *Introduction to the National Integrity System Study, Country Report*, Transparency International Croatia, Zagreb, 2003, 1-48. A direct basis was a paper by J. Kregar, *Prijedlog zakona o financiranju političkih stranaka (A Draft Act on the Financing of Political Parties)*, Informator 5493-5494, 1996, 1-3.

<sup>108</sup> Act on Funding Political Parties, Independent Lists and Candidates (Narodne novine 19/07).

<sup>109</sup> "4.1. Political parties – Unclear and ill-defined obligations regarding control of how political parties are funded facilitate possible corruption in politics. Anonymous donations and donors should be regulated in harmony with European practices. The matter should be regulated by a special law on the funding of political parties which would lay down permitted sources of party funds and specify legitimate means. The proposed Act will draw on best practice in EU countries. Once funding of political parties is precisely regulated by law and when financial statements are made public, there is less room for corruption." The implementing body for this measure is the Central State Office for

organisation of political parties within the broader sector of politics and public administration referred to in Part 4 of the National Anti-Corruption Programme 2006-2008<sup>110</sup>, and whose constitutional basis is provided for in the provisions of Article 6<sup>111</sup> of the Constitution of the Republic of Croatia<sup>112</sup>, may be seen as progress in the light of the previous insufficient and over-general provisions set forth in the Act on Political Parties.<sup>113</sup> The law still does not guarantee the financing and the financial functioning of political parties in accordance with European standards and globally accepted best practice. The law should be amended to address these shortcomings.<sup>114</sup>

The regulation of financing political parties prohibits anonymous donations (Article 5) and provides for membership fees, voluntary contributions and allocations in State, local and regional self-management units' budgets. However, all this is not enough in a State aimed at developing its democratic practices. The upper limits of voluntary contributions of natural persons (HRK 90,000.00) and legal persons (HRK 1,000,000.00) in the course of a calendar year are too high (particularly in the context of a four year election cycle and possible quadrupled amounts). They create the possibility of "exposure" to particular sources of funds. This problem is quite obvious if we look

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Administration of the Government of the Republic of Croatia and the deadline for its implementation was 30 September, 2006.

<sup>110</sup> National Anti-Corruption Programme 2006-2008 (Narodne novine 39/06).

<sup>111</sup> "Formation of political parties is free. Internal organisation of political parties shall be in accordance with the fundamental constitutional democratic principles. Parties shall publicize the accounts on sources of their assets and property. Political parties which by their programmes or violent activities aim to demolish the free democratic order or endanger the existence of the Republic of Croatia are unconstitutional. The decision on unconstitutionality shall be made by the Constitutional Court of the Republic of Croatia. The status and financing of political parties shall be regulated by law."

<sup>112</sup> The Constitution of the Republic of Croatia (Narodne novine 56/90, 135/97, 8/98 – Revised Text, 113/00, 124/00 – Revised Text, 28/01, 41/01 – revised text and 55/01 – Correction).

<sup>113</sup> Act on Political Parties (Narodne novine 76/93, 111/96, 164/98 and 36/01).

<sup>114</sup> In the regional context, we want to point to a recent source of importance for this topic: Political Finance and Corruption in Eastern Europe – The Transition Period (ed. Smilov, Daniel; Toplak, Jurij). Aldershot: Ashgate, 2007 where there is an overview of the situation in the Republic of Croatia.

at the relevant (and questionably accurate) “modest” amounts that the political parties declared at the time of the elections to the Croatian Parliament in 2007. Such actions provide the opportunity to trade political positions, terms of office, voting lists to encourage parties to dispose of increasingly excessive funds.

A better solution which exists in the practices of some countries<sup>115</sup> is to specify limits to such amounts<sup>116</sup> and to lower the upper limits in order to encourage more citizen participation, as well as to prevent the simultaneous financial support to more parties (thus diminishing the risk of failure in supporting the winning party). As for contributions by legal persons, the solution must be formulated in such a way that legal persons are better defined and that their donations are more limited or even forbidden.<sup>117</sup>

We would also like to advocate the idea of the institutionalisation of supervision by extending the powers of the State Election Commission, which apart from being a global and a regional trend, would constitute a more credible supervisory process. The State Audit Office and the Ministry of Finance are, bodies responsible to the executive branch of government. The supervision of the implementation of this Act should be carried out on a regular and timely basis; it should not consist of an accounting revision only, resulting in administrative records, but should enable a systematic and meaningful examination of all revenues and objectively determined expenditures in order to establish whether a political party has operated in a lawful way. This should be done not only on the occasion of particular elections, but continually and regardless of the fact that a particular party is in power or in opposition. By strengthening the State Election Commission and

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<sup>115</sup> J. Kregar, Prijedlog zakona o financiranju političkih stranaka (A Draft Act on the Financing of Political Parties), Informator 5493-5494, 1996, 1-3.

<sup>116</sup> Regarding the financing from the State Budget of the Republic of Croatia, the Act on the Financing of Political Parties, Independent Lists and Candidates, in Article 7, provides for financing in a relative amount (0.056%) of State Budget current expenditure funds for the previous year.

<sup>117</sup> In addition, the institution of lobbying or advocating in the political context must also be regulated because if it is not, it has the potential to constitute an aggregate of political corruption.

by developing the practical reorganisation of its permanent powers, current criticism would be addressed.<sup>118</sup>

The system of sanctions should be simpler and should be more severe in order to have a preventative effect. A system of announcing the violation of the rules of financing political parties should also be developed so they do not constitute *ex post facto* information for the voters on how a party (which they may have voted for) has violated the law. The data on the violation of the rules regarding the financing of parties in connection with current or previous elections must be published during pre-election campaigns and on the day of the elections. This must all be done at the expense of the offender, so that sanctions constitute a financial burden and violations are published prior to making any political decisions. In such a way, it would at least have a socially acceptable ostracizing effect where ethical principles cannot be applied in the political arena.

Our proposals are in line with the recommendations of the Council of Europe (a recommendation by the Parliamentary Assembly 1516 of 22 May 2001), the Council of Ministers 4E of 8 April 2003, the Venice Commission, the OECD and other organisations concerned with the financing of political parties and efforts aimed at fighting corruption and promoting good governance.

Of around fifteen standard measures regarding the regulation of political parties, around half of them have been incorporated into Croatian legislation. The upper limit of the election campaign costs is too high. It is several times higher than in other countries (in the case of individual donations, they are ten times higher than in the USA, three times than in France). The limit of HRK 1,000,000 for companies legitimizes excessive gifts.

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<sup>118</sup> For this and some other reasons, the State Election Commission must be an independent and a professional body with wide powers and the accountability for the elections (and the financing of political parties). would also like to support a frequently repeated idea, not yet accomplished, of freeing judges of their difficult tasks in the State Election Commission. See I. Crnić, *Izborni postupak- kritike i prijedlozi* (The Election Procedure – Pieces of Criticism and Proposals, Informator 5623, 26 January, 2008, 7.

Croatia's expenditure limits for election campaigns exceed the provisions currently regulating elections for the European Parliament. A political party standing for election to the European Parliament must publish a full annual report of its assets and liabilities, the sources of its financing, including a full list of all donors and donations (except for those below €500). It is forbidden to accept anonymous donations, although we still do not know all the names of bigger donors. It is also forbidden to apply methods which would indirectly help political parties twice in one campaign, for example by financing them from the European budget or to use obtained funds to help another party. Using the proceeds of a company's business is disallowed because in that way a party might gain political control or ownership of the business, thereby actually managing it. The latter provision reflects the prohibition in national legislation to receive donations from state owned companies. It is also illegal to receive donations from companies (legal persons) in amounts exceeding €12,000.

**We propose:** to lower the upper limit of individual donations and express it in relative values; to lower the limit of company donations; the efficient monitoring by an independent body and not only by the State Audit Office and the Ministry of Finance; to establish an independent institution with investigative powers to monitor political parties' accounts, their pre-election expenses and which is authorised to write reports containing the donors' full names and also to pronounce sanctions; to respect European standards in accordance with the recommendations of the Council of Europe, election legislation for the European Parliament, and the Venice Commission; to criminalise the illegal financing of political parties, perhaps also to criminalise the personal enrichment of appointed representatives during their terms of office unless the origin of their assets is known and justified. In addition, financial institutions must be bound to report all suspicious transactions.

### *3.4. The Right of Access to Information Act<sup>119</sup>*

The relationship between the authorities and citizens should be based on trust. Open, transparent government is a principle and an obligation of public authorities and access to information in their possession is a citizen's right. Citizens should know and understand the structure of all public authority bodies, their roles and responsibilities, as well as the ways public funds allocated in the State budget are spent. Citizens also have a right of access to all information kept by public authorities. Such bodies are obliged to make information public and to ensure access to all information and make their work transparent according to European public administration standards<sup>120</sup>, which prescribe openness and the right of access to any information held by the authorities.

In accomplishing public administration tasks, secrecy should be the exception and openness the main principle and obligation, because public administration exists for the benefit of citizens and not vice versa. If there is a conflict between public interest and the need for secrecy, public interest should prevail. These principles were the starting points for the development of the Act on the Right of Access to Information.

This Act<sup>121</sup> has been in force in the Republic of Croatia for about four years now. The current data on its implementation show that citizens very often refer to this Act<sup>122</sup> and that administrative bodies

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<sup>119</sup> This section has also been written on the basis of the text by Josip Kregar, Đorđe Gardašević, Viktor Gotovac: *Demokracija kroz pravo: potrebne izmjene u zakonodavstvu: konflikt interesa, dostupnost informacija i financiranje političkih stranaka (Democracy Through Law: Amendments to the Legislation: Conflict of Interest, Access to Information and Financing of Political Parties)*, Informator 5641, 29 March 2008, 1-4 and the text written by Josip Kregar, Viktor Gotovac, Đorđe Gardašević: *Regulacija prava na pristup informacijama (Regulation of the Right of Access to Information)*, Zagreb: Transparency International Croatia, 2004. The proposal has mostly been written by Đ. Gardašević.

<sup>120</sup> European principles for Public Administration; Sigma Papers: No. 27; Ccnm/Sigma/Puma(99)44/Rev1, OECD; 22-Nov-1999, p. 27.

<sup>121</sup> Narodne novine 172/03.

<sup>122</sup> Thus, for example, in its annual report for 2006, the Central State Office for Administration stated that in the course of that year, all bodies of public administration in the Republic of Croatia received 4357 applications for access to information. As many as 4140 were

and the Administrative Court of the Republic of Croatia have been very active in its interpretation and implementation.<sup>123</sup> It is important to mention, however, that the Act has some deficiencies and that it is not fully harmonised with international or Croatian regulations governing these issues. It therefore needs to be amended in several sections of its content.

The main precondition for amending this Act, according to the best standard legislation dealing with the access to information kept by the public authorities, is the application of the so-called “public interest test”. The Act sets forth that all public administration bodies (state bodies, bodies of local and regional self-government, legal entities vested with public powers, and other persons possessing such powers) are obliged to allow access to all requested data **except** those that are protected and belong to special categories of data.<sup>124</sup>

Public access to information regarding the following: prevention and discovery of criminal offences and their prosecution; efficient, independent and fair conduct of court, administrative or other legal proceedings and execution of court decisions and sanctions; the work of bodies performing administrative supervision or control of legality; the existence of serious damage to life, health, the safety of people or the environment; obstacles to the implementation of economic and monetary policies; impairment of intellectual property rights is not required.<sup>125</sup> The international guidelines (e.g. the Recommendation (2002)/2 of the Council of Europe and Regulation 1049/2004 of the

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solved, 93 remained unsolved, 49 were refused and 173 were sent to other competent bodies to be solved. For this data visit [http://www.uprava.hr/izvješće\\_2006.pdf](http://www.uprava.hr/izvješće_2006.pdf)

<sup>123</sup> See, for example, <http://www.upravnisudrh.hr/index.php>

<sup>124</sup> These are primarily secret and private data subject to the laws governing secret and personal data: Act on the Secrecy of Data (Narodne novine 79/2007) and Act on the Protection of Personal Data (Narodne novine 103/2003). Because of the existence of the new Act on the Secrecy of Data, it is necessary to adjust accordingly the Act on the Right of Access to Information in accordance with the new classification introducing concepts like „top secret“, „secret“, „confidential“ and „restricted“.

<sup>125</sup> Some procedural exceptions must be added to this, namely when a public administration body may refuse an application for access to information in two cases: “if a public administration body does not have, does not control or does not know where a piece of information is kept”, or “if the same authorised person is given access to the same information within 60 days from the submission of the application.”

European Union) set forth a corrective exception known as the “public interest test”. In short, this test is used as the basis for making even the aforementioned protected information accessible to the public if it is assessed that publication of the information in terms of public interest outweighs or is greater than the protection of certain specified data. A decision whether a particular piece of information may be accessible will be made not only by the body keeping such information, but also by a supervisory judicial body to which unsatisfied citizens may turn to for legal protection.

We are convinced that the **practice of giving information kept by the public authorities is developing in the right direction in Croatia**. Regardless of many deficiencies, several qualitative decisions have been made by the Administrative Court and by public administration bodies. Further education of administrative staff responsible for keeping public information is undoubtedly an important precondition for further development. The case law of the European Court of Human Rights will be helpful because important decisions have been made in this area. Another important event for Croatia is the upcoming adoption of the European Convention by the Council of Europe providing for access to information. A similar document already exists at the level of the European Union. Both these documents are of significance for the Republic of Croatia.

**We propose** changes aimed at respecting the recommendations of the Council of Europe and the EU in terms of the adoption of a public interest test, strict observance of case law (and of all court decisions whose observance must be an obligation, and in the case of failure, it should at least be subject to political accountability in a state governed by the rule of law), and a wider circle of those who are obliged to implement these recommendations.

### **3. Conclusion**

A crucial ingredient of democracy is the need for constant change and improvement. Democratic reforms are key elements of change

in Croatia where a higher level of responsibility is needed. Democratic institutions, by their very nature, are unfinished projects. Their forms and structures are subject to change in accordance with the circumstances and the achieved results. “Institutions are not only an essential element of liberty, as constitutions are a necessary conditions of effective human rights and the systematic control of power, but they are also the material which needs to be moulded and shaped to give expression to the desire for more freedom for more people. We cannot be free without institutions, and freedom means that we build institutions according to our lights.”<sup>126</sup>

The institutions and laws on the prevention of conflicts of interest, accessibility of information, and the financing of political parties and political campaigns are not only characterised by being inseparable parts of building democracy, but also are essential elements of **reform of Croatia’s political system to bring the country closer to European criteria of good and responsible governance.**

We also propose a number of other changes and this very fact, we are well aware, is already a kind of criticism of existing norms. Our proposals reflect the time in which we live and the urgent need to combat corruption.<sup>127</sup> Such criticism is not only the result of our efforts to find role models in European standards and laws, but also the consequence of a purely practical need: the creation of more efficient brakes to help subordinate private and party interests to public ones. A desirable outcome of our proposals is to disintegrate the structural conditions which have been favourable for the growth of corruption. A desirable goal is governance and administration based on public interest and not on client connections.<sup>128</sup>

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<sup>126</sup> R. Dahrendorf, *Law and Order*, Stevens, London, 1985, 126.

<sup>127</sup> In retrospect, ages seem to have spirits, which historians identify. But is it possible to identify the spirit of a present age, and if so, what if anything should we do as a result? Talk of the spirit of the age in the twentieth century has often been used by tyrants and bureaucrats to suppress criticism from those who object to their vision of the age. We should remember that individuals create their ages, and that individuals of genius transform them. (Karl Popper)

<sup>128</sup> “Corruption in Eastern Europe is of a structural nature and it is therefore a part and a particle of regional cliental social structures. An analysis of corruption cannot be

At the beginning of this text, we asked three questions. Here are the answers: corruption in Croatia is a real and a serious problem. There have been some positive changes in the last few years but they have not always been visible and fast enough. We have had some success in comparison to the previous situation, but we are still lagging behind other countries. Research and the measurement of corruption are parts of systematic efforts to build necessary institutions. The building of institutions is the real goal and this is why we are proposing certain changes within the main preventative measures.

**Corruption in Croatia is a real and a serious problem. There have been some positive changes in the last few years but they have not always been visible and fast enough. We have had some success in comparison to the previous situation, but we are still lagging behind other countries. The building of institutions is the real goal and this is why we are proposing certain changes within the main preventative measures.**

**Corruption is not simply a political program or a newspaper heading. It is the structure and method of government, an obstacle to respectful society, gainful employment, responsible government. Corruption grows from fear (passivity, poverty: ethical and material), blooms from ignorance (in bureaucracy and faceless society). What we need to get rid of is fear and ignorance.**

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separated from understanding clientelism”, S. Kokin, A. Sajó, Political Corruption in Transition; A Sceptic Handbook, CEU, Budapest, 2002.