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## Anti-corruption Policy in Croatia: Benchmark for EU Accession

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### *Summary*

In this article the author analyses the anti-corruption policy in Croatia as part of a wider awareness-rising process in transition countries. After the collapse of Communism, corruption spread quickly in post-Communist countries as a result of exogenous factors such as the export of corruption by the most developed countries seeking to find new markets, and endogenous factors such as hasty privatization and the creation of new political elites caught in the web of various conflicts of interest. In Croatia the situation was exacerbated by the war itself and war speculations and profiteering, followed by a corruptive privatization and lack of anti-corruption standards in the political culture of the country. Croatia had to adopt, on its way to European Union membership, a set of concrete measures countering the spreading of political corruption throughout the society. An important role was, thus, played by European Union conditionality requesting an integral approach to the pathological phenomenon of corruption. The author argues that such an integral approach has not yet been achieved due to the reduction of political corruption mostly to bribe and graft, while more sophisticated forms of political corruption have not been tackled yet, such as party clientelism, cronyism, electoral fraud and trading in influence. Therefore the author invokes the results of a comprehensive approach to political corruption as done by contemporary political science in the world, and advocates the formulation of a comprehensive anti-corruption code that would eliminate the dispersion of anti-corruptive legislation in numerous acts and redundancy that obfuscate the action of political actors in combating corruption. Here the role of the European Union is tantamount because it sets very tough standards based on a wide investigation of political corruption in Croatia at all levels, especially in the highest echelons of political life. An anti-corruption strategy as well as concrete action plans in combating corruption became part of the benchmarks, a third generation

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conditionality standards elaborated by the EU, and Croatia had to comply to them and build the society's capacity to deal with political corruption in a more efficient way, thus eliminating ambiguity and hesitancy that could harm the political actors in power.

*Keywords:* political corruption, anti-corruption measures, anti-corruption strategy, integral approach to corruption, forms of political pathology, anti-corruption laws, European Union conditionality, EU benchmarks

### 1. The Anti-corruption Decade: 1990-2000

Political corruption is a malignant disease that affects all political communities and all political systems. All forms of political authority, without exception, are liable to political corruption. In this sense, political corruption means the decay and corrosion of political authority and political power itself. This is the significance of political corruption as used in classic political thought, e.g. in Machiavelli, Montesquieu, as well as Gibbon, in his discourses on the main causes of the decline and fall of the Roman Empire. In modern political thought, this concept loses its moralistic connotations and means primarily the decay and deterioration of political institutions and the appearance of a corrupted government (Klitgaard, 1988; Alatas, 1990; Heywood, 1997).

While totalitarian political systems are corruptive by definition, since the misuse of power is built in the very foundations of arbitrary power without constraints, in democratic polities political corruption appears as one of the forms of pathology of the political process. Not the only one, since pathologies of democracy can be classified into six categories:

- first, *political demagogy*, i.e. the misuse of political communication for the sake of preserving power by appealing to the populace or to the basic fears and emotions of the public;<sup>1</sup>
- second, *political hypocrisy*, i.e. the discrepancy between political goals and values as expressed in pre-election and programmatic documents (such as constitutions) and the reality of power-policy or political realism;<sup>2</sup>

<sup>1</sup> Although the discourse on political demagogy does not fall within the aim of this work, it is important to note that this important form of political pathology was widely treated by classics in political thought such as Plato, Alexis De Tocqueville, Leo Strauss and Hannah Arendt, and most recently by Drew Westen (2008), Bryan Garsten (2009), and Michael Signer (2009). According to them, demagogy is a dangerous by-product of democracy, and humanity's urge to liberty can give rise to dark forces that threaten that very freedom.

<sup>2</sup> Again, this topic can be traced in classic political works such as those by Thomas Hobbes, Bernard De Mandeville, Thomas Jefferson, Jeremy Bentham, Niccolo' Machiavelli and Jean-Jacques Rousseau, as mentioned in: Runciman, 2010, and Grant, 1999.

- third, *political manipulation*, as the intentional activity to engage, control, or influence the body politic in order to direct its behaviour toward a specific action;<sup>3</sup>
- fourth, *political corruption*, as the misuse of political power for personal or partial political interests (Nye, 1967; Heywood, 1997; Heidenhammer, 1978; Heidenhammer, Johnston, LeVine, 1990);
- fifth, *political paranoia*, as the systemic use of fear (of conspiracies, enemies, traitors or other threats) in order to preserve power and scale down opposition<sup>4</sup> and
- sixth, *political violence*, as the ultimate means to preserve power by escalating the political conflict into open enmities with violence, i.e. the unlawful use of force or violent acts against the political opponent in order to coerce or intimidate the opposition or the civilian population in furtherance of political and social objectives.<sup>5</sup>

All these forms of political pathology become visible when democratic systems are no longer compared to totalitarian systems, as occurred after 1989, i.e. after the collapse of the Soviet communist system and its East-European variants. It is, therefore, understandable that these forms of pathology attract more attention, since they become the measure of democracy in a country, especially in new democratic polities, i.e. in transition countries, in which all these forms are more transparent – ranging from nationalist demagogy to political violence in the form of ethnic and other wars.

Among these forms of pathology, political corruption is becoming a global phenomenon. This is not to say that corruption had not been present in any particular society: however, globalization made it visible on the global scale, affecting the whole world. Besides globalization and its effects, the second factor that made corruption visible is the advancement of information technology: the business of government is no longer secretive, as it used to be in the past. Information and the circulation there-

<sup>3</sup> Political manipulation is a recurrent theme in political thought since the *genre Specula principum* in the Middle Ages and Machiavelli's advices to the ruler, but in modern politics and democracies the topic was widely researched by William Riker (1986), Philip Steele (2005), and Nikolaos Zahariadis (2005).

<sup>4</sup> Political paranoia is usually associated with authoritarian and totalitarian regimes, but important research on the use of political paranoia in democracies was done by Robert Robbins and Jarold Post (1997), Joan D'Arc and Al Hidell (2010), and Frank Furedi (2005).

<sup>5</sup> Common wisdom would tend to oppose democracy to political violence, but how political violence is becoming a constituent component of modern democracies is well demonstrated by John Keane (2004), Charles Tilly (2003), and the already classic work in political thought by G. Bingham Powell, *Contemporary Democracies: Participation, Stability and Violence* (1984).

of is the basic prerequisite of managing modern societies: more and more information become public domain and the *arcana imperii* – the secrets of the art of governing – cannot remain concealed within the political elites. The third factor, the “end of history” (the victory over Soviet communism) has brought to surface new pushes toward increased democratization and public participation in the running of public affairs. The concurrence of the three factors has led to the unveiling of corruption as the most dangerous form of political pathology in modern democracies.

However, it was the World Bank that launched in 1993 the first global anti-corruption program, after it was found that world costs of corruption in business amounted to more than three trillion US Dollars; that old democracies and the most developed countries tolerated political corruption of foreign political officials (those in developing countries as well as in transition countries); and that these costs were acknowledged as a special tax deduction for “corruption costs” abroad, which meant a *via facti* legalization of domestic corruptors when they operate abroad. Generally speaking, 10 per cent of the world’s GNP was spent on corruption, ranging from a low percentage in developed countries (cca. 1-3 per cent) up to 20 per cent in the poorest and transition countries. This average value of 10 percent is precisely the figure of the costs of corruption in Croatia, as per the *Freedom House Report* in 2009.

Consequently, in the 1990s consistent effort was made to curb corruption in the globalized economy, namely in the most developed countries, both economically and politically. The World Bank labelled such countries as exporters of corruption into the Third World and transition countries. On the other hand, the citizens of the most developed countries had themselves been protected from the pathology of corruption. This was a blatant paradox: while developing an anti-corruption culture within their own democratic societies, the most developed countries tolerated the corruption of Third World and transition countries’ officials, in order to foster their own economic and political interests. Still, this gap in double-standards appeared to be not only a factor of faster development (as Huntington argues), but ultimately it fired back as a boomerang, raising the costs of international transactions and creating a world-wide discomfort.

Consequently, significant anti-corruption measures and instruments have been launched on the international level. In the most developed democratic countries, standards of anti-corruption policies have been raised, and protective mechanisms have been built for the reduction of corruption and an efficient prevention and curative action in two fields: in international political and economic transactions, and in the field of political culture and awareness about the danger of corruption.

Throughout the 1990s, there was a series of activities of international organizations, governmental as well as non-governmental: in 1991, the *Resolution against*

*Corruption* of the General Assembly of the UN was adopted. In 1993, the overarching *World Programme for the Fight of Corruption* of the World Bank was launched. In 1995, the European Parliament passed the *Resolution on Combating Corruption in Europe*. In 1996, the UN adopted the *International Code of Conduct for Public Officials*, and next year its General Assembly voted a resolution entitled *Action against Corruption*. Also in 1997, the Council of Europe adopted the *Model Code of Behaviour for Public Officials*, paving the way for the document entitled *Twenty Recommendations against Corruption*; the European Union formulated the *Convention on the Fight against Corruption Applying to Officials of the European Communities and Officials of Member-states*; the European Commission sent a *Communication to the Council of the European Union and the European Parliament on the Need to Formulate an EU Policy against Corruption*; and the OECD passed the *Convention on the Fight Against Bribery of Foreign Public Officials in International Business Transactions*. In 1999, the Council of Europe passed the *Civil Law Convention on Corruption*, immediately followed by the *Criminal Law Convention on Corruption*; in the same year, GRECO (Group of States Against Corruption) was founded within the Council of Europe. Finally, in the year 2000, at the end of this “Anti-corruption decade”, the UN adopted the *Convention against Transnationally Organized Crime*, crowning the escalation from the first steps of fight against bribery conducing to a general offensive against international crime.

The wave of anti-corruption activities spread to the international civil society after 1993, when the international non-governmental organization Transparency International was founded, which published in 1995 its *Corruption Perception Index* (CPI). In those years, other international organizations, networks and think-tanks against corruption were established, such as the *Global Forum for the Fight against Corruption*, UNICORN – the *Global Trade-unions Anti-corruption Network*, the *Internet Center for Corruption Research*, ACN – the *Anticorruption Network for Transition Economies*, the *World Anticorruption Network*, the *World Anticorruption Knowledge Center*, an organization named *Global Report on Integrity*, alongside with numerous institutes and centers for corruption and transnational crime research, as well as numerous watchdogs, monitoring centers, university centers, independent think-tanks and other non-governmental organizations on the international, regional or national basis.

## **2. Fight Against Political Corruption as EU Accession Conditionality**

The European Union encountered the problem of corruption and political corruption during the accession process of the ten transition countries to the European Union. Despite the fact that the Copenhagen criteria established preclusive membership standards (the political criteria of which implied the functioning of demo-

cracy and democratic institutions, respect for the principles of the state of law, democratic elections and multi-party democracy), it came out that these criteria do not encompass an efficient struggle to eliminate political corruption from the political processes in those countries. Precisely because political corruption is an underhand, perfidious enemy which coexists with the democratic facade of the political system, and, moreover, is difficult to unveil when it is not manifest in the most primitive form – as bribery – it became clear that the Copenhagen criteria were not sufficient for the preparation of the candidate-states for EU membership.

In 1998, in its evaluation of the Central and East European countries' request for EU membership, within the scope of preparation for the Agenda 2000, the European Commission concluded that in those countries, the fight against political corruption must be upgraded. The Commission's report on the progress of each candidate-country can be summed up as follows: "The efforts undertaken by candidate-countries are not always adequate to the entity of the problem itself. Although some of these countries initiate new programs for the control and prevention of corruption, it is too early for a judgment on the efficiency of such measures. A lack of determination can be seen in confronting this problem and in rooting out corruption in the greatest part of the candidate-countries." Similar estimations were repeated in subsequent reports on the progress of candidate-countries from Central and East Europe. Accordingly, it was concluded in 2001 that political corruption is a serious problem in five out of ten countries of Central and East Europe (Bulgaria, the Czech Republic, Poland, Romania and Slovakia), and a constant problem in three countries (Hungary, Lithuania and Latvia). The Commission refrained from expressing critical remarks only in the case of two countries – Estonia and Slovenia.

However, in the meantime the European Union had to deal with the phenomenon of political corruption within its own ranks. Not to mention the collective demise of the European Commission in 1999 because of corruption, the EU had to deal with mounting political corruption within its member-states. Up to 2002, only eight out of fifteen member-states ratified the basic instrument that EU adopted against corruption, namely the *EU Convention on the Safeguarding of Economic Interests of the European Communities*. Some of the founding-members of the European Community were rated as countries with a "high level of corruption" – namely Germany, France and, specifically, Italy. It was stated that some of the candidate-countries were less corrupted than the three above-mentioned founding states of the EC (Estonia and Slovenia were indicated as a positive example).

Although the situation somewhat improved until the final accession of Central and East European countries to the EU in 2004, as stated in the yearly progress reports (*Country Progress Report*), in two cases a "systemic corruption" was detected. Such tough judgment requested the formulation of additional, clear and unam-

biguous criteria for dealing with the problem. This was the case with Romania and Bulgaria, which were accepted into EU membership only in 2007, but with a suspensive clause incorporated in their accession treaties, enabling the EU to freeze at any moment the membership status of each of these two countries. Moreover, pre-accession monitoring was extended beyond the critical juncture of accession, paving the way for a new precedent in EU politics – the *Cooperation and Verification Mechanism*. This mechanism will, clearly, become operational in other cases during the next waves of enlargement, with a high probability of applying it to countries from the Western Balkans area.

Consequently, it was *d'oblige* that the EU should develop new tools for measuring and evaluating corruption in candidate-countries beyond the Fifth Enlargement. Additional criteria were, thus, applied to countries pertaining to the second generation of European agreements, namely, countries whose relations with the EU and their eventual EU membership prospective was set by the *Stabilization and Accession Agreements* – i.e. the Western Balkans countries. But since the EU agreed at the Thessaloniki summit in 2003 that the progress of each South-eastern applicant country will be judged on an individual basis, it was necessary to formulate and elaborate special criteria, tailored to each country and to the specific nature of corruption developed in it. Thus Croatia, which acquired candidate status in 2005, had to fulfil a new set of requests in addition to the Copenhagen and Madrid accession criteria (political, economic and legal accompanied by the administrative criteria) – requests imposed by the *Stabilization and Association Agreement* between the EU and Croatia signed in 2001. They included elimination of the consequences of war, full cooperation with the Hague Tribunal for Former Yugoslavia, prosecution of domestic war criminals, the return of refugees, establishment of regional cooperation, etc. At the opening of each of the 33 negotiation chapters (35 in all), Croatia received additional benchmarks, including, as a special benchmark in the fight against corruption, the urgent need to adopt an overall anti-corruption program and strategy for combating corruption. This was necessary due to the fact that Croatia was categorized among countries with high, systemic corruption that requests very elaborate and constant measures to root it out from the society and the Croatian polity.

### 3. Political Corruption in Croatia

Political corruption as a pathological political phenomenon was recognized in Croatia only after the year 2000, despite the fact that research on corruption in transitional Croatia was undertaken already in 1994 (Grubiša, 1995), and the first comprehensive analyses and studies on corruption appeared between 1999 and 2001 (Kregar, 1999; Petričić, 2000; Derenčinović, 2001). The measurement of the perception of corruption in Croatia according to the Transparency International crite-

ria started in 1999, and Croatia was placed 74<sup>th</sup> on a list of 105 countries (the least corrupted country being placed first, and the most corrupted 105<sup>th</sup>). Undoubtedly, such ranking meant that corruption in Croatia was estimated to be very high, among countries that earned the appellation of *countries of endemic corruption*, on the way to the tougher qualification of “systemic corruption”. Therefore, the perception of Croatia at the time (this was the period of the authoritarian nationalist regime led by President Franjo Tuđman) was undoubtedly very unfavourable as far as democratic control and efficiency of the fight against corruption were concerned. Since then, Croatia’s ranking oscillated, reaching the peak in 2003 (in the last year of the Račan coalition, center-left government) as 51<sup>st</sup> on the scale, while in 2009 it fell back to the 66<sup>th</sup> place.

The situation in Croatia differed from the situation in other transition countries. The political and social development was highly polluted with the effects of the war and the authoritarian post-communist, nationalist regime established after the collapse of the Yugoslav model of self-managing socialism. Therefore, the causes of the rampant corruption in Croatia could be connected to a series of circumstances. Those causes are specific and make up the “peculiarity of the model” (Grubiša, 2005). They can be summarized in six major points:

First, the legacy of the “old system”, or as the Croatian Bishops Conference’s commission *Iustitia et pax* put it, the communist mentality and traditional corruption culture. The Yugoslav self-managing socialism, as a mild form of communism, with strong party control despite of a market economy, was functioning parallel with state-dirigism. It favoured some forms of petty corruption, or “street-level corruption”, also known in the theory of corruption as “bakshish” and “shirini” corruption (*bakshish* standing for “tips”, and *shirini*, a Persian word, standing for “gift of convenience”, or “sign of attention”). Besides that, the non-functioning of the market economy and red-tape favoured short-cuts in order to obtain service from local and state bureaucracy. Political corruption was embodied in party nepotism and cronyism, since the “cadre policy”, i.e. the selection of officials at all levels was *domaine réservé* of the League of Communists. Exceptions in some elections were mere confirmations of the rule (due to the proliferation of all levels of voting in the so-called self-managing democratic process).

Second, corruption was induced by the war itself: during the war, owing to the arms embargo imposed by the UN, it was difficult to purchase armaments for the defense, and war procurement was, obviously, neither transparent nor democratic. Members of the new anti-communist political elite were involved in illicit arms trade, smuggling funds for the defense, with the result that a certain number of Croatian war veterans happened to accumulate consistent fortunes. After the war, they became the first “tycoons”, among them many generals who had already dur-



ing the war started to be implicated in illegal trade, even with the enemy, or embezzling money and funds for the defense. The most notorious example was general Vladimir Zagorec, a modest technician before the war, who was sentenced to prison for embezzling funds for the defense. Other generals or high-ranking officials accumulated consistent wealth, and since it was done as an expression of the “spoils system”, their behaviour favoured the spread of corruption even at lower levels.

The third cause of political corruption was, obviously, the non-transparent process of privatization of state-owned enterprises. These enterprises were not sold to offerers at the best price, but to politically suitable (politically fit) clients from the ruling political elite, followers of the nationalist party in power. Part of the state-owned properties was distributed among the war veterans, thus creating a privileged class, spreading the notion that appartenance to the ruling elite can be a source of enrichment, incited by the example given from the top (purchase of socially-owned apartments at irrisory prices, factories given away at irrisory prices and with extremely advantageous loans, etc.) (Petričić, 2000; Kregar, 1999).

The fourth cause lies in the new political culture of the “nationalist revolution”, i.e. the concept of the state itself. It may sound strange that we introduce here an ideological argument, but the truth is that the entire war was fought not only to defend the country from Milošević and the Serbian aggression, but also to build a strong nationalist state as the embodiment of the Croatian national spirit. Obviously, such a state, as the ultimate ideal of the national and political ambitions, was not the post-modern state model, but the nineteenth-century model of national state as a symbol of national power, and certainly not a state as an instrument for the well-being (and security) of its inhabitants. Instead of the model of a modern service-provider state (servant to its citizens), the state that was inaugurated was the ultimate symbol of national strength and power. Such a concept of state, with its ideological burden, enabled the creation of a state apparatus that was beyond questionability.

The fifth cause is derived precisely from the fourth one, i.e. from the concept of state. A massive bureaucracy was created founded on the spoils system. The public administration, ostentatively called “state administration”, was filled with party acolytes and followers: two thirds of the 65.000 employees in the administration at the central level were selected without public competitions, solely on the base of their loyalty to the nationalist elite that ruled from 1990 to 2000 (with the brief *intermezzo* of a national-unity war government from August 1991 to May 1992), and again from 2003 to the present. Obviously, such an administration is not inclined towards any reform or rationalization of the bureaucratic apparatus. Moreover, it does not serve the public, but the state as the imaginary embodiment of the “national will”, “national spirit” and the “thousand-year-long historical aspiration and goal of the Croatian nation”. The fifth cause can thus be termed *hyper-bureaucratization*,

i.e. inflation of state officials that get their job not according to the rational needs of administering the state, but rather as a prize for their political loyalty nurturing the representativeness of the state and its symbols – and bureaucracy is one of the major among them.

The sixth cause is a logical result of such a concept, namely *hyper-normativism* that is derived from a power-centered state, which is not a service-provider to the public. Hyper-normativism is embodied in numerous and detailed laws regulating all aspects of social and political life, albeit the main legal acts regulating and punishing corruption are lacking: and here we speak about the lack of a basic legal document on the conflict of interest, of political campaigns and party financing, of a comprehensive anti-corruption legislature – all of these passed in 2011 only as part of EU conditionality, not on the initiative of the society itself (despite the continuous efforts made by the opposition, and hindered by the governing majority).

Only after the collapse of the nationalist government and the death of Franjo Tuđman was it possible to open a dialogue on political corruption in Croatian society. In 2002, the Croatian parliament passed the first *National Program for Combating Corruption*, proposed by the center-left coalition led by Prime Minister Iвица Račan. The first specialized body enabled to fight corruption, USKOK (*Office for Combating Corruption and Organized Crime*), was established in 2001. But after the return of the Croatian Democratic Union (HDZ) to power in November 2003, the political initiative on countering corruption went into stagnation and Croatia was again on its way down the international scale of corruption perception (*Corruption Perception Index* – CPI), but also according to other indicators: the yearly reports of the international non-governmental organization Freedom House, the *Global Governance Index*, the *Index of Democracy* of the Swedish Institute for Democracy and the British *The Economist Intelligence Unit*.

The political discourse on corruption was reinvigorated in 2006 when Croatia initiated the negotiation process regarding EU accession. One of the additional criteria for fulfilling membership requirements was the benchmark requesting the elaboration of an anti-corruption strategy, since political corruption was marked as a serious problem that could hamper the harmonization of the Croatian legal and political system with the European legal and political *acquis*. Consequently, Croatia was compelled to formulate its own anti-corruption strategy as one of the preconditions for starting the accession negotiations. The *National Program for the Fight against Corruption* was thus adopted by the Croatian Parliament in the spring of 2006.

One year later, the European Commission issued its *Screening Report* stating that, despite the fact that the *National Anti-corruption Program* was passed, corruption still represented a serious problem in Croatia and significantly influenced

various aspects of social life. The general attitude of the authorities in Croatia was labelled as *reactive* instead of being *proactive*. The general toleration of “petty corruption” – bribery – is a cause for concern, and corruption is sustained by the lack of good administration, transparency and accountability in public administration, as well as the lack of ethical codes and codes of conduct in both the public and private sectors.

This opinion from the 2007 *Screening Report* was later repeated in the European Commission *Progress Report* of the same year. It is stated therein that the implementation of the anti-corruption program has not proceeded past the initial stage. According to the standpoint of the European Commission, a complete implementation of the program was urgently necessary, as well as a strong political will that was lacking in order to strengthen the efforts, especially when corruption at the high political level was concerned. Not only was it necessary to invest more effort into pro-active prevention, unveiling and efficient prosecution of corruption, but moreover it was imperative to raise the awareness of corruption as a serious criminal act. Despite the findings of USKOK, corruption remains a serious problem, many allegations for corruption remain uninvestigated, and corruptive behaviour usually fails to be punished. All too frequently the high-profile and other cases unveiling corruption scams in the media disappear from sight unresolved, and the public perception of corruption has worsened in the last few years. The European Commission thus concluded that until the year 2007 there was not even one successful judicial prosecution of a high-profile case, and such a statement was merely copied in next year’s *Progress Report*.

As a result of such criticism, in June 2008 a revised anti-corruption strategy was adopted with a pertinent action plan encompassing special measures for wider areas exposed to corruption. In the 2008 *Progress Report*, the European Commission established that the legal framework for the fight against corruption was changed, alongside with additions to the Criminal Act and complements to the Law on the Conflict of Interest. This was assessed as a good progress, but the principle of the conflict of interest was assessed as not clear enough at all levels of political decision-making. Although the new *Law on Financing Political Parties* became operational, the most important question of election campaigns financing has not been solved completely. In contrast with the previous *Progress Report*, the 2008 Report added that a “culture of political accountability is lacking”.

Moreover, the 2009 *Progress Report* stated that “corruption remains omnipresent”. The findings from last year were confirmed, saying that a limited investigation of corruption at the high level was started, but it was obstructed for political reasons – and the culture of political accountability was still lacking. A discouraging formulation was used, reflecting summarily the objective and equally discouraging

situation: “A serious implementation of anti-corruption procedures on the part of state administration is lacking, while many political bodies support the centrally coordinated anti-corruption effort only in words” (*EU Enlargement: Croatia 2009 Progress Report*).

Although the complements to the *Criminal Law* introduced new regulations concerning the confiscation of property in case of corruption, no such cases occurred, and therefore an evaluation of these measures could not be done. Corruption is still “omnipresent”. Public procurement was cited as a special source of corruption, and besides this, the *Law on the Right of Access to Data* has not yet been implemented and has not shown any positive result. Still the problem of a lacking culture regarding corruption is underlined.

All of this resulted in a revised *Action Plan* accompanying the *Strategy for Combating Corruption*, approved on March 18, 2010. This Action Plan announced “general zero-rate tolerance of corruption”, as Prime Minister Jadranka Kosor announced on the same day at the meeting of the Cabinet. The Action Plan enumerates 145 measures which encompass, as stated in the introduction, an “integral (comprehensive, all-encompassing) approach to prevent and fight corruption”. For this reason, the “strategic vision of the fight against corruption” is evidenced through five thematic areas on which the Government focused its activities: legal and institutional framework, prevention of corruption, legal prosecution and sanctioning of corruption, international cooperation, and dissemination of public awareness on the damaging effects and harmfulness of corruption. The authors of the document are convinced that zero-rate tolerance of corruption can be achieved by reaching a synergy of activities and energies in all these areas, thus achieving visible and tangible results that can be measured. On that occasion, Minister of Justice Ivan Šimonović stressed that the Action Plan has been developed and improved in cooperation with the European Commission. According to Šimonović, the expert group of the European Commission rated the progress achieved as “very big” (*Antikorupcija*, 2010).

Nonetheless, the European Commission requested that the anti-corruption fight in Croatia be made more efficient, taking into consideration also the future EU funds that Croatia would be receiving after its accession, which makes the need for a tougher fight against corruption more compelling.

#### **4. The Problem of the Lack of a Comprehensive Conception of Political Corruption in Croatia**

However, a fundamental question imposes itself: if an “integral approach to fight corruption” is necessary, why is such an approach still lacking? A partial answer to the question can be derived from the approach to the corruption phenomenon. In the literature dealing with political corruption, the phenomenon of “double awareness”

regarding corruption is well-known. Such a “double awareness” is characterized by a denial of existence of political corruption as an “integral phenomenon”, and by its reduction to some of its elements: on the one hand, “petty corruption” and “street-level corruption”, and, on the other hand, business corruption or corruption in dealings between privately-owned enterprises. A similar approach is at work in Croatia as well (Heidenheimaer, 1978; de Leon, 1993).

For this reason, we will attempt to found our analysis of the “double awareness” phenomenon on the example of the anti-corruption strategy in Croatia, and, in particular, on definition of political corruption. Is corruption in privately-owned enterprises – when a company (or part of its management) bribes another part of the management (or an individual manager) – really a form of political corruption? Also, is “petty” or “street-level” corruption really a form of political corruption? In the first instance, where a company is bribed, and the corruptor is a corporation, while the corrupted is the management of another company or an individual manager of another company, who makes a decision in favour of the corruptor/company motivated by his own advantage or interest, one really cannot speak of political corruption. Here the decision of the corrupted party, influenced by the corruption transaction, causes damage to his own company, i.e. its owners. If this is a privately-owned or joint stock company, the owners are the injured party, and this form of corruption can be categorized as corporate crime. In the second case, if the “petty” corruption is a transaction between the corruptor/private entrepreneur and the corrupted/service-provider, who is also a private entrepreneur, this is an equally private transaction. In both cases, the market does not function properly and corruption is performed in the form of classic bribery, i.e. of financial or gift transactions made before or after the expected service or favourable decision. In both cases, the private-law relation is violated, and this may also be cause for legal sanctions against the participants.

But things are radically different if one of the participants of the corruption process, in either of the two cases, is a public figure or a representative of a public institution. Then we are indeed dealing with political corruption. It must be noted here that definitions of corruption are not static. Society’s perception of what can be termed “corruptedness” evolves. In times, societies started to distinguish between “bribery” and permissible “reciprocity” or “transaction”. Similar categories apply to political corruption. The more a society is democratic and developed, the more the concept of political corruption is extended to include every form of corruption which has social consequences reflected in the quality of the political process, in the system of values and in the political culture of this particular society.

Be that as it may, political corruption is a phenomenon which requires a complex description and categorization, and a composite definition. If we take a look at some of the principal definitions of political corruption, we see that the corre-

sponding transaction necessarily involves at least one protagonist who is a holder of some public role. For instance, Joseph S. Ney defines political corruption as behaviour which deviates from the formal duties of a public role because of private-regarding (personal, close family, tribe, clan, private clique) pecuniary or status gains, or violates rules against the exercise of certain private-regarding influence. John T. Noonan makes no distinction between “public” (i.e. political) and “private” (i.e. business) corruption: in his judgement, corruption is historically related either to political or sexual behaviour. Similarly to the Latin word *corruptio*, it is associated with a wide range of manifestations of evil. Corruption designates that which destroys the whole, which undermines and endangers the human community. Donatella della Porta defines corruption as the offer of direct or indirect pecuniary gain or other non-material services which are not the result of an official’s regular work, and which the official uses for satisfaction of his personal needs or the needs of others, being incited thereby to act contrary to his powers, or to behave or not behave in the appropriate manner. Susan Rose Ackerman distinguishes between economic and political corruption, but does not wish to set standards for a definition of corruption, because such a definition depends on the political and corporate culture and tradition of a country. Accordingly, that which, in a particular country, is considered corruption, is, in another country, perceived as an acceptable form of social behaviour. Ultimately, however, she also comes to the conclusion that corruption – be it economic or political – represents a danger to democracy and the democratic functioning of the government (Grubiša, 2005).

As opposed to the above distinctions in the works of corruption theorists, much more pragmatic definitions result from the need to find international instruments for fighting corruption. Thus the OECD (1994), approaching it from the standpoint of economic activity, defines corruption as an activity which involves the offer of illicit financial or other benefits to a public official in order to incite him to violate his official duties in order to achieve some goal or maintain a business relation. The Council of Europe states that corruption (any corruption, be it business or political) poses a serious threat to the basic principles of democracy, undermines the citizens’ trust of democracy, endangers the rule of law, represents the negation of human rights, and jeopardizes the social and economic progress. Transparency International defines corruption as abuse of entrusted power for private gain or for the gain of some political group by a public office holder, a politician or a civil servant. Or, in simpler terms, corruption is the abuse of political power for private benefit. It encompasses the behaviour of office holders in the public sector on the basis of which they enrich themselves or persons close to them contrary to regulations and illegally, and they do so by misuse of entrusted public power. Transparency International distinguishes between various forms of corruption: political, administrative and business corruption. In the view of the European Union, corruption refers to

any misuse of power or irregularity in the decision-making process, which is committed for illicit gain or as a result of inducement (Grubiša, 2005).

We could quote many more definitions which speak in favour of dividing corruption into economic (corporate, i.e. business) corruption and political corruption, as well as definitions in favour of identifying corruption as an eminently political phenomenon. According to the latter group of definitions, every corruption is political corruption, even when it involves private subjects, since the effect of their transaction has social and therefore also political implications. But this distinction between corruption forms is beside the point. The important thing is to identify the forms of political corruption, for we will find through this identification that every corruption is political in its implications.

### 5. Forms of Political Corruption

In order to gain an “integral approach to corruption”, we must also analyze the forms of political and other corruption. The most frequent form of corruption encountered by societies is bribery. Bribery is a transaction between at least two participants, in which one is the bribe giver, and the other the bribe receiver. The bribe-giving act itself is also called *active bribery*, which includes the giving, promising or offering, directly or indirectly, of any undue advantage to any public official, for himself or for anyone else, for him to act or refrain from acting in the exercise of his duties. *Passive bribery* is defined (e.g. in the *Criminal Law Convention on Corruption* of the Council of Europe) as the request or receipt by any public official, directly or indirectly, of any undue advantage, for himself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his duties. Bribery belongs to the type of “petty” or “street-level” corruption, although it can assume very large proportions, in the financial and material sense. *Graft* falls into the same category as bribery; unlike the latter, which includes the intention to influence someone in order to fulfil some personal or group interest, which is quite difficult to prove, *graft* or undeserved gain is a one-sided transaction made in expectation of a return favour within the recipients powers or of his better performance, or else a reward for a previously performed service within the scope of one’s official duty and special discretionary right (e.g. in the public health service, to perform an operation on a patient before the expiry of the usual waiting period). Graft is visible in cases when a politician uses the information on an intended conversion of a piece of land, e.g. for construction purposes, in such a way as to purchase the land himself or enable another person to purchase it before the information is made available to the general public. Such a form of corruption is also called *shirini* – after the Persian word for a “sweet”, which, in the Persian Empire, was a euphemism for bribes.

But there are other, more sophisticated forms of political corruption, in which the transaction is not visible, nor is it so easily noticeable, and it even cannot be quantified. One of these forms, more visible than others in this category, is *nepotism* – employing or favouring relatives, acquaintances or members of some more exclusive informal group. An instance of this is the case of “uncle Luka”, President of the Croatian Parliament Luka Bebić, who was expected to hire “fellow-countrymen” to leading managerial positions in public companies. When the corrupt transaction is made for the benefit of some formal group, we are dealing with *cronyism* – undue advantage gained on the basis of participation to a political group, i.e. a political party or clique, interest group or network. An instance of this is the employment of Rade Buljubašić, upon his return from emigration, by former Prime Minister Ivo Sanader, who was also president of the Croatian Democratic Union: Buljubašić was a salaried employee of the Croatian Electrical Utility, but in truth he worked at the HDZ headquarters. This category also comprises political appointment of officials according to the *spoils system*, i.e. when the winner in the political elections gives a number of positions in public administration to his followers regardless of their qualifications (e.g. the appointment of Neven Jurica, poet and member of HDZ, to the office of ambassador, although he was formally not qualified for the office, which had the catastrophic effect of use of state funds for his personal needs, as confirmed by the fact that he was found guilty by the Municipal Court in Zagreb for misuse of public funds). This form of corruption is also called *clientelism* – from the Latin concept *cliens*, designating a citizen who was compelled by his unfavourable position in society to resort to the support of a *patronus* (protector or patron) in return for various favours, including his vote in the elections. Accordingly, *patronage* is a distinct form of political corruption, in which the *patronus*, patron or protector supports his “clients” and gives them certain positions in society (as in the examples of Luka Bebić, Ivo Sanader, et al.) based on their loyalty to the party, or party leadership, regardless of their actual abilities and often in spite of their incompetence. In this way supporters and followers of the regime are created, be it in individual cases or in cases of support to entire segments of the population (for instance, the voters from Bosnia and Herzegovina at the Croatian elections, or the privileged treatment of the category of fake homeland war participants, who are mobilized as supporters of a political option or leadership).

In addition to the forms of political corruption discussed above, there are classic forms of political corruption such as embezzlement, i.e. theft of entrusted public funds or redirection thereof to areas located in the “twilight zone”. A fitting example is the case of HNS (Croatian People’s Party) official Srećko Ferenčak and his partner, who sold the piece of land entrusted to them by the City of Zagreb for humanitarian purposes on the market at the full market-based price. Furthermore, there are kickbacks – on the fringe of legality (e.g. in the form of donations for humanitarian



or educational purposes, given in return for government intervention, i.e. for intervention of an individual minister, for favouritism in public competitions, for state support) and other forms of so-called political lobbying.

Undoubtedly the most evasive form of corruptive transaction, however, is so-called influence peddling, i.e. trading in political influence. Influence peddling is the illegal practice of using someone's influence in the government or in public affairs, or connections with government members, in order to obtain services or preferential treatment for someone else, usually not connected with the final outcome of payment, i.e. material compensation. Such a form of political corruption is also referred to as trading in influence. OECD termed it "undue influence peddling", as a synonym for illegal forms of political lobbying – for instance, when Croatian city or county officials lobby government officials to have the highway route pass through their region, counting on an increase in the price of land and acting in consort with possible investors who purchased the terrain in advance (a fine illustration is the case of Pelješac Bridge: a privately-owned company bought at a low price the rocky terrain at Pelješac on which, as was subsequently decided, the Pelješac Bridge would be built).

Another form of political corruption is extortion, as unlawful and intentional obtainment of an advantage, material or non-material, from another person or subject, by imposing illegal pressure in the form of threat or intimidation in order to force them to provide certain benefits. Such coercion can include physical injury, violence or hindrance, and even involve endangering of a third party (e.g. the case of Igor Rađenović, head of Zagreb City Holding; see p. 90).

In some political systems, where the legislators' autonomy with regard to their political parties is guaranteed by the majority election system, one more form of political corruption is manifest, namely logrolling or trading of favours, a genuine *quid pro quo*, such as vote selling or trading in order to obtain passage of one's own proposed law or measure in return for a similar favour. This form of political corruption also has an "academic" variant, namely cross-quoting by authors of scientific works in order to drive up reference counts in scientific publications.

Finally, the classic form of political corruption is the conflict of interest, i.e. the mixing of public and private interests in performing one or two duties or functions. The way of resolving the conflict of interest of public office-holders is crucial to the functioning of public duty bearers. Due to the lack of regulations on prevention and resolution of conflicts of interest, there were cases of state officials – ministers – who confided the managing positions in their own, private enterprises to their wives or relatives while they performed a public function (fitting examples from Ivica Račan's 2000-2003 coalition government were ministers and officials Goranko Fižulić, Radimir Čačić and Zlatko Tomčić, while the previous, 1990s pe-

riod provided countless examples). In developed democratic societies, any participation of a public official (minister or state secretary) in the management of a public enterprise is also considered a conflict of interest. The French People's Assembly solved this issue back in 1935 by prohibiting representatives and ministers from entering into such engagement.

All the forms of political corruption discussed above testify to the fact that political corruption cannot be reduced only to one or two of its forms. Its evasiveness, its appearance in occult and non-transparent modes is due precisely to it being a complex phenomenon, irreducible to one or two forms. And this is exactly what is going on in the Croatian case.

With persistence equal to that of the European Commission's request for "full understanding of political corruption", the Croatian political and legislative practice reduces political corruption only to its most visible forms: bribery and, possibly, graft. Still, many graft-related affairs remain unsolved (for instance, the collection of precious watches of former Prime Minister Ivo Sanader). Therefore, it is obviously not enough, in the legislative aspect of the fight against corruption, to enact provisions regarding misuse of public duty, conflict of interest, right to public information, and to make transparent the procedure of public procurement. It is also necessary to call political corruption by its right name in legal regulation and enumerate all its forms with corresponding measures and sanctions. In short, it is necessary to enact genuine anti-corruption legislation, thereby increasing public awareness of political corruption and creating prerequisites for efficient, all-embracing political action against corruption. For this reason, we must, first of all, analyse the shortcomings of the existing legal regulation regarding corruption in Croatia.

## **6. Legal Definitions of Corruption and Legal Instruments against Corruption in Croatia**

The starting thesis in the analysis of shortcomings of the existing legal regulation regarding corruption in Croatia can be expressed by the evaluation that here too we encounter a reduction of political corruption to only one, most visible form of corruption. Suffice it to take into consideration only three publications which should reflect the "state of the arts" in the field of legal thought: firstly, the *Legal Lexicon* by Marta Vidaković Mukić, Supreme Court judge (Vidaković Mukić, 2006); secondly, the *Legal Lexicon* of "Miroslav Krleža" Lexicographic Institute (ed. by Vladimir Pezo) (Pezo, 2006); and, thirdly, the *Dictionary of Criminal Law* by Željko Horvatić, author of the Croatian Criminal Code (Horvatić, 2002). None of the three publications defines specifically the concept of political corruption, but some of the elements of which it consists are defined within the scope of the general concept of "corruption". For example, Horvatić holds that corruption is an

undesirable social phenomenon which causes a weakening of the citizens' trust in the work of the administration and in the laws and authorities. He points out that corruption is as old as state organization of human communities, and that it is a historical, traditional, psychological, sociological, economic, political, legal, national and international phenomenon and problem, but there is still no accord regarding a universally accepted definition of contemporary corruption. Thus, Horvatić identifies the all-embracing concept of corruption with political corruption. In his judgement, only the essential determinants of the concept are indisputable, and they are mainly reduced to exerting illicit forms of influence in the performance of state, public, economic and other duties and functions with the purpose of obtaining certain material advantages or gains. Such conduct, contrary to the office and to public interest, endangers the functioning of the rule of law principle, which is manifest as equality of all before the law, and the foundations of functioning of the legal state. Consequently, corruption impedes lawful conduct in all fields of social activity and causes destruction of trust in the existence of a legal and social (sic!) state.

We must also stress here that the request for a legal state is an eminently political question. The European Union recognized this fact and categorized the legal state realization as a political rather than a legal criterion. Therefore, when Horvatić speaks of endangerment of the legal state, we are dealing with a political phenomenon. And this is precisely what Horvatić goes on to assert in the lexicographic entry on corruption: the broadest definition of the corruption concept states that it covers any misuse of public powers for personal advantage of a person holding a public office. Furthermore, Horvatić claims that corruption is a generic concept for a series of corrupt criminal acts in contemporary criminal legislation (at this point the definitions starts to move in circles). On the other hand, however, he correctly asserts that corruption is "closely related to the concept of conflict of interest in the performance of public duties", and opposition to corruption in contemporary politics (sic!) faces numerous difficulties, even resistance, as a result of traditional views in some milieus and social communities as to what is and what is not to be considered criminal corruption.

Horvatić seeks to perceive corruption as a "criminal activity", which is why he must acknowledge that particular difficulties in achieving effective results through the policy of suppressing criminal corruption stem from the general and particular, personal and social, endogenous and exogenous causes for corruption, and from the circumstance that, in most criminal acts of corruption, it is hard to identify the specific injured person. This is so because the victims are quite frequently numerous and individually unnamed members of social communities, whose rights and freedoms are directly or indirectly endangered or violated by a criminal act of corruption. Horvatić's acknowledgement that there are occult aspects of corruption and

that, at the same time, it is necessary to identify a criminal act of corruption, is the best indication of the difficulty which arises when one tries to reduce political corruption only to an act of corruption in classic criminal legislation.

Consequently, Horvatić finds it important to determine the various criminal acts of corruption. Since he fails to grasp the occult nature of corruption, the easiest way for him to proceed is to reduce it to criminal acts which he defines as misuse of the performance of duties by state authorities, described in Article 338 of the Criminal Code of the Republic of Croatia, unlawful mediation, described in Article 343 of the Criminal Code, as well as giving and receiving of bribery (Articles 347 and 348 of the Criminal Code). Naturally, in addition to the above-mentioned criminal acts, corruption as bribery, i.e. other forms of illicit influence to obtain personal advantage, occurs also in other criminal acts, such as infringement of free deliberation of voters (Article 116 of the Criminal Code), infringement of equality in performing economic activity (Article 280), abuse in bankruptcy proceedings (Article 283), disloyal competition in foreign-trade business transactions (Article 289), and the illicit disclosure or procurement of trade secrets.

A similar reductionism is present in Marta Vidaković Mukić's definition of corruption (again the concept of political corruption is missing). In her judgement, corruption is the occurrence of corruptibility (bribe receiving) in a particular society and, when there is widespread corruption of the state apparatus, a fusion of the latter with crime is possible, which is especially dangerous for the survival of society itself. While Horvatić offered his definition of corruption in 2002, Marta Vidaković Mukić wrote on the subject in 2006, i.e. at the time when it was already clear that the issue of political corruption – or, as stressed by the Report of the European Commission on Croatia's progress, corruption "at high political levels" – was the main problem. She also reduces corruption to criminal-law provisions in Article 347 of the Criminal Code, which sanctions passive bribery – this stipulates sanctions against any official or responsible person who requests or accepts a gift or any advantage, or who accepts the promise of a gift or any advantage in return for performing an official or some other activity, within the limits of his powers, which he should not perform, or for not performing an official or some other activity which it is his duty to perform, while Article 348 stipulates sanctions against active bribery. According to M. Vidaković Mukić, criminal-law prevention of corruption also includes incriminations from Article 337, which define the abuse of position and authority, while corruption also comprises the act of misuse of state and government duty (Article 338 of the Criminal Code). She concludes that the latter is a new criminal act in our criminal legislation, committed by an official or responsible person when he uses his position or his authority to influence competitions and allocate, take over or arrange business deals in order to obtain material gain for his family members in his private activity.

A somewhat broader definition of corruption is offered in the *Legal Lexicon* of the Lexicographic Institute. Corruption is defined as violation of public duties, and even mere willingness to violate them for the sake of personal interests and advantages. It is stated that corruption is more or less present in all societies and cultures, but in different forms. Where shortcomings in the operation of the system's institutions are more pronounced, individual or street-level corruption occurs more frequently as a means of overcoming those shortcomings (i.e. as a means of survival). An instance of this is the attempt to influence the lower levels of state administration in order to effectuate certain rights and interests which cannot be met due to the inefficiency of the system itself. In societies in which the functioning of the system's institutions is satisfactory, the need for individual corruption is significantly reduced, but this does not remove causes of other forms of corruption, e.g. of mediated corruption, as a "phenomenon close to the mode of activity of the political elite, whereby it gains direct or indirect personal and/or political advantages". In a somewhat broader interpretation, the *Legal Lexicon* approaches corruption as a general social problem, which pertains to criminal law only *a posteriori*. Accordingly, with regard to preventing and limiting corruption in a society, the legal mechanisms must be used together with other anti-corruption, multidisciplinary instruments, with legal regulation of the conflict of interest, with the activity of non-governmental organisations, and with detection through the media.

Even the *Legal Lexicon*, however, fails to define the concept of political corruption, and, consequently, does not grasp the occult forms of political corruption which, being more difficult to detect and to subject to criminal-law sanctions, evade superficial observation, and thus represent a more serious threat to the functioning of democratic society.

### **7. The Need for Unified Legal Instruments for Preventing and Fighting Corruption in Croatia with regard to Prospective EU Membership**

The interpretations discussed above clearly show that the concepts of corruption and political corruption are easily confused, and that the "corruption" concept is at times used as a synonym to business corruption, at other times as a synonym to private (street-level) corruption, and at still other times as a synonym to political corruption. Such a conceptual confusion is then reflected in legal reductionism, which fails to grasp the complex nature of the phenomenon. Consequently, the Croatian anti-corruption policy remains limited to the criminal-law reduction of misuse of public office and cannot accede "corruption on a high political level", which the European Commission is talking about. The only way to make the fight against political corruption (i.e. corruption in general) more efficient is to unify the existing legal instruments against corruption, and to issue new regulations, which would also *expressis verbis* encompass sanctions against the occult forms of corruption.

Thus, the existing provisions of the Criminal Code, the Law on Criminal Procedure, the Law on Preventing Conflict of Interest, the provisions of the Law on Public Procurement, the Law on Financing Political Parties, Independent Lists and Candidates, and the provisions of the Law on the Right to Access Information, should all be unified, and, together with new provisions, they should formulate a new, modern “**Law on Preventing and Fighting Political Corruption**”, befitting the actual time and society, which would encompass all as yet unmentioned forms of political corruption that are usually reduced to misuse of public office. The mere mention of forms of political corruption such as nepotism, cronyism, patronage and political lobbying, along with all other existing forms of corruption mentioned in the other laws, would create a completely different climate and mobilize the entire society for prevention and fighting of political corruption. Such a law would also have to include provisions on the protection of whistle-blowers and all those who denounce political corruption. This would protect both the media and the media workers who, through denunciation of political corruption and organised crime, are exposed even to mortal danger or repression (e.g. the murder of Ivo Pukanić, owner of the periodical “Nacional”; the beating up of journalist Dušan Miljuš, who unveiled individual corruption affairs, and of Igor Rađenović, head of Zagreb City Holding, who initiated the process of unveiling corruption connections and conflict of interest within his own company; the firing of journalist Jasna Babić, who focuses on crime and corruption; the media persecution of journalist Duško Petričić, who wrote the book “Crime in Croatian Privatization”, etc.).

Accordingly, in conclusion, we advocate an all-embracing approach to the concept of political corruption in legal instruments, and the making of a legal mechanism which would explicitly point at political corruption, with no juggling with the ambivalence of the corruption concept. Until this is done, we will not be able to free ourselves from the impression that there is a major gap between the declarative willingness of our politicians (e.g. Prime Minister Jadranka Kosor and Minister of Justice Ivan Šimonović) to deal radically with political corruption, and the actual evading of an integral approach to political corruption by reducing the efforts only to some elements of criminal-law prosecution. Therefore, a solution to political corruption cannot possibly be found solely in the sphere of limited legal regulation, which is mostly formulated only by legal experts who do not and cannot understand the essence of political corruption (naturally, with the exception of legal theorist and law sociologist Josip Kregar). This problem can be solved only in synergy with political science and political scientists. Dogmatic lawyers and the classic, traditional legal science are interested in the competences and the functioning of political institutions, while political science penetrates the very essence of the power of political institutions, and has a better understanding of the pathology of the political system. A reduction of political corruption to the functioning of institutions and the abuse

of a public office does not make it possible to comprehend the deformations created by the informal and invisible transactions of political power. In the absence of such a synergy, in which legal regulations are complemented by research into political corruption as a comprehensive educational initiative covering important segments of the population (for instance, scientific inquiry into political corruption in Croatia is limited to several individuals, and only last year, as part of the Bologna Process, has political corruption been introduced as a separate course entitled “Comparative Political Corruption” at the Faculty of Political Science in Zagreb), Croatia will once again languish among the countries with an estimated high level of corruption, and its political elite will continue to behave in accordance with the maxim of the Prince of Salina from Tommasi’s *The Leopard*: “We will change everything, so that everything remains the same”.

#### **8. Epilogue: Expansion and Concretization of Benchmarks for the Finalization of Negotiations on EU Membership of Croatia**

The long-lasting EU accession negotiations with Croatia resulted in a new, third generation of conditionality principles with regard to membership, also referred to as benchmarks. The experience and practice of these negotiations will be instructive to other countries in the region aspiring to EU membership: Bosnia and Herzegovina, Montenegro, Serbia and Macedonia. The Croatian experience shows that the fight against corruption ranks high on the list of EU priorities at the time of both opening and closing negotiations. By June 2010, Croatia negotiated the closing of 29 of the 33 negotiation chapters which it received (four more than the transition countries from Central and East Europe). On June 25, 2010 the remaining three chapters were opened: market competition, foreign policy and judiciary. Precisely the judiciary chapter is crucial, for it encompasses benchmarks which contain, *inter alia*, the fight against corruption. The launching of an anti-corruption program and strategy had been one of the benchmarks for preparation and opening of negotiations in the field of the judiciary, but now, obviously tired of long negotiations, the European Commission, prompted by the member-states, decided to formulate the final benchmarks which it transformed from the form of opening benchmarks into the form of closure benchmarks. In this way, an impression has been created that the negotiations gained in speed, but the ultimate effect will be the same – the benchmarks must be fulfilled, regardless of whether they are termed negotiation-opening or final negotiation-closing benchmarks. This time the European Commission and the intergovernmental negotiating team have opted for an integral, systemic approach to the sphere of political corruption, although the benchmarks have seemingly been formulated in quite a neutral way. But the indicators of fulfilment thereof will be absolutely concrete and, if consistently implemented, they will have to perform the function of catalysts for the launching of a more systematic anti-corruption fight in

Croatian society. For this reason, we will conclude this discussion by listing taxonomically the 21 benchmarks, which clearly demonstrate the extent to which political corruption is not only an endemic, but even a systemic affliction of the Croatian society and politics. This is confirmed by the following benchmarks:

- 1 – to ensure the capacities for conducting the judicial reform
- 2 – to establish and keep records of appointment of judicial staff
- 3 – to reform and strengthen the State Judicial Council and the State Prosecutorial Council
- 4 – to significantly reduce the judicial backlog
- 5 – to computerize the courts and the system of allocation of cases to individual judges
- 6 – to rationalize the network of courts
- 7 – to keep records of results of war crimes trials
- 8 – to revise cases and to guarantee adequate treatment in renewal of legal proceedings
- 9 – to strengthen USKOK – *Office for Combating Corruption and Organized Crime* and to expand its powers
- 10 – to improve the efficiency and depolitization of the police
- 11 – to increase the capacity of courts, technically and in human resources
- 12 – to increase the transparency and integrity of public administration
- 13 – to improve regulations on political-party financing
- 14 – to control the assets cards of office-holders and judges
- 15 – to increase the employment of minorities, especially in the police and the judiciary
- 16 – to conduct research into under-representation of minorities in the wider public sector
- 17 – to take measures aimed at reconciliation and increased tolerance among citizens
- 18 – to finalize the solving of the housing issue of refugees, former property owners
- 19 – to improve the processing of appeals regarding house reconstruction
- 20 – to improve the administrative judicature
- 21 – to keep records of achieved results in fighting discrimination and to strengthen the Office of the Ombudsman.

(Source: *Večernji list*, July 19, 2010)



This taxonomic enumeration of benchmarks clearly shows that political corruption has gained access into each of the above-listed activities. For this reason, euphemistically speaking (in fact, in diluted, diplomatic terminology), what is requested is “improvement”, “strengthening” and “keeping record” of thus far lacking actions. And the general benchmark, which was the precondition for opening negotiations regarding (but not only) the judiciary, retains the form of anti-corruption strategy and the finalization of its implementation. The final assessment thereof will have to be made by the European Commission and the intergovernmental conference immediately preceding the conclusion of the negotiations.

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