

## CORRUPTION AND PUBLIC PROCUREMENT

# FINDINGS AND RECOMMENDATIONS

### Case Study:

### Political influence over Public Procurement in the FIMI Media case<sup>1</sup>

The highest-level corruption case ever prosecuted in Croatia concerns the allocation of public procurement contracts to FIMI Media. Several members of the political elite were prosecuted, including former Prime Minister Ivo Sanader, three other high-ranking members of the HDZ, and one of the owners of the private company as well as the ruling political party (HDZ). Although the Sanader case was prosecuted in 2010-11, the appeal is still pending before the Supreme Court. Moreover, legislation has changed since these events occurred, and control mechanisms may have improved. However, for the purposes of the paper “Political Favouritism in Croatian Public Procurement”, the verdict of the trial has been analysed in order to extract insights into how public procurement might be used to channel resources out of the state for the private benefit of political leaders and parties.

<sup>1</sup> This case study is based on the first-instance verdict in the case against former Prime Minister Ivo Sanader, the HDZ and four other persons. The case is currently under the appeal procedure before the Supreme Court, and this research makes no judgement on the guilt or innocence of those indicted. The verdict does however offer important insights into the ways in which politicians interact with the management of public companies. The verdict is based on thousands of pages of evidence and numerous testimonials gathered during a two-year investigation and trial. Source: County Court of Zagreb, First-instance verdict, Reference number: 13 K-US-8/12, March 11th 2014

The verdict notes that Sanader and others took advantage of the fact that the HDZ, as the leading parliamentary party, represented a concentration of decision-making power and authority able to play a role in furthering the interests of its financial supporters. The party used its concentrated power in government to collect financial donations from both individuals and legal entities, on the grounds that it needed to finance the party's political activities. In exchange for funds, however, promises were made about using state resources to channel contracts to the companies controlled by the donors.



In his further comments on Sanader's role, the judge emphasised the role played by public companies in a complex procedure which used public procurement to extract money from the state during the period from the end of 2004 until 2 July 2009. The verdict found that the first accused (Sanader), as the Prime Minister of the Government of Croatia, had engaged the second accused (Mladen Barišić, Head of the Customs Service) to act on his orders. Together they had attended a meeting held on 4 April 2007 in the premises of the Croatian Government, with representatives of companies solely or majority-owned by the state and public institutions. The meeting was also attended by

the third accused, Ratko Maček. Sanader had then personally proposed to the leaders of some government bodies, CEOs and others responsible for commercial companies which were exclusively or partly state-owned, using his authority as Prime Minister, and exploiting their relation of dependency (since the Croatian Government appointed their management structures), that they engage the services of Fimi Media (the seventh accused) for the procurement of certain goods and services.

The involvement of so many high-ranking politicians and officials in the government and the evidence that they systematically abused their formal and informal powers over public companies and relevant public entities to influence the public procurement process, suggests that favouritism may be widespread in Croatian public procurement. The scheme involved an extensive range of state-owned entities, including two government ministries,<sup>2</sup> with political influence over such bodies used to further private interests.

Moreover, existing mechanisms for internal and external monitoring of public procurement proved inadequate to detect these operations, although they were conducted during a period from the end of 2003 until July 2009. Indeed, Sanader and the HDZ were prosecuted only after he had resigned, apparently voluntarily, rather than in response to public pressure. It is unclear whether he would have been prosecuted if he had remained in power.

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<sup>2</sup> The list of public companies involved reads: Hrvatske šume d.o.o., Hrvatska elektroprivreda d.d., Hrvatska poštanska banka d.d., Hrvatske autoceste d.o.o., Autocesta Rijeka-Zagreb d.d., Environment Protection and Energetic Efficiency Fund, Ministry of Interior Affairs, Hrvatska HŽ group – Hrvatske željeznice d.o.o., Croatian National Tourist Board, Proplin d.o.o., Viadukt d.d., Hidroelektra niskogradnja d.d., Konstruktor inženjering d.d., Hrvatske ceste d.d., Croatia airlines d.d., Croatia osiguranje d.d., Narodne novine d.d., Ecos trgovina d.o.o., Financial Agency, Ministry of Sea, Transport and Infrastructure, Ministry of Foreign Affairs and European Integration, ACI d.d.

The verdict also provides evidence about the gains made by the HDZ, the politicians, and the individuals associated with these state-owned entities. It lists nine prominent individuals who made cash donations to the HDZ and the prime minister, many of whom subsequently won contracts from companies owned by the state<sup>3</sup>, for example:

- **Marijan Primorac** donated EUR 322,368 and paid for Sanader's BMW. His company 'Primorka' benefited from a lucrative contract to rent office space to the Croatian Lottery (public company).
- **Marinko Mikulić** donated EUR 171,052. As the owner of the privatized 'PAN' company, there was no evidence proving that he did illicit business with the state, although questions were raised about how he amassed his personal wealth.
- **Miha Zrnić Marinović** donated EUR 263,157. He owned 'Odlagalište sirovina' (Raw Material Landfill) which, with the Fund for Environmental Protection (state entity), drained the state budget of millions.
- **Božidar Longin** donated EUR 36,000. From 2003 to 2012, he was a board member in charge of legal affairs, including public procurement, in Hrvatske šume (Croatian Forests).

In terms of those who benefited from this scheme, in addition to the five individuals and one political party charged, 30 other members of the HDZ were given cash by the organisers of the scheme (the five accused). They included individuals at all staff levels, from doormen and bodyguards to secretaries and ministers.

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<sup>3</sup> Specifically, companies defined in law as legal entities that are not public authorities or sectoral contracting authorities.