

# SEVENTH FRAMEWORK PROGRAMME OF THE EUROPEAN COMMISSION



## RESEARCH PROJECT: “ALACs”

**Promotion of Participation and Citizenship in Europe through the “Advocacy and Legal Advice Centres (ALACs)” of Transparency International. Analysis and Enhancement of an Anti-corruption Tool to Enable Better Informed and Effective Citizen Participation in Europe**

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## Deliverable No 8

**Policy recommendations for an improved legal framework at national level in the fight against corruption**

**(contains in chapters recommendations of all eight TI-national chapters: CR, RO, BiH, AZ, FN, HU, IR, LI<sup>1</sup>)**

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<sup>1</sup> CR=Czech Republic, RO= Romania, BiH= Bosnia and Herzegovina, AZ=Azerbaijan, FN= Finland, HU= Hungary, IR= Ireland, LI= Lithuania

## **I. Policy recommendations for improving the legal anti-corruption framework in the Czech Republic**

### **1. Executive summary**

Since December 2005 TI Czech Republic provides free-of-charge legal assistance to people who were exposed to corrupt practices and are willing to report such experiences. The ALAC is offering two types of services: basic legal support and extended legal assistance. The basic support includes providing the client with information and guidance on protection against corruption, related legislation and relevant authorities to which the client may turn. The extended legal assistance means long-term support provided to clients and consists in the legal analysis of the case and preparation of legal opinions, petitions and applications.

Between 2007 and 2010 TI-CZ also operated the anti-corruption hotline 199. It is important to mention that both TI and the clients who approached TI perceived both projects (the advice centre and the hotline) as a single comprehensive service.

ALAC also strives to eliminate systemic causes of corruption. The ALAC uses the experiences obtained from specific cases to introduce measures, most often legislative changes, to improve legal instruments in the fight against corruption.

Strategic litigation is an integral part of the TI ALAC's work. TI initiates legal actions and administrative proceedings in matters where different legal interpretations exist, or where a generally accepted legal interpretation is lacking. In such cases, the prime aim of litigation is to achieve a precedential judicial or administrative decision.

### **Key policy recommendations at national level**

- The Czech Republic does not have an anti-corruption office. Therefore there is no effective system of enforcement of the free access to information law or conflict of interests law. A similar executive body should.
- Legislative and administrative measures for regulation of lobbying activities, stricter rules for representatives of executive and legislative powers and introduction of new standards that would apply to campaign financing of political parties should also be implemented.
- There should be more restrictive limits for the representatives of executive and legislative powers (before, during and after termination of their mandate); and
- Non-transparent practices in political party financing should be reduced (especially the so-called black sponsoring)."
- The whistleblower protection act should be implemented and effective protection of whistleblowers needs to be provided. In the Czech Republic whistleblowers have practically no legal means.

### **2. General recommendations, e.g. about funding of ALACs, taxation of pro bono legal work, general public education matters, etc.**

ALAC primarily offers basic legal support, i.e. information and guidance for all members of the public on protection against corruption, related legislation and relevant public supervisory bodies. In justified cases, ALAC may provide the victims and witnesses of corruption with

long-term support and assistance of legal professionals. Such extended legal support is only provided to those who are willing to take an active involvement in the case, i.e. are willing to file a complaint and take part in subsequent court or administrative hearings. In selected cases when the applicant is not willing to take an active involvement in the case due to fear of revenge, ALAC becomes actively involved in the case on behalf of TI. Because of this activity of the ALAC there are many potential donors that are not willing to fund TI just because they do not want to be connected in any way with specific cases in which for example ALAC lodged the criminal complaint in the name of TI.

Many cases which the ALAC is dealing with are also the ideal ground for organising public debates, namely in towns and municipalities where ALAC handled some concrete cases of corrupt behaviour. Yet even debates that were held in such locations did not focus solely on the particular problems but dealt with more general issues, such as management of municipal property and ways of exercising public control. During the duration of the project 13 public debates have been organized in various municipalities.

Thanks to the fact that TI employees are often asked to make a comment on diverse cases in media, the work of ALAC is often well promoted in various media. However, TI does not have extensive experience with pro bono legal work because all required legal work is covered by TI employees or external contracted lawyers.

Based on the the ALAC's work and experience the following recommendations can be made:

- public education is needed on whistleblowing, ethics in public office and the prevention of corruption
- independent financial support for legal aid services should be established
- pro bono legislation should be implemented.

General recommendations:

- be aware of the risks and conflicts,
- be fair in your own motivation,
- try to look beyond the particular interests involved in the case.

### **3. Brief overview of data gathered through ALACs**

During the project duration the ALAC received 2346 initial contacts and opened 46 cases. As mentioned above, the ALAC focuses its attention on four main areas: public procurement, free access to information, conflict of interest and municipal public administration. Most complaints and cases that the ALAC receives fall into one of these categories, while almost half the cases where the centre provides extended legal assistance are concerned with problems of the municipal administration. The citizens are especially sensitive to the issues and wrongdoings in this area as it directly affects their lives. At the municipal level, most cases concerned inefficient municipal property management, the issue of access to information, and the irregularities in public procurement.

TI also engages in strategic litigation, i.e. initiation of actions or administrative proceedings with the aim to achieve a precedential judicial or administrative decision. In this field, during the project duration was TI involved in 7 disputes concerning the access to information 2 disputes concerning the freedom of speech and one dispute concerning the local government elections (see below). In February 2010, TI was successful in the dispute against the Czech

Railways, when the City Court of Prague decided that the Czech Railways belong among the compulsory subjects according to the Free Access to Information Act.

Of the total number of 13 criminal complaints lodged by TI during the project duration, 5 concerned a suspected abuse of authority by a public official, 4 concerned a suspected breach of trust and 2 concerned a suspected bribery. The remaining 2 criminal complaints concerned a rigged tender. The other criminal complaints mentioned above are being handled by the authorities involved in criminal proceedings.

From 2010 to 2012 TI lodged also 12 complaints to the Office for the Protection of Competition for rigged tenders, 10 complaints to the public prosecutor for illegal privatization of the municipal property and in one case TI informed also the European Anti-Fraud Office (OLAF) (see below).

#### **4. Data analysis and insights into main corruption categories**

The ALAC focuses its attention on four main areas: public procurement, free access to information, conflict of interest and municipal public administration. ALAC strives to eliminate unacceptable (illegal) practices within the focus areas and, if possible, also to make individuals who have committed corruption personally liable for such practices. The ALAC does not perform its own investigations but rather cooperates closely with TI's analytical department, which is focused on watchdog activities.

The year 2010 and following years also brought some new topics and issues, including the freedom of speech, the local referendum, and the electoral malpractice during the local government elections.

As to the freedom of speech, TI provided legal representation to the chairperson of the accreditation committee who faced two accusations concerning the protection of personal rights because of her remarks related to the management of the Law Faculty in Pilsen. She commented on the "clientelistic network of influential individuals" – a statement that, according to TI's opinion, correctly described the situation. The accreditation committee's findings of non-transparent procedures, breaches and violations of regulations and internal directives, and practices that allowed some influential people to complete their studies in non-standard ways, constitute a sufficient basis for such a statement. The first claim against the chairperson of the accreditation committee was withdrawn by the complainant; the second claim was dismissed by the court of first instance and the verdict was confirmed by the second instance court. The reason for TI's involvement in this case was our conviction that freedom of speech is an important – and sometimes the only – course of action against corruption.

The institute of local referendum allows the citizens to directly participate in the conduct of public affairs which are within the powers of the appropriate municipality. What is important is the fact that the referendum may be initiated not only by the local council but also by the citizens themselves. The result is binding for the local authorities provided the appropriate percentage of registered voters participates in the referendum. In 2010, TI legal assistance in this area mostly addressed possibilities of active local citizens to take over the decision-making powers in situations where the local government either ignores the majority opinion of the voters or does not even allow the citizens to express their opinion.

TI prepared a practical guideline for the citizens interested in initiating a local referendum, entitled *Local referendum – the last outpost of direct democracy*, which provides the readers with detailed information concerning the relevant legislation, including the templates of necessary documents. The guideline's publication resulted in an influx of further enquiries from the general public and the TI lawyers consequently provided assistance in several other cases concerning the local referenda, for example in Jesenice municipality where the local council tried to prevent the local referendum by using various obstruction methods.

In a context of local elections that were held in the autumn, there were a number of cases of electoral malpractice which affected results of local government elections. These included various forms of vote buying as well as influencing the results through increasing the number of voters in some municipalities just prior to the elections. TI provided its legal assistance to the citizens of Krupka and was satisfied with the final ruling of the Constitutional Court, which recognized the vote-buying practice as an act directly in conflict with fundamental principles of a democratic state. However, even this ruling may not prevent some individuals or interest groups from trying to buy votes, and therefore TI will continue to encourage the implementation of systemic changes that would put a stop to such practices or introduce appropriate sanctions.

## **5. Evidence of impact**

There are several reasons why it is difficult to measure the success of the ALAC's work. One reason is that the success in particular cases depends on the institutions dealing with TI's submissions. Another reason is that legal dispute in the Czech Republic takes usually a long time. Especially regarding the free access to information cases lengthy court disputes do not lead to any real provision of information after several years.

From 71 cases opened during the project duration 33 were closed with success or partial success, 16 cases were closed as unsuccessful.

The evidence of impact of ALAC's work can be also measured by the amount of public money saved thanks to ALAC's efforts: For more than 3 years TIC criticized the tender for removing old ecological damages from communist times. The estimated cost of the tender oscillated between 1.2 billion EUR and 4.4 billion EUR. The lowest offer was 2.3 billion EUR and in December 2011 the biggest Czech tender was, also thanks to TIC's effort, finally cancelled.

## **II. Policy recommendations for improving the legal anti-corruption framework in Romania**

### **1. Executive summary**

The Advocacy and Legal Assistance Centre is an institutional project of the Transparency International network in South-Eastern Europe. In Romania, the Centre was set up in 2003 with funding from the Federal Foreign Ministry of Germany, via the Anticorruption Initiative of the Stability Pact for Europe (SPAI).

The aim of the Centre is to offer assistance and guidance to victims and witnesses of corruption in the public sector. An important element of the Centre's activity is to inform beneficiaries in regard to the legal framework and the mechanisms that can be used to fight against corruption.

The Centre has two objectives: first, to empower victims and witnesses of corruption to address their complaint and second, to promote systemic changes in policy and in the practices of the public sector that can have an impact in combating corruption.

Through the services it provides, the Centre has been aiming to preventively address issues generated by corruption in a wide range of segments belonging to the public sector, offering victims and witnesses information regarding possible means of intervention.

Taking into consideration the cases in which the center offered assistance we make the following recommendations:

- adhering to Integrity Pacts for ensuring the accuracy of public contracting process;
- encouraging transparency and free access to public information on justice;
- the unification of jurisprudence;
- establishment of standards to motivate judgments and establishment of standards for writing judgments, resolutions and ordinances;
- the elaboration of institutional practices and standards of using evidence, in order to eliminate judicial abuse;
- the punishment of those officials who commit disciplinary offenses would increase confidence in justice and strengthen the image of this system, which is perceived more negatively than it actually is;
- expanding the eligibility and the service platform for the free legal aid service

### **2. Detailed policy recommendations at national level**

#### ***Adhering to Integrity Pacts for ensuring the accuracy of public contracting process***

In order to stop the phenomenon of corruption in public procurement, we strongly recommend adhering to Integrity Pacts, which is an instrument developed by TI for ensuring the accuracy of the public contracting process.

Integrity Pacts represent simple and efficient instruments for promoting transparency and integrity in public procurement. They bring together public contracting authorities and tenderers in a particular field, in an agreement in which the parties undertake to respect all legal provisions on public procurement, to refuse any involvement in acts of corruption, to ensure the transparency of the process, the confidentiality of information that comes from

bidders, fair market competition and equal information to all participants in the procurement process, to accept further monitoring of contracts.

The adoption and adherence to the Integrity Pacts increase citizens' and institutional partners' trust in public institutions and ensures the credibility and legitimacy of officials, dignitaries and officials who are involved in the procurement process.

### ***Encouraging transparency and free access to public information on justice***

Lack of transparency is another question mark hanging over the judiciary system and which causes litigants to be suspicious of the way the system functions. From the citizens' perspective, proceedings are assessed as being highly technical and the conduct of the magistrates against justice seekers is characterized by excessive authoritarianism.

Encouraging transparency and free access to public information in the field of Justice, so that the judiciary system obeys the transparency regime established by law by providing the public with information concerning the activity within the system. Transparency and responsibility requirements in the administration vis-à-vis the right to information in the field of Justice can be this way satisfied.

### ***The unification of jurisprudence***

This major drawback of Romania's judicial system, the non-unitary jurisprudence, contributes to the lack of predictability of the act of justice and to the different interpretations of the law in court, sometimes from one panel of judges to another.

### ***Establishment of standards to motivate judgments and establishment of standards for writing judgments, resolutions and ordinances***

Respecting the legal deadlines for motivating judgments, particularly because the risk exists that in some cases of high-level corruption the delay of the motivations leads to the prescription of the case by postponing the possibility of introducing ways of attack.<sup>2</sup>

The judiciary and jurisdictional documents must contain a minimal display of all the evidence administered in the case and their debate in relation to the parties' requests and to their relevance in solving the case. Displaying the status quo and motivating the magistrates' decision regarding both the status quo and the status of law which lead to the pronouncement of the solutions represent also a need. The objectives of such measures are: the promotion of greater confidence in objectivity and motivation of the decisions adopted by the magistrates; the restorations of the educative role of the court decisions, as an element and source material for the judicial reality in social relationships.

### ***Elaboration of institutional practices and standards of using evidence, in order to eliminate judicial abuse***

It should be noted that procedural abuses occur in those situations where judges do not respect, either intentionally or negligently, certain legal provisions with a procedural character mandatory in realizing the act of justice.

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<sup>2</sup>European Commission, Communication no. 56, 2012 regarding the progress of Romania within the Mechanism of cooperation and verification

*The punishment of those officials who commit disciplinary offenses would increase confidence in justice and strengthen the image of this system, which is perceived more negatively than it actually is.*

The lack of objectivity of the judges is flawed in some cases by the existence of conflicts of interest, while it is also extremely hard to prove corruption. Citizens complain of magistrates being attracted in group relations that affect their objectivity.

### *Expanding the eligibility and the service platform for the free legal aid service*

The introduction of free legal and litigation advice services and the establishment of a fair and competitive compensation system of free legal aid services is urgently needed in this field. Establishing the management institutional framework by establishing the National Council for free legal aid attached to the Ministry of Justice and the territorial legal aid district centers goes hand in hand with the latter aspect.

### *Financing ALAC*

TI-RO recommends a system to finance the ALACs hotline, where the citizens facing corruption cases should use this hotline in order to receive assistance.

Regarding a general recommendation relating to the ALACs, TI-RO recommends that ALACs should be declared as public utility service finances from the public budget.

## **3. Data analyses, insights into main corruption categories and problems**

Since the Centre was established there have been over 6000 cases in which the Centre offered assistance and guidance to victims and witnesses of corruption in the public sector. The number of cases grew each year, but only some fell within the centre's mandate. Furthermore, it seems that the most common issues were related to the public procurement process and the abuse of the judicial system, including property restitution cases.

Due to the high number of complaints submitted to the Centre, Transparency International Romania created a series of guides meant to inform citizens on whistleblowing and on how to combat acts of corruption. Moreover, in addition to this, in order to help reduce corruption, Transparency International Romania conducted advocacy campaigns through which it promoted a series of public policies and legislative initiatives such as amendments to the relevant legislation on corruption and to the governmental anti-corruption strategy and plans of action.

Transparency International Romania supports civic education by promoting models of integrity for public institutions and their employees; by putting forward the Transparency International Guide as a civic education textbook; by debating in public meetings subjects related to corruption; and by conducting information and awareness campaigns on issues relating to public integrity.

## **4. Main corruption categories based on corruption**

Thus, looking back at the citizen's complaints, the most commonly raised issues are as follows:



### ***Not respecting the principle of integrity in public procurement processes***

One of the main areas where profound vulnerabilities were registered and which led to significant losses in the public budget is public procurement, where voluntary verification and compliance procedures have failed in favour of clientele practices. These have led to repeated postponement of projects which benefited the national interest, to the establishment of production costs ridiculously above the market level by repeatedly increasing the contract value, to a poor quality of the work performed as well as to inexplicably high maintenance costs. Moreover, issues regarding conflict of interests and nepotism in awarding contracts have greatly increased.

In this context and due to extensive loans granted by international credit institutions in order to support budget expenses, as well as low absorption capacity of European funds, adopting a set of measures to reduce corruption vulnerabilities appears to be the utmost important task within this area and may also encourage economic operators to voluntarily comply with integrity standards.

The lack of integrity of public contracting has been identified as the main problem raised in the complaints made by citizens to the Centre. Examples are the public procurement processes affected by conflicts of interest, the absence of normal processes and use of extraordinary/other procedures, renewal of contracts without other competitive procedures of contracting etc.

### ***Delaying the trials***

Citizens characterized the Romanian judiciary system as being a slow one (e.g. courts give new trial dates with great ease, which leads to delaying the trials). The very long duration of the trials is a major factor of discontent that creates suspicion about the truth being discovered by the courts.

Thus, we see that we are facing the failure of respecting the active role of the courts in finding out the truth. This is the principle according to which judges must judge in order to determine the facts in a reasonable time, not just to complete the file they are working on and thereby harming the quality of the act of justice.

### ***The judiciary system's lack of transparency***

In Romania, institutional transparency and responsibility are minimal, and a culture for respecting the citizens' rights guaranteed by the Constitution – including the right to have access to information – is lacking. Under these conditions, the real and constant access to public information is a key element in respecting the Rule of Law<sup>3</sup>.

Access to public information increases efficiency in administration, the legal system and the judicial system and helps maintain their integrity by reducing the vulnerability to corruption; it contributes to the legitimacy of the administration as a public service and to the increase confidence in public institutions and authorities.

Lack of transparency is another fact complained about by those assisted by the Centre, especially in criminal matters. In some cases, citizens complained to the Advocacy and Legal

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<sup>3</sup>Accesul la informațiile de interes public, Ghid teoretic și practic pentru judecători, pg. 5, source:[http://www.inm-lex.ro/fisiere/pag\\_34/det\\_358/1076.pdf](http://www.inm-lex.ro/fisiere/pag_34/det_358/1076.pdf), accessed on 11.09.2012

Assistance Centre that people working in courts, judges or staff, refuse to talk, to give information or to receive requests. These statements reveal a lack of availability of the judicial system toward the legal problems faced by citizens.

### ***Non-unitary jurisprudence***

The impact of non-unitary jurisprudence is particularly harmful. The lack of uniform practice on similar test cases leads to lack of confidence in the accuracy of the solutions delivered. The quality of the judgments' motivations:

Overloading the judges with cases has the effect of decreasing their ability to properly analyze the cases, which consequently results in the poor quality of analysis of cases and of the motivations of court decisions.

### ***Procedural abuses in the act of justice and the disregard for the rules of evidence by the courts***

As for ignoring evidence, it was reported in the complaints that in the reasoning of the judgment or court decision not every evidence material is mentioned which raises complaints or, even if all the material is remembered in the decision, the conclusions are drawn by ignoring one or another piece of evidence.

Those assisted by the Centre have complained of these kind of abuses and other procedural abuses. These facts, which can be punished either disciplinary or criminally, affect the procedural rights of the assisted and vitiate the solutions adopted.

## **5. The impact of ALAC to date**

Regarding the second objective of ALAC to promote systemic changes in policy and practice of public sectors that can have a lasting impact in combating corruption, we would like to mention some of TI-RO advocacy initiatives that had a respective impact. The Center uses the information provided from the citizens cases in order to translate them into advocacy initiatives, aiming to change the conditions that facilitate corruption. Thus, taking into account the cases that the citizens address to the Center the most frequent corruption issues regard public procurement, public funds management and issues related to the judicial system. Significant changes effected by ALACs:

### ***National Anticorruption Strategy (2008-2010)***

Transparency International Romania has made a series of observations and recommendations regarding the National Anticorruption Strategy (2008-2010) which were included in the final document. Regarding the TI-RO recommendation we mention some of them such as: increasing public awareness on risk associated/related with corruption; increasing transparency in public service sector; developing a human resources management system aiming to reduce the risks related to corruption; simplification of the bureaucratic procedures in order to improve public services.

***Promoting and encouraging the implementation of the provisions of Law no. 571/2004 (2010-2011)***

TI-RO has concentrated its efforts on promoting and encouraging the implementation of the dispositions of Law no. 571/2004, regarding whistleblowers, consistently focusing on the information and education of the citizens as to the importance of whistleblowing, by means of the Anticorruption Resource Center for Citizens.

***Promoting Integrity Pacts (2010-2012)***

In a context where public procurements are a privileged place for corruption to develop, both on a local and a central level, TI-RO has proposed the implementation of Integrity Pacts, starting with the year 2010, TI-RO and the Academy of Advocacy having organized a first conference dedicated to promoting of Integrity Pacts on a local level.

***Increasing the efficiency of the mechanisms used in the fight against corruption National Anticorruption Strategy (2012-2015)***

Within the National Anticorruption Strategy, a series of recommendations have been made by TI-RO, in order to include several objectives, among which were mentioned: the introduction of a yearly evaluation of risks and vulnerabilities to corruption in public institutions; the fight against corruption in public services (the medical system, the education system, the social services); the increase in efficiency of the mechanisms used in the fight against corruption in public procurements.

***Establish the National Integrity Agency***

The law establishing the National Integrity Agency was advocated in 2007 by TI-RO, through ALAC. Thus, TI-RO supported the adaption of a legal and institutional framework and the development of public policies regarding the control of conflicts of interest and incompatibilities, and also the control of wealth. Therefore, during the period 2004-2007, TI-RO provided technical expertise to the Ministry of Justice, organized public debates and launched critical assessments/evaluations regarding the law. As a result of the efforts of TI-RO, the Romanian Parliament adopted the Law no. 144/2007 on the National Integrity Agency.

***Improving the climate of integrity***

Also, to improve the climate of integrity, TI-RO signed in 2004 a memorandum with the Romanian Government regarding a common platform to fight against corruption, which led to adoption of some normative acts, such as:

- Law no. 365/2004 regarding the ratification of the United Nation Convention against Corruption;
- The introduction of whistleblower Law no. 571/2004 aiming to ensure a legislation framework that offers whistleblower protection.
- Amendments regarding the Law no. 78/2000 aiming to extend the categories of acts of corruption to a wider variety of manifestation of corruption in public sector.
- The modification and extension of Law no.78/2000, through the extension of the category comprising corruption deeds to a greater variety of manifestations of the corruption phenomenon in the public sector.

- Adoption of the Law no. 477/2004 to extend the provisions of the law no. 7/2004 regarding the code of conduct for civil servants also to other categories of public sector workers and to the workers that provide public services
- The extension of Law nr. 7/2004, regarding the code of conduct of public servants and other categories of employees in the public sector or who perform public services. It has been finalized with the adoption of Law nr.477/2004.

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<sup>5</sup> Web link: <http://ti-bih.org/wp-content/uploads/2011/11/Prees-rls-10.11.-2011..pdf>

### **III. Policy recommendations for improving the legal anti-corruption framework in Bosnia and Herzegovina**

#### **1. Executive summary**

During the implementation process of the research project “ALACs”, Transparency International Bosnia and Herzegovina (TI BiH) has been actively providing legal assistance in order to help citizens address corruption related complaints. ALAC cases created with regard to the anti-corruption legal framework of Bosnia and Herzegovina a basis for legal recommendations in different areas.

Based on the ALAC cases the following recommendations can be made:

1. Harmonizing the entities Freedom of Access to Information Laws with State-level Law,
2. Preserving the structure of existing anti-corruption laws and particularly reinforcing the laws on conflicts of interest and the law on financing political parties in Bosnia and Herzegovina without political interventions,
3. Better reinforcement of the implementation of the BiH Anti-Corruption Strategy 2009 – 2014 in general, specifically regarding stronger whistleblower protection

#### **2. Detailed policy recommendations at national level**

##### ***Policy work on amending the entities Freedom of Access to Information Laws***

The policy recommendation that derived from ALAC on the subject of amending the entities Freedom of Access to Information Laws can be observed in a general aspect of good legal practice of the ALAC, upon which legal gaps were recognized as something that needed to be altered and revised by the parliamentary bodies in both entities of Bosnia and Herzegovina. The initiative came in the first half of 2010 as a result of many years of practice, where FOIA Laws have been used (almost) on a daily basis in the interest of ALAC clients and anti-corruption work of the organization itself. Because FOIA Laws follow the procedures which are similar to administrative Laws, the lack of sanctions and clear appeal procedures were determined as a necessity that needs to be altered and amended. Also, due to the specific ways in which Bosnia and Herzegovina is organized, harmonising them with the BiH (state-level) FOIA Law presents an opportunity for legislative harmonization and further democratization of the government in BiH. In 2011, the parliamentary bodies from both entities gave an official answer that our initiatives for amending the FOIA Laws have been taken into consideration for official approval.

##### ***Case advocacy concerning FOIA Act on state level in BiH from 2010-2012***

**I.** What started as a whistle-blower case involving the misuse of public position and public financial funds was followed by a general demand for transparency and the public denunciation of the implicated official. The prosecutor’s office needed to confirm or disconfirm whether the budget money was spent on personal items, beyond prescribed budgetary expenditures, and whether ethical and public office codes were disregarded.

Proceedings in the administrative dispute were initiated against the Cantonal Prosecutor's office of Sarajevo for arbitrarily excluding public information. Disciplinary complaints were submitted against the acting prosecutor due to the dismissal of the charges against the public official on the basis of lack of jurisdiction. This decision was made after a whole year of "handling" the investigation. First penal procedures were initiated for breaking the FOIA Act (on state level), against the Council of the Ministry of BiH for withholding public documents in case of administrative silence. On that matter, actions were taken to the primary and district court of Sarajevo Canton. After different opinions on the subject of who can or cannot be the legitimate person for initiating penalty procedures, in the consolidated opinion between two courts stated that Transparency International does not possess the active (as an interested party) legitimacy for initiating penalty procedures. In 2011, the courts were disputing over the matter and established that this right is exclusively reserved for state institutions (primarily for executive bodies).

Courts opinions will serve as a recommendation to the Parliament of BiH to establish clear procedures in the matters of initiating penalty procedures for breaking the FOIA Act of BiH. Since this element is lacking in latest amendments to the FOIA Act on state level, they will serve as a recommendation in further advocacy plans.

**II.** Another important case was the people's protests in Banja Luka against the destruction of green zones in the city centre that played an important role in building local NGO coalitions and implementing direct democracy with one goal – exposing corrupt practices in public private contracting.

Public land was sold to an investor company at a very low, undervalued price, in order to build a thirteen-storey business-apartment building. TI BiH, alongside with local NGO's (Centre for protection of environment of Banja Luka and Helsinki Citizens Parliament), started to question the legality and transparency of the contracting as well as the construction process. After receiving some of the documents, the majority has been excluded by the District Court of Banja Luka, due to a law suit that was filed regarding the questioning of the issued construction license to the investor.

The campaign gathered citizens of Banja Luka, young people, students and NGO's that demanded public transparency and political responsibility. Also, issues of the protection of environment, ecology and strong ties with corruption were made public during first month of the citizen's protests. Transparency International BiH actively engaged during public press conferences and provided legal aid to all citizens and NGO's. ALAC was made widely known to all citizens and paralegal aid was provided in different cases of policy abuse and access to freedom of information.

### ***Policy work on developing proposals and advocating amendments to the Law on Conflicts of Interest***

In January 2010, Transparency International BiH advocated against the proposed amendments to the Law on Conflicts of Interest, Election Law and the Law on Civil Service. TI BiH made public appeals to the Parliament in the attempt to prevent the amendments that would derogate the existing laws. TI BiH pointed out that the proposed Law on Conflicts of Interests was aimed at completely undermining the law, enabling the ruling elite to deal with their own

private interests while in they are in civil service, while at the same time citizens would not even be able to report conflicts of interest.

Additionally, the amendments of the Election law submitted by SDA according to which candidate lists would be closed and voters will not be able to vote for individual candidates but only for the party, would introduce the category of the vote belonging exclusively to the party and not the candidate. TI BiH pointed out that this would strengthen the almost absolute power of party leaders within totally undemocratic party structures, which would be another step towards authoritarian forms of governance.

At the same time TI BiH advocated against the initiative filed by SNSD for amendment of the Law on Civil Service in BiH institutions, according to which assistant ministers, secretaries in state institutions and ministries, and directors of offices and agencies would be stripped off the title of the employee of the state. TI BiH appealed to the Parliament and international organizations, as well as public, to prevent these amendments since the ultimate goal of such initiative was to enable more positions, besides ministers and deputies, to be awarded along the party lines, and for them no longer to be professionals doing their job regardless of who is in office at the time, and all this to ensure suitable party, instead of quality and professional personnel, who work only for the benefit of their party leaders.

In November 2011, Transparency International BiH and Open Society Fund issued a proposal<sup>5</sup> to the Parliamentary Assembly regarding amendments to the Law on Conflicts of Interest, Law on Financing of Political parties and Election Law aimed at stronger supervision over the funding of political parties, harsher penalties for conflict of interests as well as control over the accuracy of assets declarations.

Additionally, TI BiH has been actively involved in monitoring the process of amendments to the Law on Conflicts of Interests and Law on political party financing, while one of the TI BiH representatives was present at all the sessions of the working group in charge of the amendment process. Based on his reports, TI BiH was able to timely react on all the proposed amendments, which were unfortunately all aimed at derogating the existing laws and giving more opportunities for public officials and parties to misuse their position and public funds. With the aim of preventing such amendments, TI BiH sent open letters to the members of the working group, as well as to all relevant domestic and international institutions, pointing out to the damage that such amendments can cause to the country and its budget.

With the same aim, TI BiH started a public relations campaign, through press releases and media statements, where its representatives pointed appealed to the public and parliamentarians to prevent the adoption of amendments that would practically legalize conflict of interests.

TI BiH also ran a series of commercials based on cartoons presenting public officials in situations of conflict of interests, together with a short test on conflict of interests. The cartoons represent politicians in conflict between their own interest and the interest of public and justice. This was aimed at increasing public awareness and knowledge on the nature of conflict of interests and importance of integrity of public officials.

TI BiH also publicly pointed to irregularities in the process of proposing the amendments, informing both the parliament and the international institutions in BiH. Due to these advocacy activities, the Parliament stopped the adoption of amendments to the Law on Conflicts of Interests and announced the preparation of the new law.

Regarding the subject of political transparency and with the purpose of revealing assets for 45 politicians in the entity of the Republic of Srpska, an ALAC case was initiated in cooperation with the Centre for Investigative Journalism (CIN), a journalism reporting NGO from Sarajevo. CIN created a database<sup>6</sup> on influential people with strong party ties which were not required to submit property records, but whose assets were made public by access to official public documentation.

In the case of the remaining 45 politicians, whose property rights remained anonymous, TI BiH started to ask for the deliverance of that documentation, but remained unsuccessful in certain aspects, because of complete administrative silence from state governing bodies that held requested documents under full state protection. In a situation in which the tally on fixed property is the basic and public registry on assets and proprietary rights, it seems that the governing politicians in the entity of RS have proprietary immunity of information disclosure. All this might have to do with the fact that one of the many politicians from whom we requested full asset disclosure was at that time acting prime minister and is the current president for the entity of the Republic of Srpska.

The case itself still remains open for revision by the state institutions. Also, given that 2012 is a local election year in BiH, it remains to be seen whether or not the subject of public transparency will come as a vital subject for local political campaigns.

### ***Monitoring the reinforcement of the implementation of BiH Anti-Corruption Strategy 2009 – 2014<sup>7</sup>***

The aim of the project was to support the implementation of the National Anti-Corruption Strategy and the accompanying Action Plan through the active involvement of civil society organisations in the monitoring and evaluation of the Strategy implementation. With regard to supporting the involvement of other organisations, TI BiH as well as ALAC office had cooperated with several NGO's in civil anti-corruption matters. One of them was the support for the development of freedom of information portal<sup>8</sup> for submitting online FOIA requests. ALAC cooperated with other NGOs more with regard to providing legal advices regarding public and administrative law as well as providing information for reporting journalists.

In regard to the European Commission 2011 Progress Report for Bosnia and Herzegovina concerning the implementation of state's anti-corruption policy, Bosnia and Herzegovina has made very limited progress in tackling corruption, which remained (according to the report), "widespread throughout the public and private sector"<sup>9</sup>.

Considering that the Anti-Corruption Strategy of BiH for 2009-2014 predicts introducing ethics and anti-corruption education in schools, TI BiH in cooperation with Centre's for Civic Initiatives during 2011 and 2012 implemented 24 workshops with teachers in primary and high schools in order to equip them with methods of anti-corruption education for students.

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<sup>6</sup> Web link: [http://www.cin.ba/Stories/P24\\_Assets/Database/index.html](http://www.cin.ba/Stories/P24_Assets/Database/index.html)

<sup>7</sup> Web link: [www.ti-bih.org/en/projekti/monitoring-provodenja-strategije-za-borbu-protiv-korupcije-2009-2014-i-antikorupcionih-reformi-u-bosni-i-hercegovini/](http://www.ti-bih.org/en/projekti/monitoring-provodenja-strategije-za-borbu-protiv-korupcije-2009-2014-i-antikorupcionih-reformi-u-bosni-i-hercegovini/)

<sup>8</sup> Web link: [www.pravodaznam.ba](http://www.pravodaznam.ba)

<sup>9</sup> Web link: [www.ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/ba\\_rapport\\_2011\\_en.pdf](http://www.ec.europa.eu/enlargement/pdf/key_documents/2011/package/ba_rapport_2011_en.pdf)



TI BiH prepared and distributed a manual containing different examples of education methods that can effectively be used with students and can transfer ethical values and anti-corruption attitudes. TI BiH also established cooperation with ministries of education on different levels of BiH in order to advocate for the introduction of these issues in school curricula as well as to achieve better cooperation with schools. Given the subject of corruption and education, in most ALAC cases, evidence of suspected (or alleged) corruption mostly falls within higher education. Cases of favouritism and acquisition of illegal diplomas or scientific qualifications are one of the main subjects of citizens' complaints.

Regarding whistle-blower protection, since the Anti-corruption Agency is in charge of implementation of this strategic objective, it needs to be able to carry out activities and in cooperation with other institutions to propose a *model procedure* ensuring the protection of persons reporting corruptive practices in all sectors. Again, the regulation of this area should include the harmonisation of new provisions with the relevant international instruments and good practice in other countries that apply high-standard anti-corruption policies.

### **3. Specific Issue: Taxation of pro bono legal work**

To have a clear overview on legal framework in Bosnia and Herzegovina concerning the taxation of providing free legal assistance, BiH still does not have a legal framework on free legal aid (or legal assistance), as a basic guarantee for equal access to courts and justice for all its citizens. So far, a law on free legal aid has been adopted in the Brcko District, entity Republic of Srpska and in some federal cantons of FBiH. On July 4<sup>th</sup> 2012, The Council of Ministers of BIH defined a Proposal Law on Free Legal Assistance by majority vote, and passed it on for the parliamentary procedure.

Transparency International BiH is not obliged to pay taxes in providing pro bono legal assistance, except when filing appeals and law suits in its own behalf and for its own account. The taxation for filing law suits or legal remedies is obligatory with regard to the state budget. Transparency International BiH files laws suits in the name of and on behalf of the organisation. The taxation for those matters is prescribed according to the Law on Judicial and Administrative Taxes in both entities as well as on state level.

Legal advice that we give to ALAC clients/citizens of BiH are non-obligatory and pro bono. TI BiH does not represent clients before court on their behalf.

### **4. Cases by corruption areas**

From January 2010 – June 2012, TI BiH's ALAC received 2561 calls via toll free phone line for reporting corruption. From 2003, ALAC in BiH, has been designed to serve as a tool to enable better informed and effective citizen participation with simple, credible and viable mechanisms. TI BiH has been upgrading these mechanisms from 2003 until nowadays. With improved communication tools, in the last three years ALAC became more accessible and efficient towards his beneficiaries that use internet based technologies in terms of communication, case administration and problem solving. Therefore, a great deal of work has been carried out in establishing an informative ALACs website and using social networks to promote the idea of free legal assistance as a national and a global anticorruption movement.

Based on received written complaints, either by mail or electronically, a total of 426 cases were initiated during the period 2010-2012 towards various institutions in Bosnia and Herzegovina, seeking to secure citizen rights, and to point on individual cases of corruption.

Comparing the different sectors, the largest number of complaints during 2011-12 was related to the employment procedures as the biggest problem that people encounter, with majority of complaints referring to the civil service sector.

When Analysing the nature of cases in affected areas in which clients make citizens' complaints, it is evident that most of them, both in the governmental sector and in other sectors, were related to the employment process, where citizens commonly reported irregularly conducted vacancies for civil servants at all levels of government and also irregular appointments for various functions. This practice escalated in cases of nepotism at the highest levels of government and an open distribution of the most responsible positions in institutions through inter-party agreements, which suggest that nepotism and clientelism are key mechanisms for advancement and the most common way to obtain a position in BiH institutions.

Nepotism as a specific type of conflict of interest can be described as an omnipresent factor of corruption in Bosnia and Herzegovina, judging by the frequency of complaints which are submitted to the ALAC. Favouritism is found among family members and close friends, who are interlinked through political parties that hold important places in government institutions. The emerging case on which TI BiH took initiative, included reports against the Prime Minister of the Federation of BiH, Nermin Nikšić, whose brother was appointed by the FBiH Government to head the public company "Autoputevi FBiH" [Motorways of FBiH], and the case of Jerko Ivanković Lijanović's brother-in-law who was appointed executive director in the same public company in spite of the nomination ban imposed on him. Reports were sent to the Central Election Commission, and the Commission is currently working on processing the cases.

When it comes to the judiciary, citizens most commonly complain about long processes at courts, but here there were also reports related to corruption in judiciary and to violation of procedures by judges. On the other hand, TI BiH also received 6 files related to the prosecutors' offices, mostly complaining that the prosecutor's offices did not react upon citizens' reports. In such cases, ALAC was actively seeking the deliverance of prosecutor's acts in order to question the legitimacy of followed procedures. During 2011, two criminal initiatives were sent to the prosecutor's office and both were related to nepotism in the public sector, regarding suspected corruption in the employment area of civil servants. Also, two disciplinary complaints were sent to the High Judicial and Prosecutors Office of BiH.

We also noticed that the prosecutors' offices in BiH have a tendency to rarely address the public in important corruption cases (for example, by making press conferences), which makes them more open to criticism and the lack of professionalism. The general attitude of prosecutor's offices in BiH is that they have a closed attitude towards the civil sector in cases of general inquiry about certain cases (regarding conducted activities, timeframe in which they are handling the investigation, etc.). For this reason citizens sometimes have to wait several years in order to see the outcome of their cases.

An encouraging fact is that citizens are more and more willing to report corruption, and that among these reports the number of whistle-blowers or persons who reported irregularities in the institutions in which they are themselves employed, is increasing steadily. However, there

still remains a lack of mechanisms to protect whistle-blowers, which discourages citizens from reporting corruption, as they fear for possible consequences. At the same time, another encouraging fact is the increased interest of the media in corruption, where journalists often turn to TI BiH for legal advice in the field of free access of information. Through this collaboration, TI BiH, in cooperation with the media, managed to obtain and publish very important documents and contracts related to the expenditure of public funds and public – private partnership, which certainly helps in strengthening the oversight of the government. Victims remain the predominant category of ALAC's clients. Divided by age, most of the clients fall into the category from 40 – 54 and by location most of them come from urban areas (cities and bigger municipalities).

## **5. Funding of ALAC 2010-2012**

The ALAC project was able to secure steady financial resources throughout the project's implementation. The list of donors in the period from 2010-2012 were Department for International Development – DFID, Civil Rights Defenders – CRD, The Federal Foreign Office of Germany – Auswärtiges Amt and The Royal Norwegian Embassy.

Since corruption continues to negatively impact all spheres of life, economic development and the rule of law, free legal aid in civil cases continues to be mainly provided by privately funded NGOs (as mentioned in the European Commission 2011 Progress Report for Bosnia and Herzegovina<sup>16</sup>). The sustainability of ALAC's project in Bosnia and Herzegovina should be considered as a unique civil project, that engages citizens in active pursuit for protection of their rights and social engagement in the fight against corruption.

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<sup>16</sup> European Commission 2011 Progress Report for Bosnia and Herzegovina, page 17

## **IV. Policy recommendations for improving the legal anti-corruption framework in Azerbaijan**

### **1. Executive summary**

The project has had a substantial impact in the country:

(1) It changed the cultural attitudes towards petty corruption and demonstrated that corrupt practices shall and can be successfully contested.

(2) The project provided support to state authorities to strengthen their capacity to process complaints by encouraging them to become more responsive to complaints. It should be noted that only 70% of all complaints formally submitted are responded to by public agencies, and of those responded to 95% are resolved either partially or fully successfully. This means that public agencies only respond in cases that can be solved rather easily. When they are unwilling to resolve a problem, they simply do not react to the complaint. This issue has been repeatedly highlighted to Azerbaijan authorities but, so far, no action has been taken and TI Azerbaijan is now considering taking those respective agencies to court for failure to respond to letters submitted.

(3) Over the years the original project evolved from the provision of rather basic legal assistance to individual citizens to a substantial advocacy mechanism aimed to attend to the roots of corruption by addressing legal loopholes, institutional vulnerabilities and performance gaps. Analysis of the statistical data obtained through citizens' communication, interaction with ALACs enabled the latter to identify loopholes in the systems which allow corruption to flourish.

(4) Based on the analysis and evaluation of ALAC data, TI Azerbaijan has made a number of recommendations to Azerbaijan authorities, related to the judiciary, the provision of public services, property rights, etc. Several recommendations were taken into account by Azerbaijan authorities, leading to a significant improvement in some of these areas. However, much more needs to be done for Azerbaijan to tackle corruption and the lack of transparency.

#### **Key policy recommendations at national level:**

- *Strengthening independence of the judicial system*
- *Simplifying and improving proceedings related to land property*
- *Open social service provision to civil society organizations*
- *Expand e-governance as a tool for greater transparency in the provision of public services*

### **2. Detailed policy recommendations derived from ALAC**

Based on data derived from ALACs, in 2011/2012 TI Azerbaijan designed packages of recommendations aimed to increase accountability and reduce corruption in 12 areas of the public administration system, such as: education, social security, recruitment to civil service,

provision of utilities, registration of real estate, etc. To achieve change in these areas, these recommendations were delivered through targeted advocacy workshops and media.

The main areas of concern are as follows:

#### *Strengthening independence of the judicial system*

A key recommendation resulting from the analysis of cases and data collected through ALACs in Azerbaijan is the need to ensure the complete separation of powers between the judiciary and the executive, including financial independence, and to create clear and transparent systems to conduct performance assessments of judges, so that their promotion is based upon clear procedures rather than decision of their superiors. Strengthening the independence of the judicial system will facilitate the use of litigation as an efficient mechanism to contest arbitrary decisions of the executive branch.

#### *Simplifying and improving proceedings related to land property*

Another critical area of concern in Azerbaijan is related to land issues, such as the distribution of land by municipalities for agricultural use; obtaining permissions from local executive authorities to build, processing of title documents for land and real estate by Land and Mapping Committee and State Registry of Real Estate. Procedures are extremely cumbersome and have many loopholes which allow for corrupt practices. The recommendation is to simplify procedures, to create a single window for applicants, to expand powers of notary public, and to move from the permission-based process to the notification of the authorities of property deeds.

#### *Open social service provision to civil society organizations*

A third major area is social security, such as pensions and targeted social aid. Procedures regulating this sector are rather clear and available on the internet, but officials abuse the poor legal knowledge and social status of their clientele. The recommendation is to expand the potential of civil society to participate in social projects by means of outsourcing social projects to NGOs, as well as to encourage NGOs to intensify their watchdog activities over the distribution of social benefits to reduce possibilities for corruption in this area. To facilitate the process, amendments shall be made to the legislation to introduce non-for-profit status of a market player.

#### *Expand e-governance as a tool for greater transparency in the provision of public services*

The business sector in Azerbaijan is both a victim and perpetrator of corruption and businessmen tend not to complain about tax, customs and other regulating agencies dealing with permissions, licenses and audits. It should be mentioned that considerable positive changes towards transparency are taking place within the tax system, which is the most efficient public agency with online tools. A recommendation is to expand electronic facilities for the business sector to communicate with officials and to minimize personal contacts.

### **3. Brief overview and data analysis, insights into main corruption categories in Azerbaijan**

Transparency Azerbaijan established the first ALAC in 2005. By now, TI Azerbaijan runs three ALACs, namely in Baku, Ganja and Quba and three more Legal Advice Centers in

Ganja, Lenkoran and Sheki, which deal with a broader range of legal issues, not necessarily limiting their assistance to customers who have encountered corruption.

The ALACs in Azerbaijan have been contacted by around 2000 clients per year. Due to this success, the project is now replicated by different actors: The government established free legal advice centers at the Ministry of Justice, as well as telephone/online hotlines in most national agencies. Civil society organizations run ALACs, particularly in regions where TI Az does not operate, and the media is now accepting live-on-air legal advice on traffic rules and complaints from drivers on FM radio.

These developments led to a gradual drop in initial call/contacts of ALACs. Since the launch of a hotline at the anti-corruption department of the prosecutor’s office on 3 March 2011, the number of complaints accepted for March-December 2011 has reached 1,084 (or by average 108 per month). For January-June 2012 this figure increased to 2,624 (or by average 437 per month). Also, other public agencies began to actively design hotlines in 2011, especially after the presidential decree on e-government of 23 May 2011. The drop is especially evident in the industrial cities of Baku and Ganja, while it is less so for the ALAC Guba.

The analysis of clients shows that more educated clients have been using government hotlines, while the rural population uses the services provided by TI Azerbaijan.

TI Azerbaijan welcomes the fact that the government and other agencies provide anti-corruption advice, as long as the services comply with high professional standards and lead to the successful resolution of cases. In particular, government agencies have the duty to provide this service to citizens, and TI Azerbaijan has persistently recommended public agencies to design/enhance their complaint mechanisms.

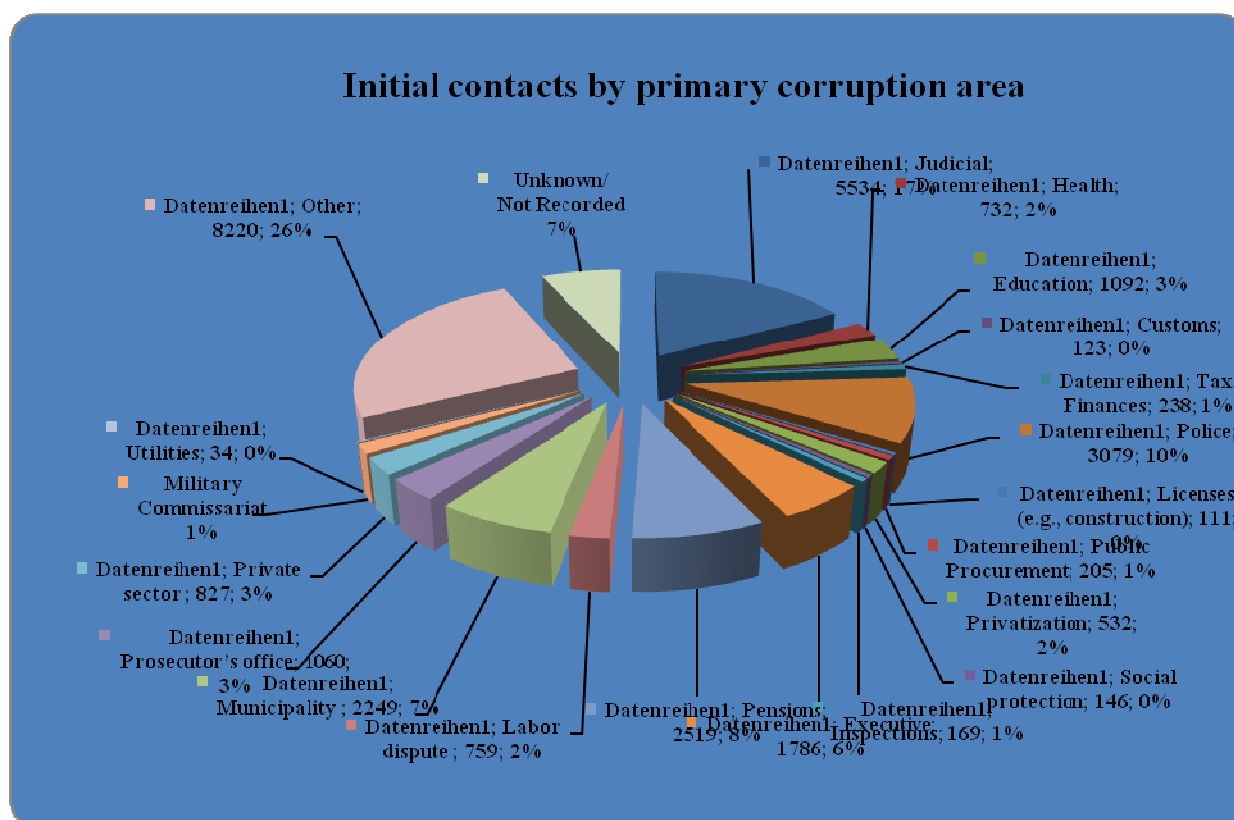
**INITIAL CONTACTS BY PROGRAMME YEAR**

2010 (Jan-Dec)	2011 (Jan-Dec)	2012 (Jan-June)
2345	1944	692

**INITIAL CONTACTS BY GENDER**

Female	Male	Unknown
1863	3036	82

## INITIAL CONTACTS BY PRIMARY CORRUPTION AREA



## INITIAL CONTACTS BY TYPE OF LOCATION

Rural	Semi-urban	Urban	Unknown
1693	816	2431	39

## CASES BY PROGRAMME YEAR

2010 (Jan-Dec)	2011 (Jan-Dec)	2012 (Jan-June)
325	284	113

## CASES BY GENDER

Female	Male	Unknown
234	461	27

## CASES BY STATUS AND OUTCOME

Client Withdrew	Partially Successful	Rejected	Successful	Unsuccessful	OPEN
N/A	93	N/A	217	33	144

## OUTCOME OF CLOSED CASES (No data)

Client Withdrew	Partially Successful	Rejected	Successful	Unsuccessful	OPEN

#### 4. Impact of ALAC

The efforts of TI Azerbaijan and other stakeholders are examples of positive actions taken by public agencies- They include but are not limited to:

- Simplifying and streamlining procedures of recruitment to civil service: the number of documents required from applicants to civil service has been considerably reduced. Applications/supporting documents from applicants are now being accepted online and civil society is invited to monitor all stages of recruitment process. The final stage of interviews is video-recorded and a commission has been established to contest results of application exams.
- Registration of real estate: applications/supporting documents for registration of real estate is being accepted online and a permission-based system for the construction of buildings for the agricultural infrastructure has been annulled.
- Provision of utilities: introduction of meters and meter-produced bills as well as online payment tools for utilities.
- Establishing of civil society oversight mechanisms: including civil society representatives in public commissions making decisions on the distribution of social benefits to vulnerable groups.

The project has also led to changes within public agencies:

- Anti-corruption Task Force at Ministry of Education and Public Monitoring Council at Ministry of Labour and Social Protection established with the help of TI Azerbaijan.
- Hotlines at the Ministry of Education, State Social Fund (190), Ministry of Labour and Social Protection established with the help of TI Azerbaijan.
- The State Registry of Real Estate (148) and State Oil Company of Azerbaijan (SOCAR) opened a hotline for the "Azerigaz" Industrial Union (185) upon recommendation from TI Azerbaijan.

The project has further contributed to increasing the general level of legal education in the country. Based on the analysis of the statistics on corruption complaints reported to ALACs and to maximize the efficiency of the above activities, 12 how-to guides were prepared, published and placed on the internet. These guides contain abstracts from respective, legislation, relevant forms and practical tips. Twenty-four on-site legal aid sessions to bring legal aid to rural population were arranged, benefiting 506 rural residents; targeted civic education (36 educational seminars conducted benefiting 669 people from vulnerable groups such as women, youth, parents of disabled children, etc.) and public outreach campaigns (8 campaigns were organized to distribute promotional items and how-to-guides were distributed to 1,500 people) have been carried out by all centres with the purpose of increasing public resistance to and intolerance of corruption.

The project also produced an additional output, the publication "What the Law Says". Lawyers from TI Azerbaijan centres noticed that customers come up with recurrent questions. Therefore, they compiled material based on the most frequently asked questions and answers explaining legal provisions in very simple terms on 20 topics, such as how to register real estate or obtain a driving license, or file a court claim in a civil case. The book has information on the responsible agencies, procedures, state fees, etc.

Thus, the project demonstrated that recommendations from civil society are heard and can be implemented by the government.



## **V. Policy recommendations for improving the legal anti-corruption framework in Finland**

### **1. Executive summary**

Finland is a very special case regarding the fight against corruption. On the one hand, petty corruption is minimal and the country is considered to be one of the “cleanest” in the world in terms of corruption. However, as demonstrated by the work of TI Finland, there clearly is a gap in perceptions of corruption between the elites and ordinary citizens, thanks to the very Finnish phenomenon of old boys’ networks (see, for instance <http://blog.transparency.org/2012/03/06/old-boys-networks-keep-tarnishing-finlands-corruption-clean-reputation/>).

These networks are not necessarily corrupt – there is no clear definition of corruption in the Finnish criminal code – but can be defined as “unethical networking”, where different benefits are being exchanged behind the scenes. This phenomenon is not uncommon in local governance bodies as well as in high politics. The information about corruption in Finland is also scattered between numerous authorities, and there is no single institution that would gather and analyze the information.

Thus, TI Finland has been looking for resources for an electronic anti-corruption platform and finally in June 2012 TI Finland won a small grant from the Ministry of Justice to create a new anti-corruption website. At the time of this writing the proposal is under discussion. The idea is to gather data from relevant authorities and combine this with a strategic exchange of information with other organizations dealing with anti-corruption work. Hotlines as such are not an efficient way to deal with this problem. The Central Criminal Police has an anonymous electronic whistleblower website. The Finnish League for Human Rights used to run a volunteer-based telephone hotline about human rights violations, that turned out to be relatively unpopular in Finland.

#### **Key policy recommendations at national level:**

- *Better coordination between authorities about corruption-related crime*
- *More information about definitions of corruption and old boys’ networks*
- *More transparency and accountability in local governments*
- *More resources to the anti-corruption unit of the Central Criminal police.*

### **2. Detailed policy recommendations at national level**

At national level the following recommendations are of crucial importance:

- Better coordination between authorities about corruption-related crime

At the moment, there are several authorities that deal with corruption: the anti-corruption unit of Central Criminal Police; the Economic Crime unit of the same agency; the office of the Chancellor of Justice; the office of Parliamentary Ombudsman; the anti-corruption network under the Ministry of Justice; Transparency Finland and some other non-governmental

organizations such as Finnwatch (indirectly). These authorities do not coordinate and/or exchange information between each other in any organized way.

- More information about definitions of corruption and old boys' networks

Old boys' networks are not officially defined anywhere in the Finnish legal system, neither is corruption. The most common definition of corruption is the „misuse of public office for private benefit“. However, since there is little research about the specific nature of Finnish corruption and its best-known form, old boys' networks, there is a need for more research and better rules on what kind of networking is acceptable.

- More transparency and accountability in local governments

Many, if not most of the cases dealt by TI Finland are related to local authorities. Lack of information, untransparent decision-making and unethical networking seem like a commonplace practice in Finnish municipalities. The new legal framework concerning local governments is currently

- More resources to the anti-corruption unit of the Central Criminal police.

At the moment, there is one police officer permanently employed by the anti-corruption unit of the police. This makes systematic investigations of corruption-related crime very demanding, especially since Finnish corruption is by nature structural and very hard to tackle. It is of crucial importance to acknowledge this and allocate more resources to the only institution investigating corruption-related crime.

### **3. Main corruption categories based on complaints**

ALAC in Finland is more of an advice and advocacy desk than a helpline. However, in May 2012, TI Finland conducted a trial period, during which a pro bono lawyer could be contacted. TI Finland contacted people that had been in touch with the organization via [info@transparency.org](mailto:info@transparency.org), giving the potential clients a possibility to talk to the lawyer. Roughly, the categories that came out of this trial period – during which, four complaints were sent to the lawyer, were

- Problems in municipal decision-making (3 cases)
- Problems with other authorities (1 case).

The first category includes issues such as untransparency in public procurement and unethical networking between, for instance, courts and municipal decision-makers. The second category included one case that was very complicated and beyond the resources of TI Finland. In three of the four cases, the client was involved in an ongoing court procedure, which made it impossible to interfere. The fourth case was slightly more simple; it included a question of conflict of interest in public procurement. The answer for this was that it was not corruption in the strictly legal sense. The result of the trial period was quite clearly as expected by TI Finland: Finnish corruption is of a structural nature and it is rather more important to inform the public and offer people tools to understand where the problems lie than provide them direct support. There have also been some questions, for instance, with regard to definitions of corruption and ethics in businesses and/or public authorities, but these tend to appear seldom. There are no clear-cut rules of, for example, what kind of services businesses can provide to

civil servants. The rule of thumb, however, seems to be that anything that is being done openly and can be revealed to wider public is acceptable.

#### **4. Key policy recommendations derived from the practice of ALAC**

The Finnish ALAC practice has shown the following problems:

- A wider and more thorough discussion about corruption, conflicts of interest, old boys' networks and other problems is needed in Finland. This discussion needs to be based on academic research on corruption, and has to lead to concrete steps: ethical codexes for civil servants, a concrete legal definition of corruption, coordination and information exchange between authorities (police, tax authorities, political decision-makers) and other.
- Whistleblower legislation needs to be introduced in Finland. Currently, certain big companies have their own whistleblower protection mechanisms, but they are not sufficient.

## **VI. Policy recommendations for improving the legal anti-corruption framework in Hungary**

### **1. Executive summary**

The operation of the Hungarian ALAC throughout the last year and a half has attracted over 150 complaints. The distribution of the issues raised provide a reliable picture of main issues the Hungarian population is dealing with, e.g. credit issues, employment matters, petty corruption, family law disputes. From the wide range of complaints only a modest proportion is related to corruption, but those cases seem to provide good basis for anti-corruption advocacy. As the routine of the ALAC becomes solid and the service become better known by the broader population, while the quantity of complaints constantly increases, the number of genuine corruption cases also rises. Dealing with reported cases of provable corruption not only help victims of corruption, but also contributes to research, learning by anti-corruption activists and investigative journalists and gives leverage to legal reforms.

Based on the cases the following recommendations can be made:

- financial and legal education of the entire population have to be improved
- effective and easily accessible legal aid services have to be set up
- effective protection of whistleblowers needs to be provided
- conditions for pro bono legal work has to be improved
- the extent of OLAF investigations has to be increased and refund policy promoted and enforced
- independent financial support for legal aid services should be established

### **2. Detailed policy recommendations at national level**

#### ***Promotion of legal aid services***

More resources would be necessary to support the public legal aid services in Hungary. Due to remodelling of the legal aid service and the victim support service provided and sustained by the state, these services cannot give the eligible legal aid to those who are in need and cannot afford to hire an attorney. As a result legal aid services of non-governmental organisations have become more important. Based on the feedback of the complainants, the quality of legal aid services provided by the Ministry of Public Administration and Justice is insufficient. Public legal aid services are often reluctant to deal with difficult cases as the contracted attorneys receive very low fees to provide legal representation and the government offices providing legal advice handle these cases as any other administrative issues, such as registration of cars or issuing ID cards without giving proper attention and help to their clients. As a result, sensitive cases where wrongdoings committed by judges, police or authorities are hardly ever solved by public legal aid services.

#### ***Amendment of pro bono legislation***

ALAC regularly cooperates with civil and criminal law attorneys, providing legal advice and representing clients in court on pro bono basis. This is one of the reasons why TI Hungary is determined to draw the decision-makers' attention to the shortcomings of the relevant legal regulations, and advocate for the amendment of pro bono legislation. In Hungary the laws in

force do not contain any provision in connection with pro bono activity given by attorneys. Consequently if an attorney works on a pro bono basis, he or she can be sanctioned by the tax authority due to not having paid tax for the service provided to clients in need.

### ***Basic level education of law and economics***

Based on the cases ALAC is dealing with, TI Hungary is convinced that the non-existence of a basic level education of law and economics in primary and secondary schools is an essential problem in Hungary. In the framework of public education elementary knowledge regarding contracts, loans, exchange rates, fundamental rights, etc. should be transmitted to the students, so as to make them aware of basic economic and financial phenomena, make them understand the conditions included in a loan or a labour contract, accordingly enable them to make responsible decisions in the field of finance or when contracting for work as well.

### ***Better-functioning legal and institutional background for whistleblower protection***

Even though the whistleblower protection act was adopted in 2009 with the pronounced aim to guarantee adequate protection of employees reporting alleged misconduct, corruption, fraud, or other illegal practices, TI Hungary repeatedly drew the lawmakers' attention to the fact that in the absence of a sufficient and properly operating institutional background, legal system and an authority providing the protection of whistleblowers and conducting the procedure in connection with whistleblowers' reports, this act would not be able to reach any its proposed goal. Since the adoption of the law no public body has been designated to implement the law. Therefore its provisions are totally ineffective, as - unlike the legal solutions of the False Claims Act in Hungary - the whistleblowers have practically no legal means to make any use of this legislation without a designated public entity.

Reprisal against whistleblowers is a criminal offence according to the Criminal Code in force. However, according to criminal statistics there have been only negligible number of criminal procedures started because of the commission of this crime up to the present.

The inadequacy of the relevant regulation is also indicated by the fact that there are clients who reveal their detailed information about a corruption case with the mere target to inform ALAC and ask it to do nothing, because they are afraid of being dismissed from their work or suffering other kind of disadvantages.

As the Hungarian whistleblower protection act is non-functional it is a priority of the ALAC to help whistleblowers by providing them legal advice and protection. As whistleblowers not only report corruption-related wrongdoings, but also labour safety and environmental issues in such cases, the ALAC goes beyond its anti-corruption mandate so as to develop legal practices needed to protect any whistleblower in the future.

## **3. Data analysis and insights into main corruption categories**

Since ALAC started to use the new TI database on 1<sup>st</sup> of April 2012, ALAC has dealt with more than 100 cases. The number of clients contacting ALAC has been increasing to a great extent since the last report of October 2011. Presumably this growth is triggered by the constant attention of the media on TI's activities and broad press coverage of some of the chapter's events such as the launch of the National Integrity Study, as well as promotion of the ALAC through the media. Although ALAC receives more and more complaints and

clients often make reference to our website<sup>17</sup>, it has to be noted that there is a stable pattern of the received complaints that a significant amount, approximately the half of them are not related to corruption at all.

More than half of the complaints are requests for basic legal information and seek help in simple legal issues. In a significant proportion of these cases complainants regard either normal legal proceedings or maladministration as cases of corruption, but in fact these show no element of corruption, only people who received poor quality services, insufficient information or are unhappy with the outcome administrative or legal procedures in which they were a party.

The cases not addressing corruption are inter alia family law disputes, labour law cases and complaints on the increasing instalments for repaying for foreign currency credits. Most of the time the reason for contacting ALAC with non corruption-related issues is that the client cannot afford to hire an attorney, while the legal aid service offered by the state seems to be unable to give the necessary legal help. In such cases ALAC refers the client to legal aid services of NGOs specialised in the field of the legal issue in question. If a simple answer can be provided, ALAC offers basic legal information instead of further referencing.

#### **4. Main corruption categories based on complaints**

Based on complaints received by ALAC, police, courts, prosecutors, local governments and public administration authorities are considerably concerned by corruption practices or abuse of power. Police procedures, public procurements, investigations, prosecutions, land registration procedures and litigations seem to be the processes affected to the highest degree.

##### ***Police***

ALAC is frequently contacted because of police misconduct. Many of the police-related cases are not corruption cases. However ALAC is ready to give basic legal advice by consulting with an expert or referring the client to other NGOs when receiving such complaints. In cases of wrongdoing by police, abuse of power often remains unpunished, as investigating authorities recurrently appear to be reluctant to initiate investigations into such reports. Even if investigation is initiated, as a consequence of the bias of prosecutors and the termination of the procedure, it cannot be taken for granted that charges would be pressed. In the matter of complex police-related corruption cases, ALAC consults with an expert on possible legal venues of seeking remedies. In terms of complaints, police misconduct mostly manifests itself in the infringement of procedural requirements during investigations and other police procedures. As a consequence, clients contacting ALAC due to police-related corruption and misconduct cases principally suffer a violation of their human rights and infringement of their rights guaranteed by the criminal procedure law.

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<sup>17</sup> The website of the ALAC ([www.merjtenni.hu](http://www.merjtenni.hu)) has been functioning since in early 2011 in order to give comprehensive information about corruption, make people aware of the ALAC procedure and help them decide whether their cases are related to corruption or not. Nevertheless it is remarkable that only half of the complaints are sent to the e-mail address of the ALAC on the website and half of them are received through the general e-mail address of TI which shows that only half of the complainants are aware of the ALAC and the rest is aware only of TI Hungary.

### ***Local governments***

Reports and complaints received by ALAC show that corruption, especially abuses of public funds, unlawful management of municipality assets, bribery in the public procurement are typical misconducts committed by local governments.

In a particular case the client revealed a five-year-long corrupt practice committed by a municipality in the course of public procurements. ALAC has recently contacted an investigative journalist, who is examining the case and investigating all relevant details. One of the ALAC's criminal law attorneys has already given extensive legal advice to the client and on the basis of the collected facts the attorney is going to inform the client whether it is possible to make a report that would result in effective investigations and possibly in a criminal procedure.

### ***Legal sector***

Several cases indicate that corruption and misuse of power exist in the legal sector as well. In most of the legal sector related cases corruption cannot be proved, only assumed. ALAC received more complaints concerning illegal acts of judges and prosecutors.

Judges are often suspected of being partial, not having appointed a counsel for the defence, though the defence would have been statutory, or having appointed a counsel for the defence who was biased against the accused. However these complaints often have to be assessed cautiously as parties not receiving proper legal remedies after years of legal battles consider the outcome of their case as having fallen victim of corrupt lawyers (judges, attorneys, experts, etc.).

### ***Land registration***

ALAC also received a significant number of cases in connection with abuses of land and property. Complaints on the misuse of land and property regulations primarily allege the unlawful change of land borders in the land register and unlawful registration of land and property transfer. Certain cases involved the land registration procedure, but corruption is rather difficult and frequently impossible to prove in these cases.

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<sup>19</sup> It did so on one occasion, paying €400 to review documentation in a case involving an allegation of public contracting corruption.

## **VII. Policy recommendations for improving the legal anti-corruption framework in Ireland**

### **1. Executive summary**

Transparency International Ireland (TII) established Western Europe's first TI Advocacy and Legal Advice Centre (ALAC) in May 2011. TII's ALAC programme is known as Speak Up and offers citizens and whistleblowers information and advice on their rights, using evidence gathered to identify and publicly highlight risks of abuse or corruption. Speak Up uses a free-phone number and a secure email system (Hushmail) for people to make anonymous contact with TII's volunteers. Since Speak Up was established, over 200 people have approached TII to report concerns or for practical support and information.

Of those contacts, we have dealt with 20 cases involving alleged bribery, embezzlement, fraud and/or maladministration. One of these cases relates to potential irregularities in the use of European Union funds. People are contacting our helpline with concerns relating to a wide range of issues and involving both the public and private. The five biggest categories or sectors subject to complaints are the health services, legal services, education, social services (including charities), and banking and finance. Our work in supporting clients and observing related trends over the past 15 months have led to the following recommendations:

1. The Irish Government must introduce universal whistleblower legislation as a matter of urgency
2. Public education is needed on whistleblowing, ethics in public office and the prevention of corruption
3. Additional safeguards and resources are required to prevent wrongdoing in the charities sector
4. Stronger safeguards are required to address the risk of corruption in local government
5. A significant increase in resources is required to sustain Speak Up as a free public service

More tentative recommendations could be drawn from the data collected in relation to the Irish health service, education sector and the judicial/legal services sectors. That said, without additional resources to undertake further research into these areas it is difficult to draw firm conclusions about levels of transparency or risks of corruption. For this reason, we have refrained from making firm recommendations in some of the most commonly reported sectors such as the health or legal services.

### **2. Detailed policy recommendations at national level**

The high level of uncertainty and anxiety faced by most people with concerns of wrongdoing demonstrates the need for cross-sectoral whistleblower legislation. There are some 35 pieces of legislation with provisions aimed at protecting whistleblowers across different industrial and professional sectors. Each of these pieces of legislation offer widely disparate safeguards for whistleblowers and serves to cause confusion about the potential rights that a prospective whistleblower may enjoy. The Irish government has committed to introduce a universal whistleblower law, however a draft bill has yet to be published and a timeline for its introduction has yet to be announced.



Public and worker anxiety arising from confusing legal standards is exacerbated by a low level of awareness among employers and the public around corruption. Few callers seem to understand common law definitions of whistleblower and corruption. There also appears to be a relatively low level of awareness of what types of behaviour constitute criminal conduct or corruption, and what state agencies are responsible for investigating concerns. We would suggest this lacuna be remedied through increased investment in public education.

The relatively high number of callers from the Irish charities and non-profit sector indicates serious fraud and corruption risks within the sector. This is particularly true for charities that are involved in the provision of social services and the procurement of land, housing, and emergency relief supplies. The risk of misappropriation through poor financial management in the non-profit sector needs to be addressed as a matter of urgency. Paradoxically, this will involve an increase in funding for the sector and an investment in the recruitment and up-skilling of administrative staff. Additional measures, including greater oversight of organisations' financial management by independent directors are also required. The establishment of a Charities Regulator would also go some way to raising standards within the sector. One of our few public cases involved the dismissal of a whistleblower at the Irish Red Cross (see *Impact*).

Local authorities remain especially vulnerable to fraud and corruption. There appear to be few measures in place to prevent the bribery of local authority officials. The incentive for soliciting bribes presents itself where officials have a high degree of discretion over planning and procurement decisions. Further investigation is required of the systemic risks presented by economic incentives and weak administrative safeguards. In the meantime, we recommend that the Irish Government introduces the following measures endorsed by Judge Mahon in his report on corruption in local government:

1. Give the Standards in Public Office Commission (state ethics watchdog) a supervisory role over enforcement of conflict of interest provisions at local government level.
2. Provide for a formal complaint procedure for local government.
3. Require each local authority to include information on the application and enforcement of the conflicts of interest measures in its annual report.
4. Place increased emphasis on the prevention of conflicts of interests through training, education and research.
5. Expand the scope and types of conflict of interests and indeed redefining the definition of a conflict of interest, most if not all of which are relevant to local government.
6. Publish planning submissions received and manager's report dealing with submissions on the internet.
7. Restrict the power of elected members to direct the manager to grant planning permission.
8. Interventions by members on a specific planning application should be noted on the file and applicants for planning permission would have to disclose if they made a political donation to a (named) member of the applicable regional authority within a specified time when applying for planning permission.
9. Prohibit public officials from receiving any gift or benefit above a nominal amount where it could be perceived to be connected with performance of public functions.
10. Further measures should be introduced to regulate conflicts of interest arising out of use of inside information by officeholders.
11. Prohibit national/local public officials from entering a contract for provision of goods or services to a public body/local authority while a public official and a year after leaving office.

12. Ban local elected officials from having any dealings in buying, selling, developing land which was rezoned or had its planning status changed during their time in office, or for two years afterwards.

### **3. General Recommendations**

The large number of callers reporting concerns of a criminal nature highlights the need for legal support for clients. While the pilot project has been successful in determining a relatively high level of demand for services, it has also demonstrated the difficulty in providing practical support to clients reporting concerns of a criminal nature.

In cases where TII has secured legal advice for clients at a discounted cost, fees have still been extremely high. In one case, a client who considered reporting suspicions of fraud on an EU-funded project had to pay more than €1000 for advice from three separate solicitors to review documentation. She has declined to report her concerns because of the prospect of incurring additional legal costs. We believe that a whistleblower should not have to bear the financial burden of protecting Ireland's or the EU's financial interests. Furthermore, and given the size of its limited budget, TII is currently unable to meet the legal costs of its clients.<sup>19</sup> TII is not registered as an independent law centre with the Irish Law Society and therefore it cannot offer legal advice to callers. The only route to meeting this demand is through the recruitment of an in-house legal advisor by TII. This would involve the registration of the Speak Up helpline as an independent law centre with a registered solicitor assuming responsibility for cases.<sup>20</sup> This in turn would require a significant increase in financial resources.

The number of cases received over the course of the first day of operations demonstrates the publicity-sensitive nature of demand for services. 40 calls were received through the helpline on 27 May 2011. This represents almost 20 per cent of cases over 18 months in one day. Translated over the course of a year this would represent a total of 8,800 calls per year. A concerted publicity/public relations and advertising campaign (without prior financial investment in staff) would therefore likely lead to an unrealistic demand on resources and unsustainable strain on resources. For a breakdown of staff/volunteer time spent on calls/cases please see page 8.

### **4. Brief overview of data gathered through ALACs**

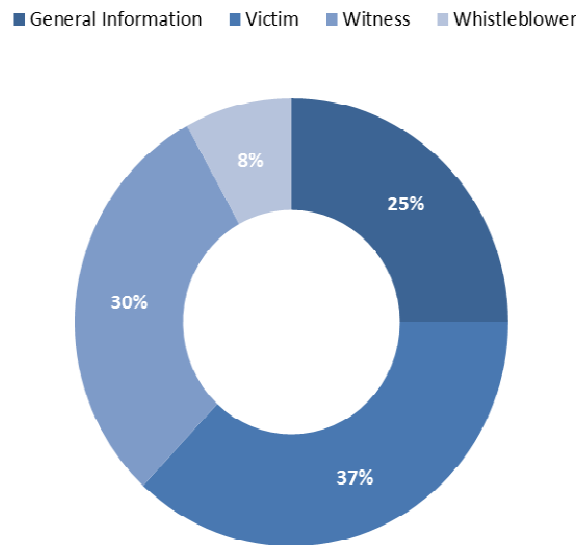
#### **a. Client Categories**

The majority of callers (38 per cent) claim to have witnessed wrongdoing in a number of categories. This figure includes 8 per cent of the total number of callers who have reported wrongdoing during the course of their work and could therefore be categorised as whistleblowers. 37 per cent of clients have been users of public services who claim to have been victims of a range of abuses or misuse of position. The remaining 25 per cent of callers are those who made general requests for information (including inquiries about public services and legislation).

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<sup>20</sup> This requirement is laid down under Statutory Instrument SI 103 (2006))

**Figure 1: Client Categories**

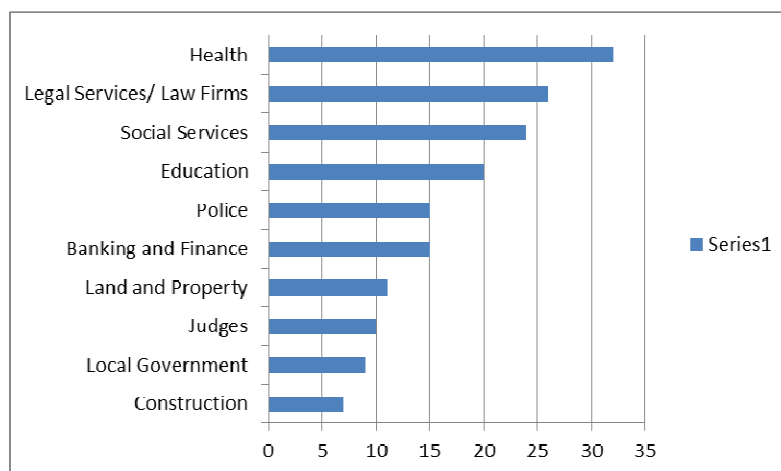


A large number of clients (35 per cent) have reported allegations or suspicions of criminal activity. The majority of cases (52 per cent) have involved allegations of malpractice (wilful, albeit not necessarily criminal wrongdoing), while the remaining 48 per cent of corruption/fraud-related reports have related to non-criminal neglect or other forms of unethical conduct (including inefficiency or favouritism).

b. Sources of Concern

The five biggest categories or sectors subject to complaints are the health sector, legal services, education, social services (including charities), and banking and finance.

**Figure 2: Sources of Concern**



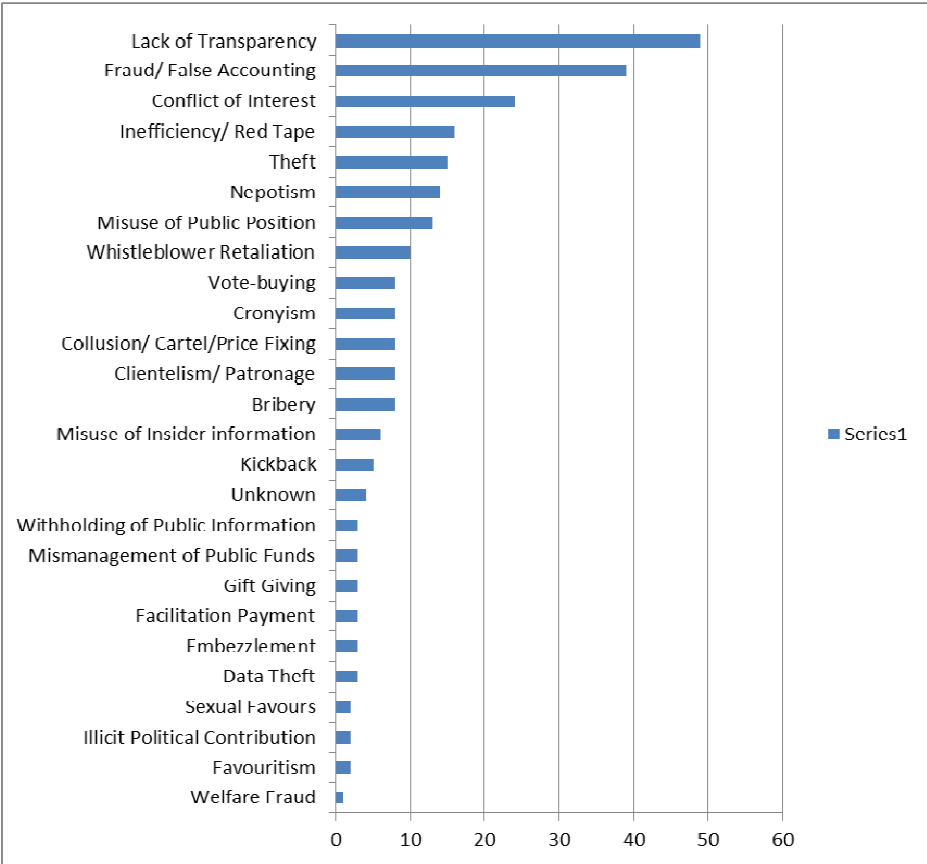
The statistics provide an overview of the sector or profession subject to the most complaints or through which most complaints have been made. The Health Service, Legal Services,

Social Services (including charities), Education together with the Police and Banking sector (jointly) represent the top five sectors subject to reports or complaints and account for over 40 per cent of all the calls received to date. It is difficult to say whether this is representative of higher levels of wrongdoing in these sectors or whether it is because of the frequency of encounters organisations in these sectors have with the general public. Further research is required into how public bodies in particular act on foot of complaints and the level of disclosure of official information by these public bodies.

It should be noted however that the majority of concerns in some sectors do not relate to corruption. This includes the health sector, where 21 out of 30 complaints refer specifically to inefficiency, lack of transparency, or other administrative shortcomings. Nonetheless, the relatively high proportion of allegations of bribery in local government (5 out of 9 complaints) is a serious cause for concern. This is particularly worrying given the widespread coverage of the findings of the Mahon Tribunal into Certain Planning Matters and Payments ([www.planningtribunal.ie](http://www.planningtribunal.ie)). The Tribunal found that corruption was both endemic and systemic in local government during the 1980s and 1990s. The serious nature of the complaints from credible witnesses in local government suggests that the risk of corruption is still relatively high.

**5. Data analysis, insights into main corruption categories**

**Figure 3: Types of alleged wrongdoing reported to the Speak Up service**



The largest proportion of cases recorded to date, involve fraud or false accounting by individuals, professionals (almost all by legal professionals), and companies. The number of

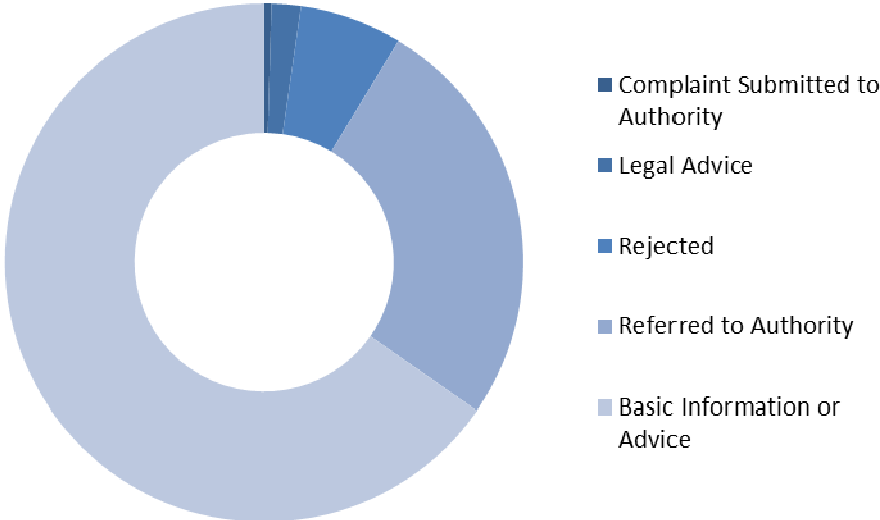
reports alleging the bribery of public officials has been small overall. However, there appears to be a significant pattern emerging from reports of ‘softer’ or ambiguous forms of wrongdoing (or the risk thereof). These include ‘Nepotism/Cronyism’ (8 per cent); ‘Conflicts of Interest’ (7.5 per cent); and ‘Clientelism/Patronage’ (2.5 per cent). The number of calls received relating to the Health Service, the Garda Síochána (police), Education, and Social Services also indicates a relatively high level of dissatisfaction with the way in which complaints have been handled by public bodies or the level of transparency allowed for in the course of their work. This is borne out by the number of complaints surrounding ‘Inefficiency/Red Tape’ (5 per cent), and ‘Lack of Transparency’ (16 per cent).

Notwithstanding the success of the helpline in its first year (see *Impact*), TII’s sample is still too small to determine the level or scale of wrongdoing or mistrust in public institutions or the professions. Nevertheless, the data does allow for patterns to be observed about the typology and distribution of complaints. This in itself should help identify priorities for intervention - both by those agencies responsible for delivering public services as well as campaigners working for reform. A more substantive measure of public institutions’ responsiveness to citizens and willingness to reform will be tested over a longer period as TII pursues more detailed case work on foot of citizen complaints and whistleblower reports.

**6. Impact of ALAC**

In over sixty per cent of cases, clients have been offered information or advice, 25 per cent of clients have been referred directly to other agencies. Only 6 per cent of cases were rejected as having no merit or relevance to the remit of the helpline.

**Figure 4: Action Taken by TI Ireland**



Given the lack of resources at TI Ireland and the resulting inability to provide legal advice to clients, it is impossible to litigate a case to a successful conclusion. Furthermore we cannot share information on on-going cases for legal and privacy reasons.

Nevertheless, we have intervened publicly in two cases by offering support to whistleblowers that had brought concerns into the public domain. In both instances, public pressure was successfully brought to bear on employers who had dismissed whistleblowers. TI Ireland publicly represented former Irish Red Cross (IRC) Director of International Aid, Mr Noel Wardick in his appeal for against his dismissal against the IRC from 2010 to 2012. TI Ireland made submissions to the Minister for Defence as well as the International Committee and Federation in calling for an independent investigation into reports of financial irregularities at the IRC and his reinstatement. Ultimately the case was settled to Mr Wardick's satisfaction and reform was undertaken at the charity to address governance failures. Further information on Mr Wardick's case is available at:

- <http://www.thejournal.ie/noel-wardick/news/>
- <http://transparency.ie/content/transparency-international-ireland-calls-irish-red-cross-treat-noel-wardick-fairly>
- <http://www.irishtimes.com/newspaper/ireland/2012/0508/1224315744391.html>

Similarly, TI Ireland publicly supported a healthcare worker Ms Louise Bayliss in 2012. Ms Bayliss was dismissed after reporting concerns over the movement of patients to a secure hospital unit. She claimed that the measures were introduced because of hospital cutbacks. TI Ireland publicly supported Ms Bayliss through print and broadcast media. After a public outcry, Ms Bayliss was reinstated by her employer. More information on this case is available at: <http://www.irishtimes.com/newspaper/breaking/2012/0124/breaking56.html> (TI Ireland mention)

Finally, our Speak Up helpline has contributed to political pressure for legal safeguards for whistleblowers in Ireland. The Irish Government has committed to introducing a bill in 2012, and although a bill has yet to be published, a draft general scheme for universal whistleblower law has been released. TI Ireland has been active in advising government on the scheme of the legislation. For more information please see <http://per.gov.ie/2012/02/27/%E2%80%9Cthis-bill-will-protect-whistleblowers-who-speak-out-against-wrongdoing-or-cover-ups-whether-in-public-or-the-private-sector%E2%80%9D-howlin/> and <http://www.irishtimes.com/newspaper/opinion/2012/0801/1224321232851.html> (TI Ireland mention)

We were unable to generate reliable statistics on clients' awareness of rights at the time of writing.

## **VIII. Policy recommendations for improving the legal anti-corruption framework in Lithuania**

### **1. Executive summary**

#### **Key policy recommendations at national level**

- There are big practical challenges related to access to information in Lithuania. Citizens in the country need basic civic education about the right to know and terms of using it.
- Citizens need to be educated about their rights in the public sector and the occurrence of bureaucracy while legal acts need to provide for clear responsibility for public officials.
- Recovery of land remains a serious issue in Lithuania that fosters corruption and citizens need a reference point to clarify all the related issues and seek for advice while navigating the rigorous procedures relating to the issue of land recovery.
- Regarding the so called disability and working capacity assessment commissions procedures need to be more open, criteria determining the final verdict must be clearly stated in a written manner and well justified.
- Extensive awareness raising and advocacy among doctors are needed to contribute to the solution of problems related to corruption in the health sector.
- There is a vital need to strengthen the system of protection of persons reporting corruption, including both a need for a specific law on whistleblowers protection and the need to create effective and clear safety standards for existing reporting channels.

#### **2. Detailed policy recommendations at national level**

TI Lithuania has been developing the ALAC based on previous experience the Chapter had from *ad hoc* requests for assistance, as well as involving in different research and advocacy activities in the field of anti-corruption.

Due to the fact that the most intense promotion stage of the newly created ALAC is scheduled to start in Autumn 2012, so far there is not enough data to be usefully systemized into many different categories. The decision to intensify promotion in autumn was made after consulting public relations specialists and bearing in mind the fact that Lithuanian public life intensifies in September-October (also meaning that the processes in the public sector intensify in the beginning of new Parliament sessions annually).

The cases that have been referred to TI Lithuania during the implementation of this project, fall into similar systemic policy recommendations that TI Lithuania had from the above mentioned previous experience.

Listed below are the main policy recommendations that can be concluded from the implementation of ALAC project and previous TI Lithuania experience:

- After conducting a survey on access to information, working with FOI requests for a while and receiving recurring requests for assistance and legal advice from the public, TI Lithuania concluded that there are big practical challenges related to access to information in Lithuania. That was one of the major reasons why TI Lithuania created an interface linking the ALAC on-line platform with another TI Lithuania tool [www.parasykjiems.lt](http://www.parasykjiems.lt) (www.writetothem.org equivalent). Access to information issues and breaches of the right to know are crucial in the Lithuanian context.

Citizens need basic civic education about the right to know and terms of using it. Also, public officials need more pressure from the public to fully comply with the access to information legal acts in practice. In general, the national legal base is sufficient enough, the main issues are engaging citizens to use their right to know and ensuring that all public servants interpret the access to information legal acts in the same efficient manner.

- A big part of requests for advice that TI Lithuania receives are related to public servants who observe unnecessary or invented formalities, unreasonably refuse to settle issues within the official's jurisdiction or delay decision instead of dealing with the matter on the merits. This makes bureaucracy a complex issue in Lithuania which is often hindering citizens to use their rights or is even used as grounds for corruption.

Citizens need to be educated about their rights in the public sector and the occurrence of bureaucracy while legal acts need to provide for clear responsibility for public officials. At the same time, administrative procedures still need to be simplified reducing the administrative burden for citizens.

- Recovery of land (from the nationalisation processes) is still an important issue in Lithuania which is still often hindered by corruption and bureaucracy due to complicated procedures. Citizens often feel that they have to bribe public officials to go through the recovery mechanism which in itself is rather obscure.

Citizens need a reference point to clarify all the related issues and seek for advice while navigating the rigorous procedures. The recovery mechanism needs to be clarified and simplified by creating one reference point in the public sector.

- An other important issue is related to disability and working capacity assessment commissions. During the period of the project implementation alone, TI Lithuania has been contacted several times seeking for assistance and advice on this very specific issue. Since this issue is related to social welfare payments, the procedures can be very complicated and quite often citizens might feel extorted for bribery due to lack of information or extensive time requirements. Because of complex procedures and the amount of discretion that officials have in this case, there are also chances for abuses.

Procedures of disability and working capacity assessment need to be more open, criteria determining the final verdict must be clearly stated in a written manner and well justified.

- In general, the problem of corruption in health sector is still crucial in Lithuania. Three times in a row, the Lithuanian map of corruption (national research coordinated by the Special Investigation Service and conducted by selected research companies) provided that health sector is perceived as the most corrupt of all institutions in Lithuania. This was only confirmed by inquiries of citizens to the ALAC. Systemic changes in the legal base and, even more importantly, public culture are strongly needed.



Extensive awareness raising and advocacy among doctors are needed to contribute to solution of this problem and there is a strong need of a clear position from the Government stating that corruption in the health sector will not be tolerated. TI Lithuania, while working on the ALAC project, was involved in an intensive advocacy and awareness raising campaign in April, 2012. Together with the European Law Students' Association and Lithuanian Medical Students' Association, TI Lithuania organized two discussions for medical students in Vilnius and Kaunas, a conference for the public and health sectors and academia. At the same time, a publicity campaign disseminating "The best way to thank a doctor is to say thank you" stickers was implemented in a number of hospitals in Vilnius. This also triggered discussions with the President's Office and strategic directions needed were discussed.

- Finally, most of the citizens seeking assistance from TI Lithuania emphasise the fact that they are still quite often reluctant to report on corruption for public institutions because of fears of retaliation. Previously, TI Lithuania has conducted an extensive analysis of national legal framework revealing that there is no sufficient legal protection for reporting persons. Furthermore, even though there are a lot of channels for reporting in public institutions, many of these lack security and fail to comply with the safety thresholds, thus undermining the concept of safe reporting.

TI Lithuania is actively working on whistleblowers protection and is currently engaged in a working group on safety standards for reporting formed by the Ministry of Interior. There is a vital need to strengthen the system of protection of persons reporting corruption, including both a need for a specific law on whistleblowers protection and the need to create effective and clear safety standards for existing reporting channels.

### **3. Data analyses, insights into main corruption categories and problems**

TI Lithuania started preparatory works for ALAC in September 2009. After analysing the national situation, cultural background and international practices, it was decided that the ALAC in Lithuania would combine interactive means of on-line reporting and a traditional helpline.

- When establishing an ALAC, in-depth analysis of the national context is needed to ensure that the established Centre would respond to the needs and expectations of the local society.

After drafting the concept of national ALAC, numerous consultations with experts were conducted and an IT company was contracted to develop the internet platform. Intense works on the content of the website started in summer 2011. The first two quarters of 2012 saw further development, extensive user testing and creation of interfaces connecting the platform with other on-line tools thus increasing the total outreach.

The on-line platform has been fully prepared for operation at [www.skaidrumolinija.lt](http://www.skaidrumolinija.lt) since the 3<sup>rd</sup> quarter of 2012. The helpline was established in the beginning of 2012, consultations on regular phone and walk-in consultations have been available from the beginning of the project. This period also means that TI Lithuania has been continuously involved in exerting pressure on institutions on specific systemic issues.

- When establishing an ALAC, enough time for preparatory stage needs to be foreseen to ensure adequate and effective development process.

Different studies show that people tend to refrain from reporting potential corruption cases in fears of retaliation. TI Lithuania prepared a number of internal acts to comply with national laws regarding protection of private data and implemented a number of additional cyber security measures to ensure safety of reporting persons. The main goal of these activities was to ensure and communicate the feeling of maximum safety for users.

- Establishing a feeling of safety is vital to ensure that reporting persons would actually use the platform to seek advice.

In Lithuania, bureaucracy is very often used to either conceal or even foster corruption and Lithuanian ALAC will comprise both issues.

- Even though corruption cases are at the core of the ALAC, the concept has to be adapted accordingly to meet the expectations and needs of the community it will serve.

#### **4. General recommendations, e.g. about funding of ALACs, taxation of pro bono legal work, etc.**

Main general recommendations for establishing an ALAC:

- In general, it is crucial to ensure that the public (with a specific focus on youth) is exposed to at least some degree of education on anti-corruption, transparency and accountability. Otherwise, it is very complicated not only to communicate the need of transparency in general, but also to engage citizens in the fight against corruption.
- Establishing an effective ALAC requires an in-depth analysis of the national context. If the ALAC is designed to be sustainable, this is an even bigger challenge. Therefore, when establishing an ALAC, enough time should be designated for the first stage of implementation - assessing the national context, conducting user-testing, collecting feedback and insights, etc. Also, different means of citizens engagement need to be considered, such as public boards.
- *Pro bono* legal help is very often quite complicated to obtain due to high costs of legal work in general. Hence, law students can be easily engaged to conduct most of legal tasks overseen by a senior coordinator. Recruiting is easier and more effective when conducted in cooperation with law schools.
- Sufficient funding is crucial for an effective ALAC to be established, gain momentum and become a well-known tool in the society.

**SEVENTH FRAMEWORK PROGRAMME OF THE EUROPEAN COMMISSION**  
**Thematic Priority: Theme SSH-2007.5.1.1**  
**Theme Title: Area 8.5.1 Participation and Citizenship in Europe**



**RESEARCH PROJECT: “ALACs”**

**Promotion of Participation and Citizenship in Europe through the “Advocacy and Legal Advice Centres (ALACs)” of Transparency International. Analysis and Enhancement of an Anti-corruption Tool to Enable Better Informed and Effective Citizen Participation in Europe**

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