



SIGMA

Support for Improvement in Governance and Management

A joint initiative of the OECD and the European Union, principally financed by the EU

FORMER YUGOSLAV REPUBLIC OF MACEDONIA

PUBLIC INTEGRITY SYSTEM

ASSESSMENT MAY 2009

Summary

This report updates Sigma's 2008 assessment report on the Public Integrity System in the former Yugoslav Republic of Macedonia¹.

Main Developments since last year

The adoption and implementation of anti-corruption legislation is one of the eight key priorities (benchmarks) of Macedonia's preparations for EU accession, as laid down in the Accession Partnership. A package of laws in areas related to public sector integrity was amended by parliament in 2008 and 2009, and in general this package represents improvements. The amended laws included the following: Law on the Prevention of Corruption; Law on the Salaries and Allowances of the Members of Parliament and Other Elected and Appointed Persons in the Republic of Macedonia; Law on the Members of Parliament; Law on Financing of Political Parties; and the Electoral Code.

In May 2008 the State Commission for the Prevention of Corruption (SCPC) adopted the State Programme for Prevention and Repression of Conflicts of Interest and the respective Action Plan. In accordance with the Action Plan, the SCPC published guidelines for managing conflicts of interest.

In November 2008 the Basic Public Prosecution Office for Prosecution of Organised Crime and Corruption (hereafter referred to as BPPO) was established as an autonomous office within the Public Prosecutor's Office, with jurisdiction over the whole country. The BPPO is now fully staffed but there are still concerns regarding its capacity.

Main Characteristics (strengths and weaknesses)

The adoption of necessary and appropriate legislation should not hide the fact that in some areas integrity in the public sector still needs to be improved. The major reason for this need is the gap between the existing regulatory framework and its implementation. In general, full respect for the principle of legality and the creation of a strong professional civil service would be the first preconditions for improving the implementation of integrity-related regulations.

One of the very sensitive areas related to public sector integrity is the system of financing political parties. In the context of the early parliamentary elections in June 2008, the practice of electoral campaign financing was not sufficiently transparent and fair. The large parties in particular benefited from doubtful financial sources. Non-transparent arrangements between those parties and the media favoured a climate of suspected corruption. However, it is expected that the amendments introduced in the Electoral Code of October 2008 could lead to an improvement of the situation.

The role of parliament in the system of political powers is very weak. As indicated by the adoption of 172 laws in July and August 2008, the participation of parliament in the legislative process appears to be more a formal act at the end of the process rather than a substantive contribution to public and transparent debate followed by a final decision to adopt a law. An improved capacity of parliament would contribute not only to better legislation but also to increased transparency in the public sector through the effective control of the government as the executive power of the state.

The Ombudsman has evolved into an institution that is now highly respected by both the public sector and civil society. Even without a specific role in fighting corruption, its overseeing function contributes to improving the rule of law as well as to increasing transparency and integrity in public life and in the activity of the public administration.

Recommendations for Reform

Areas that are still in need of reform and suggestions as to how to address the problems are specified as follows:

¹ In this report, the former Yugoslav Republic of Macedonia will hereafter be referred to as "Macedonia".

1. **Financing of political parties:** Financing of political parties and electoral campaigns has been one of the main risk areas that have adversely affected not only the public integrity system and the fight against corruption but also the trust in the democratic state in general. The lack of transparency regarding the resources spent in electoral campaigns, the sources of financing, and the advertisement discounts given by the media have continued to be the common denominator of elections in Macedonia. With the amendments to the Law on Financing of Political Parties and to the Electoral Code, an improvement in this risk area can be expected, but only if the legally established controlling institutions are capable and willing to implement the rules and procedures.
2. **State Commission for the Prevention of Corruption (SCPC):** As far as the normative part of SCPC's activities is concerned, the adoption of the State Programme for Prevention and Repression of Conflicts of Interest represents a step forward in the reinforcement of Macedonia's public sector integrity. Jointly with the previously adopted (May 2007) State Programme for Prevention and Repression of Corruption (2007-2010), the new State Programme provides a good framework for increasing public integrity. However, the implementation of both programmes needs to be improved. The SCPC is seen as performing mainly a reactive rather than a proactive function and therefore confidence in its capacities and will is lacking. Filling vacant positions would be a very first measure to strengthen the SCPC's capacity. Further efforts are also needed to increase the effectiveness of the control of asset declarations, mainly by strengthening the cross-checking of information between the various public entities.
3. **Cultural implications:** The success of the implementation and consolidation of anti-corruption policies presupposes that illegal or unethical practices are no longer accepted by the large majority of the society as a natural way of dealing with public affairs. The rejection of such practices will require a long-term process aimed at changing mentalities and attitudes. More informative campaigns are necessary and must be extended throughout the country, showing how to identify corruption and what are the damages that corruption can cause for every citizen, for the international reputation of the country (which in turn affects foreign investment), and finally for democracy. Providing further training on ethics for civil servants could also have a positive impact.
3. **Parliament:** The role of parliament in improving the integrity system requires a clear division of powers and sufficient political and support capacity. Those conditions are not in place yet. Parliament needs to strengthen its capacity for legislative initiative and for controlling the government and the public administration. Its organisation, functioning and technical support must be thoroughly assessed and improved. The "shortened procedure" for passing legislation must be clearly exceptional.
4. **Judiciary:** The Academy for training of judges and prosecutors (the Judicial Academy), the Judicial Council, and the Council of Public Prosecutors are contributing to the increase of independence and autonomy within the judicial system and should be supported. In addition, more objective criteria must be established to ensure that the recruitment and promotion of judges and prosecutors are based exclusively on merit.

1. Introduction

This report analyses key elements of the public integrity framework in Macedonia, following Sigma's usual baselines. The objective of this assessment report is to identify strengths and weaknesses, but it should also help to orient reforms and assistance. The information used in this report was gathered by mid-April 2009.

The implementation of anti-corruption legislation is one of the eight key priorities (benchmarks) of Macedonia's preparations for EU accession, as laid down in the Accession Partnership. In the relevant areas the following laws were amended: Law on the Prevention of Corruption (December 2008); Law on the Salaries and Allowances of the Members of Parliament and Other Elected and Appointed Persons in the Republic of Macedonia (December 2008); Law on the Salary of Judges (amended twice in 2008); Law on the Members of Parliament (December 2008); Law on Financing of Political Parties (amended twice in 2008); Electoral Code (October 2008); Law on Public Prosecutor's Office (September 2008); Law on Criminal Procedure (July 2008); Criminal Code (November 2008); Law on the Court Budget (August 2008); Law on Court Service (adopted in August 2008 and afterwards amended twice); Law on Management of Confiscated Property, Property Benefits and Seized Items in Criminal and Misdemeanour Procedure (adopted in August 2008); Law on Civil Servants (amended twice); and the Constitution (January 2009).

In May 2008 the State Commission for the Prevention of Corruption (SCPC) adopted the State Programme for Prevention and Repression of Conflicts of Interest and the respective Action Plan. In accordance with the Action Plan, the SCPC published guidelines for managing conflicts of interest.

The above list of legislative activities might lead to the supposition that some progress has been achieved. As a matter of fact, Macedonia obtained its best-ranking position last year since its first listing by Transparency International (TI) in 1999. According to the 2008 TI Corruption Perception Index, Macedonia was rated 3.6 and its rank was 72 out of 180 countries².

However, according to Macedonian observers, the progress on the ranking list is mostly due to the formal adoption of new laws, amendment of laws and introduction of new procedures. This appraisal was confirmed by the assessment mission. The non-existence of an appropriate regulatory and institutional framework is not the primary cause of a situation that still needs substantial improvement. What allows corruption to remain in some places is mainly the lack of implementation of the existing legislation. In addition to the reasons that will be provided in the body of this report, this lack of implementation has two general aspects, which are specified in Sigma's 2009 assessment reports on the Administrative Legal Framework and on the Public Service in Macedonia: a) the professional weakness of many implementing public sector bodies, mostly induced by a recruitment policy that is politically influenced rather than merit-based; b) the underdeveloped respect for the principle of legality. Both reasons are interconnected and mutually dependent. As long as these general problems have not been tackled, all well-intended political attempts to improve the situation in terms of public integrity will have only very little impact on the reality of citizens' everyday life.

2. Political Party and Electoral Campaign Financing

During the assessed period three elections were held: parliamentary, presidential and municipal elections. The existing rules of the relevant legislation (Electoral Code, Law on Financing of Political Parties and Law on the Prevention of Corruption) applied to the parliamentary elections of June 2008. However, as in the case of the elections of 2006, when new legislation with better control tools was not passed by parliament before the election, the Law on Financing of Political Parties was amended only after the presidential and municipal elections carried out this past year.

Based on the Electoral Code, parliament adopted a decision for compensation of the costs of election campaign organisers for candidates who were elected as members of parliament in mid-September

² In 2007 Macedonia was rated 3.3 and its rank was 84 out of 179 countries.

2008³. According to the Code, the organiser of such an election campaign (i.e. the “person who is authorised by a political party, coalition or group of voters to organise the election campaign”, article 2, no. 14 of the Electoral Code) is to receive 15 MKD (2.50 EUR) for each vote won by the candidate.

The Law on Financing of Political Parties⁴ was amended twice in 2008. The July 2008 amendments⁵ referred only to the alignment of the sanctions with the Law on Misdemeanours. Thus all sanctions were termed fines and were expressed in euros (payable in the MKD equivalent). Only the minimum fines for legal entities were increased by an amount ranging between 2,500 EUR and 5,000 EUR. The amendments of December 2008⁶ concerned the insertion of the word “net” next to the word “salary” in two articles regulating the membership fees of political parties and specifying the amount of donations to political parties.

Based on the experience of the 2006 and 2008 parliamentary elections and in order to provide a greater degree of harmonisation between the relevant pieces of legislation, half of the provisions of the Electoral Code were amended at the end of October 2008⁷. The amendments include more precise and clear rules and correct some of the errors concerning the financing and conduct of electoral campaigns, such as the regulation in article 83-a, paragraph 1, according to which any services or goods obtained by the organiser of an electoral campaign either free of charge or at a price lower than the market price are considered as donations to the campaign.

Financial Sources

Regarding the sources of financing of electoral campaigns, the amendments to the Electoral Code added “funds from non-identified sources” among the prohibited sources. According to the Code, the electoral campaign can be financed by donations of natural persons and legal entities given in the form of money, goods and services, the value of which must not exceed the established limits, which are 5,000 EUR for persons and 20,000 EUR for legal entities (article 83, paragraph 2 of the Code), with some exceptions. If the amount of the donation is higher than the allowed amount, the organiser of the electoral campaign is obligated to transfer the difference between the allowed amount and the donated amount to the state budget within five days of the date on which the donation was received.

The register of donations for an electoral campaign (article 83-b of the Code) that is to be kept by the organiser of the campaign is a novelty. The register should contain data on the name of each individual donor, the type and value of the donation, and the date on which it was received. It is to be kept on a form prescribed by a rulebook adopted by the Minister of Finance. The organiser bears personal responsibility for the financial report (article 85, paragraphs 1 and 6).

Conclusion

The amended legislation on sources of financing of political parties, if correctly implemented, should contribute to increasing the transparency of the funding systems of parties.

Expenditures

Following the June 2008 parliamentary elections, the deadline for submission of financial reports on electoral campaigns to the State Election Commission, State Audit Office and parliament was 21 July (30 days after verification of the mandates of the new parliamentarians). Seven of the 18 political parties that participated in the early parliamentary elections did not submit their financial reports on time, but no sanction was applied.

³ *Official Gazette of the Republic of Macedonia*, no. 117/2008

⁴ *Official Gazette*, no. 76/2004

⁵ *Official Gazette*, no. 86/11

⁶ *Official Gazette*, no. 161/2008

⁷ *Official Gazette*, no. 136/2008; corrections to these amendments were made three times in the period between the end of November and end of December 2008 and were published in the *Official Gazette* nos. 148/2008, 155/2008 and 163/2008.

Based on data obtained from the Broadcasting Council and on its own monitoring of the printed media, the State Commission for the Prevention of Corruption (SCPC) came to the conclusion that the two largest coalitions of political parties that participated in the elections had exceeded the legally defined maximum for electoral campaign financing. Most of the expenditures had been made in media representations and commercials. A precise and true analysis cannot be made because the political parties had benefited from huge discounts provided by the media, which were not reported. The fact that the election campaign expenditures reported by the political parties were larger than the amounts they had obtained for the financing of the campaign fuels the assumption that there might be other sources of financing (illegal or anonymous).

In particular, the issue of enormous discounts on the cost of political commercials for certain parties to the detriment of others has continued to leave room for non-transparent behaviour in this area. With the amendments to the Electoral Code, these discounts are now considered as donations.

The lack of transparency that still exists in the campaigns, in particular the fact that only one party included the names of the donors in its financial report, favours the climate of suspicion of corruption and opens the possibilities for money-laundering as well as for financing from abroad, which is forbidden by law.

The State Audit Office, which is the institution in charge of auditing budget funds distributed to political parties and for the financing of electoral campaigns, has not yet submitted its reports on the financial conduct of the parties during the previous parliamentary elections. So far, financial irregularities during the campaign have remained without consequences.

Conclusion

The practice of electoral campaign financing is still not sufficiently transparent and fair. Large parties benefit the most from doubtful financial sources. In particular, non-transparent arrangements between parties and the media favour a climate of suspected corruption. However, it is expected that the amendments introduced in the Electoral Code of October 2008 could lead to an improvement of the situation if the State Election Commission and the State Audit Office become more effective in controlling political parties' financial conduct.

3. Integrity in Parliament

Immediately after the June 2008 elections, the new President of Parliament announced the possible adoption of a law on parliament by the end of 2008. The rationale for this law was that there were specific laws on the other two branches of state power and that this new piece of legislation was required to regulate the work of parliament, the rights and duties of MPs, and the administration in parliament. To date no legislative initiative has been reported on this matter.

A Code of Ethics for MPs is foreseen in the Anti-Corruption Action Plan, but it has not yet been adopted.

With regard to the general role of parliament in the political system, the legislative activities carried out between July and August 2008 can be seen as representative: 172 laws were adopted, 50 of which were new laws;⁸ about 140 laws were adopted through the short procedure on urgency grounds.

The speed with which the government forced through this number of laws within just two months might have been exceptional and justified by the government by using the argument that most of these laws were needed for the EU integration process. Nonetheless, it characterised the role of parliament within the system of powers in Macedonia. The participation of parliament in the legislative process appears to be seen more as a formal act at the end of the process rather than a substantive contribution to public and transparent debate and the final adoption of a law. The institutional capacity of parliament needs to be strengthened so as to prepare this body for its constitutional tasks, which are,

⁸ The average time for the adoption of a single piece of legislation in one of the parliamentary sessions in August 2008 was 35-40 seconds; in this session 52 laws were passed.

inter alia, the substantive participation in the legislative process⁹ and the effective control of the government as the executive power of the state.

Immunity of MPs

The immunity of MPs (in terms of both non-liability and inviolability) is protected by the Constitution and regulated by the Law on MPs¹⁰ and by the Rules of Procedure of the Assembly of the Republic of Macedonia¹¹. The Committee on the Rules of Procedure and Mandatory and Immunity Issues oversees parliamentary immunity and monitors the enforcement of rules of procedure in parliament.

The amended Rules of Procedure of Parliament¹² regulate the procedural deadlines for lifting the immunity of Members of Parliament in a more precise way. In contrast to the former provisions, which did not set time frames, the Rules now stipulate that the President of Parliament should submit immediately the request for approval of the detention of an MP to the Committee on Mandate and Immunity Issues, which in turn is obligated to review the request/notification and submit a report to the President of Parliament within two days.

In 2008 two requests were submitted to the Committee on the Rules of Procedure and Mandatory and Immunity Issues for lifting the immunity of two MPs who are also members of the Committee on Mandate and Immunity Issues. The immunity of the two MPs was lifted.

Incompatibilities of Members of Parliament

The parliamentary mandate (the “office of a member of parliament”) is not only incompatible with any other elective public office (mayor or member of a municipal council) or any public office filled by the appointment (election) by parliament or by the government (including the offices of Prime Minister and minister), but also with any other employment in the private or public sector (including the civil service and the public service) or with any other remunerated professional or commercial activity (which has to be “suspended” or put on hold during the period of parliamentary mandate).

The control of compliance with these very stringent incompatibilities is a responsibility of the State Commission for the Prevention of Corruption (SCPC), but any decision related to MPs must be adopted by parliament. No special majority is required by the Constitution or by the Rules of Procedure for this purpose.

A law on the establishment of an additional condition for the performance of public office (Law on Lustration) was adopted at the end of January 2008¹³. The law applies to persons who are either candidates or holders of public office at central or local level and who are managerial civil servants, members of the management and governing bodies in state enterprises and public institutions, managers and teaching personnel in state and private higher education institutions, notaries, attorneys, mediators, journalists, etc. (as listed in article 5 of the law).

According to this law, the persons included in its scope should not be or have been registered in the files of bodies dealing with state security in Macedonia or in the files of such bodies of former Yugoslavia during the period between 2 August 1944 and the date of entry into force of the law as undercover collaborators or informants, users of information, or persons issuing orders in procedures to gather data and information that constitute a breach or limitation of the basic freedoms and rights of citizens for political or ideological reasons.

⁹ In the words of the Constitutional Court President, “quite often, a number of bills are being written, copied or translated, particularly in certain spheres that the lawmakers do not comprehend. Then, the bills are submitted to government and easily endorsed and the same happens when they are submitted to parliament”. See www.transparency.org.mk/en/: corruption barometer February 2009

¹⁰ *Official Gazette*, no. 84/2005

¹¹ *Official Gazette*, no. 60/2002

¹² *Official Gazette*, no. 91/2008

¹³ *Official Gazette*, no. 14/2008

As a result of the adoption of the Law on Lustration in January 2008¹⁴, it was foreseen to establish a commission to verify the relevant facts. However, the Commission on Verification of the Facts (Lustration Commission) was not established in time for the early parliamentary elections, although the opposition MPs requested the election of commission members before the dissolution of parliament in April 2008. The candidates for parliament who had participated in the elections (from both the opposition and the parties in power) nevertheless submitted statements to the State Election Commission that they were not, and had never been, informants or collaborators of the secret services. For formal reasons these statements were not valid according to the Law on Lustration, but they were at least a signal of the MPs' good will to respect the spirit of the Law.

Parliament adopted the decision on the election of the president, deputy president and nine members of the Lustration Commission only on 15 January 2009¹⁵. The president of the Commission is a journalist of Albanian origin and the deputy president is a university professor.

The Lustration Commission did not have enough time and support staff to verify the statements of the candidates for the presidential and local elections of March 2009, since at the same time it was occupied in verifying the statements of the already elected MPs as well as of all the other appointed officials covered by the Law on Lustration.

Conclusions

The incompatibility system for MPs is in line with common European practices.

As far as the specific area covered by the Law on Lustration is concerned, it is too early to assess the quality, neutrality and professionalism of the Commission on Verification of the Facts (Lustration Commission) in implementing the Law on Lustration. The activity of the Commission should be closely controlled and monitored since there are risks of misusing this tool for political reasons. Doubts were also expressed concerning the Commission's scant support staff and budget resources.

Conflict of Interest

According to the Law on Conflict of Interest¹⁶, which applies to MPs, when exerting public authority and performing public duties, an official must not carry out any activity that might influence the unbiased performance of the function and the protection of the public interest, except for the management of the official's own property¹⁷, scientific or research work, and artistic or cultural activity. In case of doubt as to whether there is a conflict of interest, the official is obligated to request the opinion of the State Commission for the Prevention of Corruption (SCPC) and to take all necessary measures to prevent any influence that the private interest might exert. In the event of a conflict of interest, the official is obligated to act in accordance with the public interest.

This law regulates the responsibility of the SCPC to prepare and adopt a State Programme for Prevention and Repression of Conflicts of Interest (hereinafter referred to as the State Programme on Conflicts of Interest) and an accompanying Action Plan, both of which were adopted in May 2008. The adoption of this programme is also one of the main priorities of Macedonia's EU Accession.

The State Programme on Conflicts of Interest identifies a number of problems (15) related to conflict of interest and groups them in nine risk areas, specifying the activities for each of those areas that are

¹⁴ Official Gazette, no. 14/2008

¹⁵ Official Gazette, no. 6/2009

¹⁶ Official Gazette, no. 70/2007

¹⁷ According to the Law on Conflict of Interest (article 8, 3), "the management of personal property, such as a house of residence of the official, holiday house, land and similar property and management of village property" are not considered as the "performance of private activities". However, the official must delegate to another person or separate body the management of companies, institutions or any other private activities that he/she was managing or carrying out. The law also establishes rules (article 9) restricting the persons to whom these responsibilities can be delegated (family ties and relationships).

necessary for overcoming the identified problems. It also establishes indicators for monitoring the implementation of each activity. The risk areas are as follows: 1. Accumulation of functions and obtaining benefits; 2. Influence for financial or other benefits; 3. Discretionary powers; 4. Official action in matters involving private interest; 5. Gifts; 6. Nepotism in employment, public procurement, conclusion of contracts, issuing of different kinds of licences, etc.; 7. Misuse of public assets/resources for private (personal, political party and other) interests; 8. Post-employment; 9. Use and mistreatment of information not available to the public.

A Guideline for Managing Conflicts of Interest was prepared by the SCPC in September 2008 with the support of the USAID's Program for Human and Institutional Development. During November 2008 the SCPC, in co-operation with the Judicial Academy, delivered training on conflicts of interest for 120 representatives of the judicial branch. During the first half of 2009, the SCPC plans to deliver such training to representatives from the executive and legislative branches of power and from local self-government units.

The SCPC is the unique body that may identify conflicts of interest. The investigation to determine the existence of a conflict of interest may be carried out by the SCPC on the basis of its own findings (the majority of cases), at the request of an official person, based on a report by another person, or on an anonymous report (less frequent situation), or at the request of the authority in which an official is employed.

Conclusion

The adoption of the Law on Conflict of Interest and the related subsidiary regulations represent a positive development in dealing with this issue and are intended to increase integrity in political and administrative life. However, further efforts and commitment are needed to ensure full implementation of the Law on Conflict of Interest.

Asset Declaration

The obligation to submit asset declarations is regulated by the Law on the Prevention of Corruption.¹⁸ It is applicable to all public employees as well as to MPs. Following the adoption of the Rulebook of the Minister of Justice on the manner in which asset declarations of public employees are to be handled (July 2008), the SCPC requested all state and municipal bodies to designate the person in charge of handling asset declarations. The SCPC plans to train these persons so that the 8,807 declarations received by the SCPC since 2006 can then be transferred to the 73 respective bodies for examination.

With regard to the obligation of MPs to submit asset declarations, 114 of the 120 MPs of the dissolved parliament submitted their declarations. From the newly elected parliament, only one MP had not submitted a declaration by the end of the assessment mission (mid-April 2009).

Asset declarations are controlled by the SCPC in co-operation with the Public Revenue Office (PRO) - the latter is in charge of checking the origin of property upon request of the former. With a view to improving control mechanisms, in December 2008 these two institutions set up an IT network connection for comparing the databases of both bodies. In April 2009 the SCPC started to provide training to the PRO employees in the practical use of this system. In 2008/2009 the SCPC submitted to the PRO 20 requests in total for examination of the assets of officials.

The most common sanction for the failure to submit an asset declaration or for the submission of incomplete or inaccurate information remains a fine for misdemeanour. In 2008, the SCPC initiated a misdemeanour procedure against seven MPs, four members of the government, and three judges as well as 22 other elected and appointed officials who did not submit the respective asset declarations. It

¹⁸ Official Gazette, no. 10/2008

appears that a wider range of sentences, allowing for more severe punishments, would help to increase the degree of compliance with the law.¹⁹

Conclusion

Some progress has been achieved by parliament in ensuring the compliance of its members with the rules on asset declarations. However, consideration should be given to amending the Law on the Prevention of Corruption in order to introduce more severe punishments for failure to submit property and asset declarations and for its inaccuracy as well. The existing penal framework for this type of violation does not seem to dissuade offenders from the legal infringement.

Remuneration of Parliamentarians

Amendments to the Law on Salaries and Allowances of the Members of Parliament and Other Elected and Appointed Persons in the Republic²⁰ and the Law on the Members of Parliament (both adopted in December 2008) have led in the end to a slight reduction of the remuneration of MPs. However, as it is in the range of 800-950 EUR, this remuneration still seems to be adequate in comparison to average salaries in the country, in particular to the salaries of related groups in the public sector, such as judges and top-level civil servants.

Parliament's function of controlling the government

In 2008 there were 30 parliamentary questions raised by 10 MPs and four of these questions were not answered. One interpellation was proposed on the work of the President of the Committee on Procedural and Mandate-Immunity Issues, but was not approved by parliament. The last Inquiry Committee was set up in March 2008 (its members were appointed in October 2008) and deals with the circumstances of the death of the former President Boris Trajkovski.

The new Rules of Procedure of Parliament contain some minor changes regarding parliamentary questions, interpellations and votes of confidence. Amendments are mainly related to the period of time within which the government has to react to parliamentary questions or interpellations respectively. In general, the modifications weakened rather than strengthened parliament's position.

Conclusion

Parliament's function of controlling the government's executive action corresponds to the weak role that parliament has with respect to legislation. Strengthening parliament's capacity in either area of its constitutional mandate is imperative.

4. Government

The situation regarding political, penal and legal accountability of members of the government, as well as their incompatibilities, is the same as reported in Sigma's 2008 assessment. It is considered to be almost in line with European practices.

Concerning conflict of interest, the provisions of the new law (including those related to the acceptance of gifts) also apply to members of the government.

A Code of Ethics for the government was prepared and submitted but was not adopted due to some reservations about its contents and legal orientation. It was reported that the Code had been drafted rather as a law than a code of ethics.

The new provisions of the parliamentary Rules of Procedure now also apply to the immunity of the Prime Minister. According to the 2005 amendments to the Constitution, the right to immunity of

¹⁹ The Annual Report of the SCPC (March 2008) refers to the case of an MP who had not submitted his asset declaration and was fined 10,000 MKD (less than 200 EUR), which was under the minimum (500 EUR) stipulated by the legislation. The Commission appealed the court decision.

²⁰ *Official Gazette*, no. 161/2008

cabinet members was reduced in scope, so that it is now granted to the Prime Minister only, and instead of the government, it is parliament that decides on the immunity of the cabinet member.

Discrepancy remains between the implementation of the regulatory framework and the principles stated by the government of transparency, integrity and responsibility. The non-transparency of some public procurement cases²¹, the discriminatory selection of the media to broadcast government campaigns²², and the misuse of the state broadcaster's Parliamentary Channel to transmit government sessions live are examples of the violation of relevant legislation. Furthermore, the government's pressure and even threats against media coverage that is not in its favour (labeling the media as "anti-patriotic") have resulted in repeated warnings by the Broadcasting Council to stop this negative practice. Widespread complaints about politicised staff recruitment policy and the suspicion of influence in the judiciary round out the picture of the government's lack of compliance with the law and with ethical standards.

Conclusion

The government's claims of raising the level of integrity in Macedonia's public sector would be more credible if its own practices set satisfactory standards of respect for legal and ethical norms.

5. Judicial System

The legal framework related to the organisation and functioning of the judiciary has improved since Sigma's last assessment and therefore, in principle, there are better conditions for ensuring independence and professionalism. In 2008 three laws related to the judicial system were amended: Law on the Public Prosecutor's Office, Law on the Court Budget and Law on the Courts.

The amendments to the Law on the Public Prosecutor's Office²³ (PPO) introduced a reduction in the number of years of required experience and eased the criteria for the appointment of the Public Prosecutor of the Republic of Macedonia and for the selection of public prosecutors. This measure was announced as being aimed at recruiting for the PPO young and professional staff as well as members of minority communities (this objective is in line with the implementation of the Ohrid Framework Agreement).

The Law on the Court Budget²⁴ was amended in order to transfer the Court Budget Council from the Supreme Court to the Judicial Council. A changed membership of the Court Budget Council is defined in the amended law and the employees of its expert service are also transferred to the Judicial Council. Transferring such competence and staff to the Judicial Council can be seen as a logical solution, as the Council is the management body for the courts.

Amendments to the Law on the Courts have conferred on the Supreme Court an important role in guaranteeing the citizen's right to "due process". Accordingly, the Supreme Court amended its Rules of Procedure in February 2009²⁵ in order to formally introduce the section of the Court on due process and to describe its competencies. However, as Sigma had stressed in its previous assessment report, doubts remain about the effectiveness of this right, since possible compensation for having had one's right to "due process" infringed would have to be paid by the judiciary's budget, which is recognised as clearly insufficient to guarantee the normal functioning of the judiciary system. At the end of 2008 99.12% of court budget funds had been utilised, while the debts of the courts at the end of the year were approximately 466,000 EUR.²⁶

²¹ Second tender for the construction of hydro-power plant Golemi Cebren and Galiste

²² e.g. e-Macedonia and others

²³ *Official Gazette*, no. 111/2008

²⁴ *Official Gazette*, no. 103/2008

²⁵ *Official Gazette*, no. 21/2009

²⁶ Debts are mainly related to operational costs (such as electricity, communications, water supply, maintenance, and experts), which may create severe problems for the functioning of the courts.

In April 2009 the number of judges was 655 (out of 696 positions for judges established by the Judicial Council), 295 of whom were male and 360 female. Thus, the number of judges has slightly increased (from 632 in 2007), but it is still not sufficient to solve the problem of the huge backlog of cases. This number is in fact lower than the number of judges in 2005 (672). However, it must be stressed that in order to solve the backlog of cases, further attention should be paid to other factors such as the organisation of the courts, a better balance in distributing cases, better management, etc.

The Law on Court Service is being implemented and some amendments could be necessary soon. For instance, according to a ruling of the Constitutional Court, the obligation imposed on court staff to handle urgent procedures during a strike is too vaguely established by the Law on Court Service and leaves room for arbitrariness, which is not acceptable in terms of fundamental rights.

Judicial Council

The Judicial Council is the governing institution for judges and courts, responsible for selecting, appointing, promoting and dismissing judges. Only decisions on the dismissal of judges can be appealed to a special panel of judges within the Supreme Court. The Judicial Council aims to ensure and protect the independence of the courts and to increase professionalism and integrity among judges.

The Judicial Council is accountable to parliament. In accordance with article 64 of the Law on the Judicial Council²⁷, the Council is to submit an annual report on its operations to parliament. In addition to setting out the content of the annual report, this article also specifies that, before submitting the report to parliament for consideration and eventual adoption, the Judicial Council itself must adopt the report by a two-thirds majority vote of all members of the Council. The 2008 annual report of the Judicial Council was debated and adopted by parliament.

The Judicial Council elected its new president and deputy-president on 2 February 2009²⁸ as well as the president of the Supreme Court on 17 July 2008²⁹. It is incumbent upon the Judicial Council to determine the number of judges in each court.

Following the amendment to the Law on the Court Budget, the Court Budget Council was transferred from the Supreme Court to the Judicial Council, and the president of the Judicial Council is now also the president of the Court Budget Council.

The Judicial Council is therefore almost fully operational and is continuing to strengthen its capacity to perform the whole set of competences established by law. Even taking into consideration the increasing number of employees, the Council is still insufficiently staffed. In 2008 the Council reviewed and acted upon 1,613 complaints on the work of individual judges and the courts by citizens and legal entities. For the time being, it is recognised that rather than acting *ex officio*, external pressure is the main lever for the Council's action. There are also complaints about the effectiveness of the Judicial Council.

The Judicial Council is also in charge of carrying out the performance evaluation of judges and of establishing salary awards according to the performance of the related court (not based on the performance of individual judges). Following consultations and pilot experiences, the forms for monitoring and assessing judges, based on the Rulebook on Performance Assessment of Judges (February 2008), were adopted. The first performance assessment of judges was scheduled to start in April 2009. It remains to be seen whether the system will really be implemented and whether it will contribute to improving the effectiveness of the courts.

Council of Public Prosecutors

According to the law that created the Council of Public Prosecutors, its main objectives are to strengthen the autonomy of the public prosecution and to reinforce the professionalism of prosecutors.

²⁷ Official Gazette, no. 60/2006

²⁸ Official Gazette, no. 17/2009

²⁹ Official Gazette, no.89/2008

Its functions are related to the appointment, cessation of functions, dismissal and disciplining of prosecutors. However, doubts were reported regarding the entity – the Council or the General PPO – entitled to adopt disciplinary sanctions against public prosecutors. This is a critical situation that requires urgent clarification.

The Council is composed of 11 members whose term of office is six years. On 22 February 2008 the public prosecutors elected their six representatives to the Council, while parliament elected the three remaining members on 31 July 2008³⁰. The Public Prosecutor and the Minister of Justice are *ex officio* members of the Council.

The Council of Public Prosecutors submits an annual report on its work to parliament. A copy of the report is also submitted to the government and to the Public Prosecutor's Office. The line of accountability is therefore not completely clear.

In accordance with its constitution, the Council adopted a number of internal regulations, including its Rules of Procedure, the Rulebook on the Manner of Performance Assessment of Public Prosecutors, the Rulebook on Regulation of the Procedure for Establishment of Accountability of Public Prosecutors, and the Rulebook on the Manner of Supervision of the Work of the Public Prosecution Offices.

The Council of Public Prosecutors is not treated as a direct budget-user (like the Judicial Council), but receives its budget through the Public Prosecutor's Office.

Based on the decision on the establishment of the number of public prosecutors, adopted by the Council of Public Prosecutors in September 2008, the planned number of public prosecutors is 219, while there are only 171 public prosecutors at present. There were no dismissals of public prosecutors during the period under review.

The Council has received 62 complaints from citizens and legal entities about the work of the public prosecutors, and it has completed the procedure for 47 of them. There is no information about the nature of the complaints or about the way in which the procedures on the complaints were "completed".

Basic Public Prosecution Office for Prosecution of Organised Crime and Corruption

In November 2008 the Basic Public Prosecution Office for Prosecution of Organised Crime and Corruption (hereafter referred to as the BPPO) was established as an autonomous body within the PPO, with jurisdiction throughout the country. All of its 10 positions have been filled. The BPPO is operational.

The BPPO is an autonomous office accountable to the Public Prosecutor and to the Council of Public Prosecutors.

More and more often there are cases of criminal offences with a background of corruption, misuse and evasion of the legal provisions for public procurement, and taking or giving bribes. With regard to organised crime, the main trends in 2008 and in the first three months of 2009 are related to several large cases of smuggling of migrants and cigarettes and illegal possession of weapons, as well as to several corruption cases.

To facilitate the fight against these criminal offences, amendments to the Law on Criminal Procedure as well as amendments to the Law on Interception of Communications were introduced in order to reinforce the effectiveness of special investigative measures.

Co-operation between the BPPO and other authorities in charge of detecting perpetrators of criminal offences is reported as good and productive. However, details on the activities of the BPPO are not available because the 2008 annual report of the PPO has still not been issued.

It was reported that the BPPO had sufficient capacity to carry out effective work in the fight against corruption and organised crime. The Office's close co-operation with other authorities working in

³⁰ Official Gazette, no. 96/2008

these areas fosters its efficacy. However, for the time being its effectiveness still needs to be demonstrated.

Recruitment and Promotion of Judges and Prosecutors

The recruitment and promotion of judges and of prosecutors is under the responsibility of the Judicial Council and the Council of Public Prosecutors respectively.

The procedure for the appointment of judges is very important in order to achieve a real separation of powers and to create an independent judiciary. In spite of the criteria defined in the Law for Recruitment of Judges, the general perception remains of political or other impermissible influences on their appointment. Experts have stated that “there are professional staff in courts who are well trained and with great experience but have no ability to be elected as judges as they do not belong to a political party”³¹. Hopefully, the situation will improve when in two years’ time the course at the Judicial Academy becomes compulsory for entry into a judicial career (for judges and prosecutors).

An identical situation was observed in relation to promotion, where merit should be the only criterion to be taken into consideration. The appraisal model for judges raises some reservations. In fact there is no control mechanism that oversees the Judicial Council’s procedures.

The Public Prosecutor is appointed by the Assembly, on the proposal of the government following the publication of a public announcement for the submission of applications and receipt of the opinion of the Council of Public Prosecutors, for a term of six years with a possibility of reappointment. The Assembly can also discharge the Public Prosecutor (article 106 of the Constitution and article 40 of the Law on the Public Prosecutor’s Office). Article 65 of this law also establishes strict reasons for the termination of office of the Public Prosecutor, but the criteria for dismissal set out in article 67 are more permissive. Therefore, political influence and conditioning of the work of the Public Prosecutor is possible.

Ordinary public prosecutors in the Basic Public Prosecutors Office are elected by the Council of Public Prosecutors from among the listed applicants who have the general requirements stated in the law (e.g. Macedonian nationality, law degree, successful passing of the Bar exam) and have completed the required training at the Judicial Academy³². No clear criteria have been established for the election, which could lead to “favouritism, corruption and improper influence” on the recruitment procedure³³.

The situation is better regarding higher public prosecutors, who are elected from among other ranks of public prosecutors following criteria established by law, even if these criteria are mainly qualitative and therefore allow for a large amount of subjectivity.

Both judges and public prosecutors are appointed for life. However, for some positions (e.g. the Higher Public Prosecutor of a Higher Public Prosecution Office) appointments are made for a four-year term, with the possibility of re-election. If these officials are not re-elected, they continue to perform their functions as public prosecutors (article 46).

When recruiting judges, the Judicial Council is to act according to the rules established by the Law on the Judicial Council related to equitable and adequate representation in the election of judges (articles 42 and 43), which reinforces the influence of minority communities.

Judicial Academy

The Judicial Academy started its operations in November 2006 and its capacity is increasing. It is an autonomous institution with its own budget, premises, staff and equipment), headed by a management board of 11 members (the president of the Judicial Council, the president of the Supreme Court, the

³¹ “Analysis Focus Groups” 2008 report, page 5

³² Article 44 of the Law on the Public Prosecutor’s Office

³³ Opinion on the draft Law on the Public Prosecutor’s Office and the draft Law on the Council of Public Prosecutors of the former Yugoslav Republic of Macedonia, Venice Commission, 2007

Public Prosecutor and the Minister of Justice are members *ex officio*). The director and the executive director complete the managerial structure of the Academy.

The Academy plays an important role in increasing the independence and professionalism of the judiciary. It provides initial training (five months for theoretical instruction, nine months of practical training, and one month for the preparation of the final examination), as well as continuous professional training for judges and prosecutors.

With a view to setting in place a more detailed regulation of the Judicial Academy's work, the majority of the existing rulebooks were reviewed and new rulebooks were adopted in 2008.

The first generation of 27 candidates successfully completed the practical part of the training and passed the final examinations at the beginning of January 2009. A second generation of candidates started the initial training in September 2008.

The training capacity of the Academy is consolidated and in a process of growth. The number of training courses delivered increased from 123 in 2007 to 221 in 2008. The number of participants also confirmed a positive evolution – from 2,987 in 2007 to 4,723³⁴ in 2008 – as part of the continuous professional development activities for judges and public prosecutors.

On 17 December 2008 the Board of Directors of the Academy adopted the framework programme for 2009-2010 for continuing the professional education of judges and public prosecutors.

In two years' time the courses at the Academy will be compulsory for entry into a judicial career so as to promote the increased knowledge and skills of future judges and prosecutors.

The Academy, will use IPA funds (for 2008) to establish three new training centers in Bitola, Stip and Gostivar. It will also develop an e-learning system and a training programme on the new case management system for the court administration and judges.

Accountability of Judges and Prosecutors

Judges enjoy immunity according to article 100 of the Constitution, and their office is incompatible with any other public office or profession and with membership in a political party.

Regarding public prosecutors, the Constitution (article 107) grants immunity only to the Public Prosecutor. However, the Law on the Public Prosecutor's Office states that "*public prosecutors may not be held criminally liable or detained for their actions, opinions expressed or decisions made, while performing their public prosecutorial duties*" (article 48, 1).

Judges and prosecutors are not liable for damages incurred while performing their duties.

As for judges, the office of Public Prosecutor is incompatible with the performance of any other public office or profession and with membership in a political party.

The accountability of judges and prosecutors is also established by the Constitution and other laws. They are also submitted to the Law on the Prevention of Corruption and to the Law on Conflict of Interest. To guide and assess the ethical conduct of judges, a Code of Judicial Ethics is also in place.

The Judicial Council and the Council of Public Prosecutors are responsible for instituting disciplinary procedures and sanctions against judges and public prosecutors, as well as for their dismissal. However, the above mentioned dispute on who is in charge of taking decisions reading public prosecutors risks undermining effective accountability of prosecutors. In 2008, 50 disciplinary procedures against judges were initiated, 17 of which were dismissed.

The number of disciplinary procedures and dismissals is high. It is a fact that many citizens' complaints concern the unprofessional and inappropriate behaviour of judges (according to the Legal Centre in Skopje), but some of the dismissals are based on subjective criteria, such as "personal disagreements" (e.g. president of the Kumanovo court case dismissal).

³⁴ 2008 Annual Report of the Judicial Academy

Remuneration of Judges

Salaries of judges range between 84,000 MKD (about 1,368 EUR) for a judge in a basic court and 109,316 MKD (about 1,780 EUR) for the President of the Supreme Court. Compared to 2008 (670 EUR and 880 EUR respectively), these salaries have considerably increased, even taking into account the fact that the previously separate food and daily transport allowances have been incorporated into the basic salary.

Looking at the salary conditions in Macedonia, it is possible to conclude that the position of a judge is now an attractive job. It remains to be seen whether this salary increase will reduce corruption and increase the overall quality of the judiciary. The raising of salaries for judges has created some additional problems in the courts. In fact, since the gap between judges and court staff considerably increased, the latter went on strike. According to the Trade Union of Administration Workers, it is possible that this situation could lead to the increase of corruption among court staff.

Institutional Capacities of the Judicial System to Promote Integrity and Fight Corruption

In recent years, important steps have been taken to reinforce the institutional capacity of the judiciary to implement the judiciary reform that is indispensable for ensuring the efficiency of the courts: setting up of the Administrative Court (started operating in December 2007 and is almost fully staffed), which has contributed to streamlining the workload of the Supreme Court, until then responsible for dealing with administrative conflicts; establishment of a specialised court unit within the first-instance court in Skopje dealing with corruption and organised crime; setting up of the Basic Public Prosecution Office for Prosecution of Organised Crime and Corruption (BPPO); increasing the capacity of the Judicial Council; start of operations of the Council of Public Prosecutors; implementation of laws on the litigation procedure; strengthening of the court infrastructure and court budget; improvement of the Judicial Academy; adoption of the Code of Judicial Ethics; introduction of the right to due process, combined with the allocation of competence to the Supreme Court to decide on cases filed for violation of this right³⁵.

In spite of all the legal tools and measures implemented so far, public appraisal of the performance of the judiciary continues to be negative. The complaints of citizens to the Ombudsman (which increased by 29.20% in relation to 2007), the SCPC, the media, NGOs, and the Centre for Legal Assistance in Skopje, and the analysis of experts (Analysis Focus Group report³⁶) indicated the need for further improvements. Complaints concern the unprofessional and inappropriate behaviour of judges, breaches of procedure, extreme dissatisfaction with court decisions, lack of enforcement of said decisions, deficient functioning and lack of transparency of courts, strategic media coverage of the justice for political advantage (breaching the principle of presumption of innocence).

Other weaknesses of the judiciary are related to the poor management of the courts, the rare use of arbitration mechanisms – citizens feel discouraged because these mechanisms are too formalised and time-consuming, deficient technological infrastructure in the courts, and political influence on the judiciary. One example of political interference was the decision of the previous President of the Republic to pardon persons suspected of a crime (the mayor of Strumica, Zoran Zaev, and his five associates) before the criminal judgment and sentence were passed. The (sub-constitutional) Law on the Right to Pardon (articles 3 and 11) might allow such a practice. However, according to European constitutional standards, the prerogative of mercy implies the right of the head of state to pardon and release an individual who had been convicted of a crime from that conviction and its intended penalty. The interference with criminal proceedings contravenes the rule of law as well as the principle of separation of powers.

It should be mentioned here that the insufficient capacity of the judiciary is also a consequence of the unsatisfactory quality of the legislation.

³⁵ A special chamber comprised of three judges was created for this purpose in March 2008 and by mid-April 2008 a total of 77 motions had been filed.

³⁶ “Analysis Focus Groups”, 2008 report

The backlog of unresolved cases is still a serious problem. In 2008, the total volume of cases in the basic, appellate and administrative courts and the Supreme Court, taking into account the unresolved cases from previous years and new cases, amounted to 1,724,76237. To overcome this problem, the Ministry of Justice, after hearing the presidents of the basic and appellate courts and of the Supreme Court and the heads of units in these courts, adopted a decision obliging the basic courts to immediately undertake measures to resolve the old court cases that were still pending. The backlog of old unresolved court cases dating from 2000 or earlier were to be resolved by the end of March 2009, and for the others, dating from 2001 to 2006, the deadline was set at the end of June 2009. The Ministry of Justice will monitor this process. It is not certain which resources, additional capacities and alternative solutions will be available for this purpose without putting at risk the quality of court decisions.

The Ministry of Justice also announced measures for ensuring that a trial will take place in reasonable time in order to prevent the violation of the citizen's basic right to due process, as guaranteed in article 6 of the European Convention on Human Rights and Basic Freedoms and in the Constitution of the Republic of Macedonia.

To improve the situation with regard to enforcement cases, the Ministry of Justice prepared amendments and addenda to the Law on Enforcement that envisage the transfer of enforcement cases to private enforcement agents. The issuance of payment forms will be the responsibility of notaries. An increased role of public notaries must be promoted.

Conclusion

Even considering some weaknesses in the legislation and in institutional capacity, it is possible to conclude that Macedonia is developing its justice system in the right direction. However, much more effort is needed to increase the independence and effectiveness of the judiciary and to gain recognition from citizens of the judiciary as a solid and trustworthy institution, immune to corruption and able to investigate and punish corruption and other crimes.

The Judicial Council and the Council of Public Prosecutors are endowed with the competences and powers needed to ensure more professional recruitment and appointment of judges and prosecutors, protect their independence/ autonomy, and guarantee their professional and ethical behaviour. In practice, however, political influence still seems to be relevant.

The extension of the training network of the Judicial Academy to other regions of the country as well as the reinforcement of its capacity will contribute to increasing the professionalism of the judicial system.

Easing arbitration mechanisms, relieving the judiciary of functions that can be performed by other sectors, and improving the quality of legislation will also make decisive contributions to improving the capacity and quality of the judiciary.

It is expected that the improved salary conditions of judges will increase their professionalism and integrity and raise the overall quality of their performance.

³⁷ Data from the 2008 Annual Report of the Courts

	Unsolved (previous year)	New	Total	Solved	Unsolved
Supreme Court	1,612	2,544	4,156	2,821	1,335
Administrative Court	5,804	8,497	14,301	5,147	9,154
Appellate Court	3,700	38,201	41,901	35,621	6,280
Basic courts	1,082,436	581,968	1,664,404	736,452	927,952
Total	1,093,552	631,210	1,724,762	780,041	944,721

6. Other Institutions Promoting Integrity

State Commission for the Prevention of Corruption (SCPC)

The SCPC was established as an independent body in November 2002 by the Law on Prevention of Corruption. It consists of seven members elected by parliament for one five-year term only, without any re-election provision, and a president elected by SCPC members for one year only. The current Commission was elected by parliament in February 2009.

According to the Law on Prevention of Corruption, parliament announces the competition for appointment of SCPC members in the *Official Gazette of the Republic of Macedonia* as well as in the daily newspapers. The candidates must *i)* have Macedonian citizenship; *ii)* be permanent residents in Macedonia; *iii)* have a university degree either in law or economics; *iv)* be respected in his/her profession; and *v)* must have a minimum of eight years of work experience.³⁸ The Commission for Election and Appointment in parliament drafts the list of candidates from all applicants who fulfil the legal requirements and submits the list to the plenary session of parliament.

The principle of equitable and fair representation of minorities must be respected when electing the State Commission members.

In addition to its strategic planning, prevention activities and monitoring function, the SCPC takes action – on its own initiative or on the basis of claims and information submitted by citizens – in cases of suspected corruption. In some of these cases, after a preliminary examination, the SCPC proposes the action of law enforcement agencies or of the Public Prosecutor's Office, requests information from other public authorities, or formulates recommendations to such authorities.

In 2008 the SCPC resolved 713 cases, broken down as follows: 567 were related to corruption, 29 to conflict of interest and 117 to the early elections. It received 357 new asset declarations. A large number of citizens' claims were related to the functioning of the courts and to the operations of local governments (concerning especially construction licensing and urban planning).

All public authorities are subject to a generic obligation to co-operate with the SCPC. As far as the authorities depending on the government are concerned, the SCPC currently deems co-operation to be satisfactory, as a consequence of an internal instruction issued by the Prime Minister.

In July 2008, the SCPC organised an annual conference for the purpose of monitoring the speed and quality of implementation of the short-term activities of the State Programme for the Prevention of Corruption 2007-2011 (hereafter referred to as the State Programme on Corruption). The general assessment was that activities were being implemented at a satisfactory level, but that implementation focused more on formal rather than essential aspects, which emphasised the need to redefine certain medium-term and long-term activities of the Programme. Notwithstanding the achieved progress in the implementation of anti-corruption policies and measures throughout the country, factors favourable to corruption were identified, such as the "high level of politicisation, the slow establishment of the rule of law and good governance" were identified.

In terms of inter-institutional co-operation, the SCPC organised at the end of 2008 an annual meeting with the institutions that had signed the Protocol on Co-operation in the Prevention and Repression of Corruption and Conflicts of Interest (2007). All participating institutions concluded that the co-operation had been successful and decided to broaden it by offering mutual expert assistance, undertaking joint work on specific cases of crime and corruption, and setting up teams for the elaboration of laws within the areas of their mutual competence. Following the meeting, three additional institutions signed the Protocol: Public Procurement Bureau, Council of Public Prosecutors, State Election Commission and Commission for Appeals on Public Procurement.

The SCPC currently has 14 employees. The number of staff does not yet correspond yet to the stated needs of the Commission, especially with regard to managerial positions.

³⁸ Article 48 of the Law on Prevention of Corruption (2002, as amended)

The incumbent president of the Commission was re-elected to this position by the members of the SCPC on 25 February 2009 for a third one-year term of office, contrary to the previous practice of non-eligibility of the outgoing president to run for re-election.

The general opinion is that the SCPC is not yet assuming the leadership in the fight against corruption and that it sometimes displays a passive and selective attitude in the appraisal of cases. It is mainly the pressure of public opinion that leads the SCPC to initiate a procedure, such as in the case of violation of a provision by failing to submit an asset declaration (Director of the Public Security Bureau). During the assessment mission, Sigma was informed that the SCPC was perceived by the general public as “a tool of the government”. The appointment of the SCPC President as chief editor of the public broadcasting service of the Macedonian TV station reinforced this perception. Furthermore, the re-election of the president for another one-year mandate, breaching an unwritten rule for this position of non-eligibility for a second term of office, did not give a good image of the institution that should be an ethical model for society.

Conclusion

As far as the normative part of SCPC's activities is concerned, the adoption of the State Programme for Prevention of Corruption (State Programme on Corruption) represents a step towards the reinforcement of Macedonia's public sector integrity. The implementation of the Programme, however, needs to be improved. The SCPC is seen as performing mainly a reactive rather than a proactive function and therefore confidence in its capacities and will is weak. Filling vacant positions would be a very first measure in strengthening the SCPC's capacity.

Inter-institutional co-operation is increasing and this may improve the SCPC's effectiveness.

Ombudsman

The Ombudsman is a constitutional institution³⁹ aimed at protecting the constitutional and legal rights of citizens and all other persons against actions and omissions by state administration bodies and by other bodies and organisations that have public authority. The Ombudsman is also in charge of protecting the principles of non-discrimination and adequate and equitable representation of minority community members in state administration bodies, local self-government units and public institutions and agencies.⁴⁰

The Ombudsman has evolved into an institution that is now highly respected by both the public sector and civil society. Even without a specific role in fighting corruption, its overseeing function contributes to improving the rule of law as well as transparency and integrity in public life and in the activity of the public administration.

The Ombudsman's Annual Report for 2008⁴¹ was submitted to parliament for adoption. It shows the Ombudsman's efficiency in monitoring public institutions: 3,701 complaints⁴² were received, of which 2877 were dealt with by the Ombudsman in 2008, with the remainder in progress; 638 violations were found⁴³, of which 605 interventions by the Ombudsman were accepted. Most of the submitted complaints were about the work of the judiciary (29.22%), followed by property rights (10.49%), labour and employment rights (8.37%), police work (7.81%), pension and disability insurance rights (5.96%), and urban planning and construction (5.36%), while 21 complaints (0.69%) were about protection against discrimination and equitable representation of minority communities. The low number of complaints about protection against discrimination is not due to any improvement of the situation in this area but to the absence of consistent and precise anti-discrimination legislation.

³⁹ Article 77 of the Constitution

⁴⁰ See Law on Ombudsman (September 2003)

⁴¹ <http://www.ombudsman.mk>

⁴² In 2007: 3,022 complaints submitted

⁴³ In 2007: 950 violations of the rights of citizens ascertained

The most common type of violation of rights (in 85% of the cases) is related to non-compliance with legally prescribed procedural requirements, e.g. breaking the deadlines for decision-making in administrative and court procedures (the right to “due process”).

Very often the competent bodies did not comply with the legally prescribed deadlines for submission of information requested by the Ombudsman.

The Ombudsman report also calls attention to some problems in the public administration area that are mentioned in Sigma’s May 2009 Assessment Reports on Public Service and on the Administrative Legal Framework.

Among the activities for 2009 is foreseen the drawing up of a proposal for amendments to the Law on the Ombudsman, aimed at strengthening the autonomy of the institution and its competencies and at including the new competencies that it has been granted in accordance with the ratified Convention against Torture.

Conclusion

The Ombudsman has progressively consolidated its position as an efficient, professional, neutral and reliable institution for the protection of human rights in Macedonia. This institution enjoys the highest reputation and confidence on the part of civil society, which can also be seen from the constantly high number of complaints it is entrusted with. The co-operation and support of other public bodies is not always satisfactory. A stronger supervision of the government over these bodies is required to ensure that they fulfil their legal obligations in an Ombudsman procedure.

State Audit Office

The State Audit Office (SAO) was established in 1997. The State Audit Law provides a good level of independence of the SAO from the government and from parliament. For instance, the Auditor General is elected by parliament for a ten-year term, and conditions for his/her dismissal are strictly established by law. However, a draft law was prepared to amend the State Audit Law, seeking improvements in terms of its independence, mainly in financial matters. The SAO is also asking for recognition as a constitutional institution, but the necessary amendments to the Constitution seem to be delayed.

Among other functions, the State Audit Office has the responsibility to audit political parties financed by state budgets fund and the funding of electoral campaigns. As the supreme audit institution in Macedonia, the SAO provides support to parliament for the identification and demonstration of irregularities, illegal operations, and possible corruption and abuse of power, and it co-operates with other relevant institutions (Public Prosecutor’s Office, for instance) in fighting corruption. However, the SAO lacks the capacity to perform the whole set of responsibilities.⁴⁴

7. Anti-Corruption Policies, Strategies and Legislation

In Macedonia the anti-corruption policy focuses on building a normative framework and strengthening the capacity of the respective enforcement bodies.

As a contribution to capacity-building, internal and international co-operation among the bodies with competencies in the fight against corruption was strengthened (protocols, meetings, study visits). Moreover, the first cycle of conflict-of-interest training was held and for 2009 a second cycle is expected to be held, with the target group composed of judges, public prosecutors and professional experts from the four appellate areas. Training in the manner of handling asset declarations of civil servants will also be provided in 2009.

The development of the legal framework related to anti-corruption and organised crime continued in 2008. In addition to the numerous legislative projects already referred to in this report, amendments to

⁴⁴ For further information on the SAO, refer to Sigma’s 2009 assessment report on External Audit in Macedonia.

the Law on Criminal Procedure⁴⁵ (with regard to the use of special investigative measures for crimes related to corruption) and to the Law on Management of Confiscated Property, Property Benefits and Seized Items in Criminal and Misdemeanour Procedure⁴⁶ should be mentioned. The second National Strategy on the Prevention of Money-Laundering and Financing of Terrorism for 2009-2011 was prepared in December 2008 by the Bureau for the Prevention of Money-Laundering and Financing of Terrorism.

Amendments to the Criminal Code⁴⁷, now being prepared, should be very relevant for corruption cases as they attempt to rectify some of the problems identified so far, such as the mild sanctions pronounced by the courts, short deadlines for prosecution and frequent instances of time-barred cases, and absence of criminal punishment for persons who have acquired property illegally.

For 2009-2010 amendments are foreseen to the Law on Prevention of Conflict of Interest, Law on Prevention of Corruption, Law on the Use and Disposal of the Assets of State Administrative Bodies, and the Law on Lobbying.

One of the novelties suggested by the advisor to the Prime Minister on the fight against corruption, is the introduction of the new criminal offence of “illegal enrichment”, relevant in cases where the origin of the property cannot be established (UN Convention on Corruption). Such an approach could have a positive impact on the fight against corruption, but it carries some risks as well. In fact, in several countries a debate is going on about how the inversion of the onus of proof could damage the protection of individual rights. Therefore, implementation of such measures should be monitored carefully in order to avoid misuse of power.

Amendments related to the receipt of gifts in the Law on Conflict of Interest, Law on Prevention of Corruption, Law on Use and Disposal of the Assets of State Administrative Bodies are also foreseen. The harmonisation of this legislation is necessary due to the different definitions of a gift. The target is to have a single definition of a gift so as to avoid the risk of legal conflict between these laws.

Conclusion

In terms of designing anti-corruption policies, developing strategies and adopting related legislation, the outcome of all of these activities can be assessed as positive. However, the major problem remains the same, as has been underlined in previous Sigma assessment reports as well as by other international and local observers and experts, NGOs and the Macedonian Chamber of Commerce. This problem is related to the implementation and monitoring of anti-corruption legislation, which is regarded as being “very weak”.

As commonly stated, there is no single, simple solution for resolving corruption problems, especially if corruption is perceived as being widespread in the society and is socially tolerated as a “way of life”. Good legislation, capable and co-operative institutions, professionalism, effectiveness of punishments, training, involvement of civil society, and public campaigns are tools that have been identified in various pieces of legislation and in strategic documents in the country, and some measures have already been taken. However, for the time being the fight against corruption is not yet a success story in Macedonia. As for effectiveness, more commitment is needed.

8. International Co-operation against Corruption

The Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters has been implemented by the Basic Public Prosecution Office for Prosecution of Organised Crime and Corruption (BPPO). In the framework of this protocol, direct communication and co-operation with the prosecution offices of neighbouring countries and of EU Member States are being established, and in concrete cases, evidence necessary for conducting a criminal procedure has been obtained.

⁴⁵ Official Gazette, no. 83/2008

⁴⁶ Official Gazette, no. 98/2008

⁴⁷ Official Gazette, nos. 37/96, 80/99, 4/2002, 43/2003, 19/2004, 60/2006, 73/2006, 7/2008 and 139/2008

Macedonia has signed memoranda to ensure bilateral co-operation with the Prosecutor's Offices of Albania, Serbia, Montenegro, Bosnia and Herzegovina, and Croatia to strengthen the regional network, in particular in the area of combating human trafficking and illegal migration. In addition, memoranda of co-operation have also been signed between the Macedonian Public Prosecutor's Office (PPO) and the National Anti-Mafia Bureau of Italy in the fight against organised crime and corruption as well as with the Prosecutor's Office of Slovenia. Study visits and regional roundtables (in Vienna, Tirana, Podgorica) were also organised.

Macedonia is also participating in the project, Support to the Prosecutors' Network in South Eastern Europe (PROSECO), implemented by the Council of Europe (CoE) in close co-operation with the Ministry of Justice of Italy. The main objective is "*to strengthen the capacities of the CARDS countries to develop and implement judiciary co-operation against serious crime based on the acquis and other European and international standards and practices by supporting the Prosecutors' Network*".

Further improvement of international co-operation has been achieved through the exchange of practices and experiences during the past year, made possible by study visits, training sessions and foreign assistance.

A CARDS 2005 twinning project with Italy (2006-2008) on the fight against organised crime and corruption was aimed at: strengthening the institutional and operational capacity of the BPPO; training BPPO prosecutors and other actors involved in fighting organised crime and corruption; assessing anti-corruption and organised crime legislation (looking at the EU *acquis* as well); establishing a plan for implementing and maintaining the judicial database and for ensuring access of the BPPO to the databases of other institutions.

In matters of training, most of this support was provided as part of the twinning project with Italy. Study visits took place and five training sessions with Italian experts were organised at the Judicial Academy in Skopje for both prosecutors and judges. The International Criminal Tribunal for Former Yugoslavia in The Hague was visited by the BPPO, which participated in meetings and study case presentations. The head of the BPPO also visited the Directorate for Anti-Corruption and the Directorate for Fighting Organised Crime and Terrorism in Romania.

9. Recommendations for Assistance

For the process of improving public sector integrity and combating corruption, Macedonia would require external assistance. Priority areas for support are as follows:

- improving the government's capacity to monitor and evaluate the implementation of law;
- capacity-building of the State Commission for the Prevention of Corruption (SCPC) and provision of support to information campaigns;
- assessment of the capacity of parliament to perform its role;
- continued support for the training of judges and prosecutors.