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SERBIA

PUBLIC INTEGRITY SYSTEM

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Main Developments and their Characteristics

A package of laws on the judiciary and prosecutors, which in general represents improvements, was passed by parliament on 22 December 2008 and most of the laws will enter into force on 1 January 2010. The package of judicial laws includes: Law on the High Judicial Council, Law on Judges, Law on Organisation of Courts, Law on the State Prosecutorial Council, Law on Public Prosecution, Law on Seats and Territorial Organisation of Courts and Public Prosecutors' Offices, and Law on Amendments and Additions to the Law on Misdemeanours. In 2008, prosecutors' offices were also strengthened by the establishment of a Special Department for Combating Corruption within the State Public Prosecutor's Office.

A Law on the Anti-Corruption Agency was adopted on 23 October 2008 (*Official Gazette of the Republic of Serbia*, No. 97/2008) and will enter into force on 1 January 2010. The Agency is intended to fulfil the obligations stemming from article 6 of the United Nations Convention against Corruption (UNCAC), despite the fact that that Convention may be properly implemented in various ways, depending on the quality of the governance system. International experience has shown that in governance environments where checks and balances are defective, anti-corruption agencies often lack credibility, run the risk of being captured by vested interests, and are generally ineffective. The Serbian Agency will have rather strong powers in several anti-corruption areas (financing of political parties, conflict of interest, asset declarations, etc.), but its accountability set-up is unclear. In conclusion, despite some positive aspects introduced by this law, as shown below, the Agency's legal design gives grounds for scepticism concerning its appropriateness.

Summary of Main Conclusions

1. Parliamentary and Governmental Immunity and Conflict of Interest

Parliamentary immunity seems to be properly regulated in a comparative perspective, but the systematic reticence of parliamentarians to lift the immunity of their colleagues and of government members may constitute an abuse of the institution of immunity. The finality of an incompatibility regime seems to be neither sufficiently understood nor well regulated, as MPs, unlike other office-holders, are allowed to take and keep positions in public enterprises, institutions and companies or other legal entities with a majority state capital share. The conflicts of interest and incompatibilities of MPs and government members is exceedingly lax and leaves many loopholes through which conflict-of-interest and incompatibility policies may be easily abused in practice. The recently passed Law on the Anti-Corruption Agency may have little impact with regard to politicians' conflict of interest, as it contains many exceptions to the general rules and the Agency itself may grant further specific exceptions *intuitu personae*, for which no legal criteria have been established and which therefore cannot be challenged. A similar conclusion as the one reached concerning MPs may be applied to members of the government concerning conflict of interest, incompatibilities and immunities. However, in the case of government members, it is unclear where the competence for lifting immunity lies, as the 2006 Constitution displays inconsistent provisions regarding that issue (article 134 vs. articles 105-7).

2. Financing of Political Parties and Electoral Campaigns

The main vulnerabilities to corruption concerning political party and electoral campaign financing stem from outstanding regulation loopholes, unclear legal definition of the scope of entities (political parties, electoral associations, etc.) and of the funds to be controlled, proliferation of practically unenforceable legal provisions, and especially very deficient control mechanisms. Defective regulations and inadequate control bodies make real and effective control impossible. The newly created Anti-Corruption Agency will only partially contribute to solving the problem, as it cannot investigate private persons contributing funds to political parties or financing political activities. On the positive side, it seems that public pressure to make political party financing transparent is growing and that politicians have recognised the need to shed more light on this highly sensitive issue.

3. Parliamentary Scrutiny of the Government

The parliamentary instruments to control the government (motion of censure, interpellation, questions, special inquiry committees, etc.) are relatively new (some of them –e.g. interpellation – were introduced for the first time in Serbia by the 2006 Constitution) and have been scarcely used so far. There is little parliamentary scrutiny of the functioning of the government. This is primarily due to a high degree of dependence of MPs on political party leadership and also due to the Serbian parliamentary tradition, whereby MPs are primarily interested in the legislative process rather than in holding the government to account. The institutions reporting to parliament have only recently been established and therefore are still in a consolidating phase. They might have an impact on anti-corruption (as well as on the functioning of the public administration) if only the parliament would be more responsive regarding their reports and recommendations, which is not the case. The tradition of little scrutiny by parliament of the functioning of the government makes it quite unlikely that parliament would ever use these institutions as parliamentary instruments to control the executive bodies of the administration. However, some of the institutions may be very useful for citizens and for the media engaged in societal control of politicians. In addition, parliamentary support services are weak and need expert, specialised research assistance to properly fulfil the constitutional mandate imposed on parliament of controlling the government.

4. Integrity in the Judiciary and Prosecutorial Services

The judiciary is perceived as one of the most corrupt institutions in the country and as an obstacle to the development of the rule of law. A package of laws on the judiciary and prosecutors was passed on 22 December 2008, and most of the laws will enter into force on 1 January 2010. These laws are intended to organise the judicial system in a completely different way and to improve the quality of the judiciary and enhance its independence. It should be noted that the independence of the judiciary has for some time been inappropriately undermined by the direct or indirect intrusion of the executive. This disrespect for judicial independence is likely to linger unless both the political culture and judicial independence develop and become more robust by clearly embracing the values of democracy and the rule of law. A positive new development is that, in accordance with the new 2008 Law on the Anti-Corruption Agency (due to enter into force on 1 January 2010), judges and prosecutors will be subject to the same conflict-of-interest provisions as any other public official, which is not the case under the existing (as from April 2004) regulations on conflict of interest, which exclude judges and prosecutors from the scope of the law.

Although the remuneration has substantively increased since 2001, it still does not seem to attract young professionals to become judges or prosecutors. To understand the scarcity of talented candidates for the judicial profession, to be added to the low pay are low professional prestige, difficult working conditions, uncertain career perspectives, and excessive political influence in recruitment and promotion. The new Law on Judges of 22 December 2008 should contribute to improving the situation with regard to the performance evaluation of judges. Under the new legislative framework, the performance of all judges and court presidents will be subject to regular evaluation involving all aspects of judicial work, which will be the basis for appointment, mandatory training, allocation of pay grades, disciplinary proceedings, and dismissal.

5. Anti-Corruption Policies, Legislation and Administrative Reforms

The National Anti-Corruption Strategy was adopted in late 2005, and a package of anti-corruption laws, passed by parliament on 23 October 2008, includes the following: Law on the Anti-Corruption Agency, Law on Amendments and Additions to the Law on Financing Political Parties, Law on Seizure and Confiscation of Crime Proceeds (in force as from 1 March 2009), Law on Liability of Legal Entities for Criminal Offences, and Law on the Recognition of the Additional Protocol to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The Criminal Code describes adequately the main corruption-related crimes.

A number of administrative measures have been taken in recent years in order to improve the performance of the police in charge of corruption cases. Key measures comprise strengthening the

capacity of the Ministry of the Interior (police) to combat corruption through a co-ordinated, specialised department under the responsibility of the Prosecutor, intensified training of judges and prosecutors on anti-corruption, etc. However, although a number of high-profile corruption cases have come to light in the last couple of years, the perception of the public is that prosecution for corruption charges is still rather politically selective. Likewise, certain measures have been taken in the Customs and Tax Administrations to improve the resiliency of these departments to corruption. Moves in the right direction are also observed in municipal administrations. The long-awaited supreme audit institution (State Audit Institution) could play a significant role in the control of the use of public money, but it is not yet fully operational. Especially important is the creation of the Anti-Corruption Agency, which will start its operations at the beginning of 2010, although there are doubts concerning the soundness of giving the responsibility for the implementation of an important group of anti-corruption measures to a single, very powerful institution.

Serbia has signed and ratified all major international anti-corruption conventions against corruption except the OECD Anti-Bribery Convention. .

Main Recommendations

1. Strengthen the capacity of existing accountability bodies, such as the Ombudsman's Office and the Office of the Commissioner for Free Access to Information;
2. Regulate in a balanced way the access to information and the guarding of state secrets;
3. Strengthen the capacity of parliament to scrutinise the government's operations and to hold the government accountable for its actions;
4. Regulate better the financing of political parties and electoral campaigns;
5. Continue the comprehensive justice sector reform aimed at strengthening judicial and prosecutorial professionalism, efficiency, independence and accountability;
6. Continue strengthening the capacity, professionalism and efficiency of the public administration so as to minimise corruption at both central and local self-government levels and to create a high integrity working environment;
7. Ensure that the Anti-Corruption Agency is provided with adequate accountability mechanisms for the implementation of the Anti-Corruption Agency Law;
8. Continue efforts to make the State Audit Institution fully operational.

Introduction

This report is an analysis of some key elements of the public integrity framework in Serbia, where corruption is a serious problem and the public sector has specific vulnerabilities stemming mainly from inadequate regulations and weak control mechanisms. The objective of this assessment report is to identify strengths and weaknesses, which should help to orient reforms and assistance. The domains of corruption in which the situation is most critical are political corruption, public procurement procedures, operation of local self-governments (urban planning) and bribing in inspections and licenses and building permits, the judiciary, and to a lesser extent, health and education sectors.

To delineate the “integrity framework”, we have drawn on concepts provided by OECD¹, Council of Europe² and the European Commission³. The public sector elements of the framework comprise the constitutional arrangements, judiciary (including prosecution), parliament, political parties and party financing, political accountability and responsibility, policy and regulatory systems as well as the administrative elements -- particularly the public service and general administrative legal frameworks, external audit (including mechanisms to combat fraud), public procurement, public expenditure management systems, public internal financial control, policy-making and regulatory processes. These elements apply to all levels of the state, including municipalities and state-owned enterprises.

In this report, we assess how far institutional arrangements underpin, or undermine, integrity in parliament, the government (in its European continental meaning, i.e. the Council of Ministers as a constitutional body) and the judiciary. We also look at how political arrangements, especially financing of political parties and electoral campaigns, affect the integrity system. We then turn to national policies and institutions aimed at fighting corruption. Finally, we list the Serbian incorporation of the main international instruments for harmonising anti-corruption policies and legislation.

In other reports, we have assessed elements having an impact on the integrity framework in public administration. The separation is not clear-cut because of overlaps in certain aspects – for example, rules concerning asset declaration may address civil servants, judges and/or politicians in the same legal instrument. The public administration elements that we have assessed were selected by the European Commission. For Serbia we have produced assessments on: a) Public Service and the Administrative Legal Framework, b) External Audit, c) Public Expenditure Management, d) Public Procurement, e) Public Internal Financial Control, and f) Policy-making and Co-ordination. This report should be read together with these other assessment reports. However, because not all necessary administrative elements were selected for assessment, even the whole set of Sigma assessment reports does not constitute an assessment of the totality of the country’s integrity framework.

PRESERVING INTEGRITY IN PARLIAMENT

Inviolability of Members of Parliament and Parliamentary Immunity

Serbian legislation provides for dual protection of members of parliament: *non-liability*, i.e. non-accountability for votes cast and opinions expressed in the performance of their duties; and *inviolability*, i.e. immunity for acts which are not carried out in the performance of their duties. A principle of non-liability is elaborated in Article 103-2 of the Constitution, which states that a

¹ e.g. from OECD: Public Sector Integrity: A Framework for Assessment (2005); Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences (2003); Trust in Government: Ethics Measures in OECD Countries (2000); Ethics in the Public Service: Current Issues and Practice (1996)

² Twenty Guiding Principles for the Fight against Corruption, Resolution (97)24 of the Committee of Ministers of the Council of Europe of 6/11/97

³ The Ten Principles for Improving the Fight against Corruption in Acceding, Candidate and Other Third Countries which are contained in the Annex to the Communication of 28 May 2003 of the European Commission to the Council of the European Union and European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy against Corruption

Member of Parliament (MP) cannot be called to account in criminal proceedings, or detained or punished for an opinion expressed or a vote cast in parliament.

As regards the principle of inviolability, the Constitution grants immunity to MPs against instituting criminal proceedings or any other proceedings where a penalty of imprisonment may be pronounced (article 103). However, the scope of inviolability is restricted in case of *flagrante delicto* of committing an offence, carrying a minimum penalty of not less than five years, in which case a representative may be detained without the approval of parliament (article 103). Unlike non-liability, inviolability is effective only during the period of the parliamentary mandate and ceases to have effect after this period has expired. Parliament may decide to uphold the immunity of an MP who has not invoked his/her immunity if doing so would be necessary for the discharge of his/her office.

The procedure for lifting parliamentary immunity is regulated by articles 172 and ff. of the parliamentary Rules of Procedure (RP). The RP stipulate that a request to approve the remand in custody of a MP, or a request to approve the institution of criminal proceedings or other proceedings that may result in a sentence of imprisonment should be made by the appropriate body to the Parliamentary Speaker, who then forwards it to the Administrative Committee. The Committee is obliged to present its report, accompanied by its proposal, to parliament. If parliament does not grant its approval for the prosecution of the representative whose remand in custody has been ordered, the remand in custody is abolished, and the MP is released. As stated by the Constitution, parliament may also uphold the immunity of a representative who has not invoked his/her immunity, if doing so would be necessary for the discharge of his/her office of deputy. In this case, proceedings against the MP are suspended. If parliamentary immunity is lifted, there are no special rules that apply to the prosecution and trial of members of parliament.

Between February 2007 and March 2008, nine MPs invoked their immunity against prosecution charges. These nine MPs were altogether charged with 14 criminal offences, nine of which were libel cases for statements given to the media or in public meetings. One MP invoked his immunity because of criminal charges for the misuse of an official position and another was charged with falsifying an official document and entering into a damaging contract. Immunity was lifted in none of the above-mentioned cases.

It may be argued that the MPs' immunity for acts that are not carried out in the performance of their duties (inviolability) is rather wide, as it is restricted only in case of *flagrante delicto* carrying a minimum penalty of five years, which leaves significant space for MPs to "hide" behind their immunity.

There have been suggestions for reducing the scope of parliamentary immunity only for votes cast and opinions expressed in the performance of duties (non-liability). This proposal was supported by the Strategy for the Fight against Corruption,⁴ which recommended immunity restriction only for statements given and actions taken in the performance of duties.

However, since immunity rules are enshrined in the Constitution (article 103), it is not likely that they will be subject to change in the near or even distant future. Therefore, the only action that can be taken in this regard is raising the awareness of MPs to interpret immunity rules in a restrictive sense and lifting their immunity or that of their colleagues charged with criminal offences that are not directly related to the performance of their parliamentary tasks and duties.

The Venice Commission stated that "insofar as this Article 103 protects the free expression of deputies for words uttered within the National Assembly and in its precincts, it is desirable and necessary. The broader immunity of Deputies for any act committed is traditional in many democracies and has been regarded by the Venice Commission as still pertinent for new democracies where there may still be a risk of unwarranted prosecution of opposition members. In Serbia this risk seems at present remote."⁵ However, when the customary parliamentary practice is the non-lifting of

⁴ Strategy for Fight against Corruption, adopted by parliament on 8 December 2005

⁵ Venice Commission Opinion No. 405/2006, adopted at its 70th plenary session on 17-18 March 2007, CDL-AD (2007)004, paragraph 54.

MPs' immunity and when this practice is coupled with an already wide scope of immunity, the concern arises as to whether immunity rules are well established and serve their voiced purpose only or whether they also serve other less noble goals. This combination of elements may have serious consequences for anti-corruption purposes, as it conveys the feeling of corruption as being politically protected.

Remuneration of Members of Parliament

The remuneration of MPs is regulated by the Law on Salaries in State Organs and Public Services.⁶ Net basic salary is calculated by multiplying a coefficient determined by the law⁷ with the base pay, determined by the decision of the Administrative Committee of parliament.⁸ As all other public employees, MPs are entitled to a length of service supplement of 0.4% of net basic pay per year, subject in practice to a maximum of 16% for men and 14% for women. In addition to this supplement, MPs are entitled to a special supplement for an amount equivalent to 40% of the net basic salary.

When all supplements/allowances are added to the basic salary, the salary level of MPs is around 110,000 RSD (1160 EUR), which is the equivalent of four average salaries in Serbia. MPs' remuneration is subject to the same tax rules as those applying to other employees (employee tax in the amount of 12 % of total gross pay, and social contributions in the amount of 17.9% of gross pay to be deducted by the employer and 16.8% to be paid by the employee). MPs also have additional perquisites, such as free public transport in Serbia, daily meal allowance during parliamentary sessions (up to 5% of the average salary in the economy), paid hotel accommodation or apartment lease if the MP is not from Belgrade. Due to the deterioration of economic conditions in the country triggered by the world economic crisis, members of parliament have accepted to give up their daily meal allowance in order to make some savings in the budget.

Although salary levels of MPs have not been subject to an increase in the last couple of years, the level of their salaries is rather satisfactory if put in the context of the current Serbian socio-economic circumstances. MPs have on several occasions attempted to have their salaries raised, but the level of their salaries, established in 2005, has remained unchanged. This is due to strong reactions of the public and the media to any discussion on increasing the salary levels of MPs which, in the public perception, are already too high.

Conflict of Interest of Parliamentarians and Asset Declaration

Members of parliament are subject to regulations on asset declaration and registration prescribed by articles 12 and ff. of the Law on Prevention of Conflict of Interest in Discharge of Public Office.⁹ At the moment, the authority monitoring the asset declarations of MPs and other office-holders is the State Board for Resolution of Conflict of Interest, which was established in 2005.

Under the current legal framework, MPs and other officials are obliged to submit to the State Board for Resolution of Conflict of Interest, within 15 days of the day of election to public office, a report on their income and property and on the property of their spouse and lineal relatives by consanguinity, according to their property status on the day of election. The law also obliges MPs and other officials to submit, throughout their term in office, a disclosure report to the State Board annually, by 31 January of the current year for the previous year, and within 15 days following the end of their term in

⁶ Law on Salaries in State Organs and Public Services, *Official Gazette of the Republic of Serbia*, No. 34/01.

⁷ The coefficient for MPs is 8.6, for the Speaker of Parliament it is 12, and for deputies of the Speaker of Parliament it is 10.50.

⁸ The current base pay of an MP is 8824 RSD (around 90 EUR), determined by the Decision of the Administrative Committee of the Parliament on 3 February 2005.

⁹ Law on Prevention of Conflict of Interest in Discharge of Public Office, adopted on 20 April 2004, "Official Gazette of the Republic of Serbia" No. 43/04. This law will cease to be in force as from 1 January 2010, when it will be replaced by the Law on the Anti-Corruption Agency.

office, according to their status on the day of submitting the disclosure report. Finally, all officials are required to submit disclosure reports over the following two years, on the day of expiry of one year after submitting the previous report, according to their status on the day of submission of the disclosure report. All officials are also required to inform the State Board on any change in respect of the information recorded in the Property Register, resulting in an increase of property exceeding 20 average salaries in the month when the change occurred, pursuant to the latest published data of the Statistics Office, within 15 days of the occurrence of such a change.

Article 13 on the Content of the Disclosure Report sets out in detail the requirements for the declaration, which are as follows: 1) ownership rights on real property and lease rights on real property exceeding one year, at home and abroad; 2) movables under mandatory registration with government authorities (motor vehicles, vessels, aircraft, weapons, *et al.*); 3) deposits in banks and other financial organisations, at home and abroad; 4) stocks and shares in legal entities; 5) cash and securities; 6) rights deriving from copyright, patent and similar intellectual property rights; 7) debts (principal, interest and repayment period) and claims; 8) source and amount of income from discharge of public office and engagements in scientific, educational and cultural institutions; 9) public official's membership in management and supervisory boards in public enterprises, institutions and companies or other legal entities with state capital share, and scientific and humanitarian associations; 10) any other information deemed relevant by the public official for the application of this Law.

The only difference in requirements on asset declaration between MPs and other office-holders is that the disclosure report submitted by MPs, in addition to the above-mentioned information, also has to contain information on business entities where they have retained managing rights or where they are directors, deputy or assistant directors and members of management or supervisory boards. This is the consequence of the fact that MPs, unlike other office-holders, are allowed to take and keep positions in public enterprises, institutions and companies or other legal entities with a majority state capital share.

Incompatibility

The Serbian Constitution (Article 102-3) forbids MPs from being representatives in the Assembly of Autonomous Provinces or office-holders in executive bodies or in the judiciary. Although constitutional provisions seem to be rather straightforward, the question has been raised in practice whether an MP can concurrently hold a position as mayor in local government, which is the case of two Serbian MPs. It is interesting to note that the State Electoral Commission gave a positive opinion on this issue, claiming that it was possible for an MP to be a mayor in local government as it does not represent an executive body, but the Republic Board for Resolution of Conflict of Interest, in its opinion of February 2007, stated that there had been a conflict of interest in this case and recommended that all MPs who held mayoral offices resign. So far the two MPs who also hold the position of mayors in local government have not resigned from their mayoral positions, with the excuse that the final decision on this issue was to be decided by the Constitutional Court.

It should further be stressed that MPs are allowed to hold concurrently other responsibilities in the public or private sector. Article 10 of the Law on Prevention of Conflict of Interest in Discharge of Public Office stipulates that an MP may be a director or deputy and assistant director or member of the management or supervisory board of a public enterprise, institution or enterprise or other legal entity with a major state capital share, which is a privilege granted only to MPs and not to other public officials. The only limitation to this rule is the requirement that an MP may hold concurrently other responsibilities in only one institution of the public sector. The law also allows MPs to continue to exercise their management rights and to remain members of the management or supervisory boards in the private sector, provided that the nature of the activity of the business entity does not interfere with the MP's discharge of public office.

The new Law on the Anti-Corruption Agency¹⁰ of 27 October 2008 (to enter into force on 1 January 2010) provides, *inter alia*, for a new regulation of conflict of interest of public officials, which

¹⁰ Law on Anti-Corruption Agency, adopted on 23 October 2008, *Official Gazette RS*, No. 97/2008.

abrogates the Law of 2004 and prohibits the concurrent holding of two or more public offices of all public officials, including MPs. This is an important improvement to the current situation. The law, however, allows exceptions to this rule, in cases where public officials obtain the explicit –and rather discretionary – approval of the Agency.

Conclusions

Parliamentary immunity seems to be properly regulated in a comparative perspective, but the systematic reticence of parliamentarians to lift the immunity of their colleagues and of government members may constitute an abuse of the institution of immunity.

The finality of an incompatibility regime seems to be neither sufficiently understood nor well regulated, as MPs, unlike other office-holders, are allowed to take and keep positions in public enterprises, institutions and companies or other legal entities with a majority state capital share. The conflicts of interest and incompatibilities of MPs and government members is exceedingly lax and leaves many loopholes through which conflict-of-interest and incompatibility policies may be easily abused in practice. The recently passed Law on the Anti-Corruption Agency may have little impact with regard to politicians' conflict of interest, as it contains many exceptions to the general rules and the Agency itself may grant further specific exceptions *intuitu personae*, for which no legal criteria have been established and which therefore cannot be challenged.

POLITICAL PARTY AND ELECTORAL CAMPAIGN FINANCING

The main pieces of legislation regulating the activities of political parties are the following: Law on Political Organisations of 1990, Law on Financing Political Parties of 2003 and Laws on Electoral Campaigns for Electing Representatives (2000, amended in 2004), the President of the Republic (2007) and Local Self-Governments (2007).

Sources of Political Party Revenues and Ceilings in Campaign Expenditures

Electoral campaign expenditures are financed from public and private sources, both of which are subject to limitation. The limitation of expenditures is a function of the limitation of funds authorised to be gathered by political parties.

As regards public budget resources, the Law on Financing Political Parties, adopted on 18 July 2003, provides that budget appropriations to cover election campaign costs may amount up to 0.1% of the state budget (reduced for transfers to other levels of government and to social security and medical insurance funds), 0.05% of the territorial autonomy unit's budget (reduced for transfers from other levels of government), and/or 0.05% of the local self-government unit's budget (reduced for transfers from other levels of government) for the year for which the budget is passed. The law is supplemented by the rulebook adopted by the Ministry of Finance.

There have been proposals from some opposition parties to reduce the amount of 0.1% of the state budget for electoral campaign costs. However, given that the amount of the state budget is usually around 5-7 million EUR, when this amount is divided by the population size (around 7 million), it turns out that each citizen is paying approximately one euro for the electoral campaign, which does not seem to be overly expensive. Much more serious problems relate instead to the control of funds, especially of private donations and contributions.

Electoral campaign expenditures financed from the budget are equally allocated to the designated representatives of registered election lists and/or representatives of candidates in the following proportion: 20% within 10 days of the election list registration and/or confirmation of the list of candidates, while the remaining funds (80%) are allocated to representatives of electoral lists that have won seats, in proportion to the number of seats won or to the candidate who has won a seat, within 10 days of the proclamation of election results.¹¹ Such a distribution (20% plus 80%) has been

¹¹ Article 10, paragraph 1 of the Law on Financing of Political Parties, adopted on 18 July 2003, *Official Gazette RS*, No. 72/03, 75/03.

criticised, as it favours the larger parties, which are sure to pass the electoral threshold of five per cent. This enables them to enter into additional financial commitments and to take loans in order to obtain additional financing.

There is a possibility of reimbursement by the party of a portion of the electoral campaign expenditures if the budget funds allocated to a party or coalition for election campaign expenditures exceed the amount of funds spent for the election campaign up to Election Day. In this case, the difference is to be returned to the state budget and/or to the territorial autonomy unit or local self-government unit within 10 days of the date of payment of these expenditures.

One situation, which has occurred in practice, concerns a large number of small political parties, which apply for campaign expenditures just in order to obtain funds, without any intention of using these funds for political campaigning. Two key problems may be identified in this respect: the existence of too large a number of registered political parties at the moment (around 600), of which a large majority has tiny political support and inadequate control of electoral expenditures.

Significant proliferation of the number of parties is enabled by the current Law on Political Organisations,¹² which requires only 100 signatures for registering a political party. This problem is expected to be overcome by the adoption of the new Law on Political Parties, which is under preparation and which will require at least 5000 signatures for party registration. Furthermore, there are proposals in the draft law for the cancellation of a political party in case it does not pass, in two consecutive elections, the established electoral threshold of 5% of the total number of votes cast. It is expected that the passage of the draft Law on Political Parties will prevent the misuse of funds.

Donations and Private Financing

The total amount of private funds to finance electoral campaign costs cannot exceed 20% of the overall sum of the public funds allocated for the campaign (i.e. budget resources). This means that in practice the amount of the private funds allocated for an electoral campaign cannot exceed 1.4 million €.

The Law on Financing of Political Parties also prescribes that individual financial donations should not exceed 0.5% of the overall private funds intended to finance costs of an electoral campaign (article 11-3). As previously mentioned, the amount of private funds to finance costs of an electoral campaign cannot exceed 20% of public funds, which amounts to 1.4 million EUR. This means that the amount of an individual financial donation should not exceed around 7000 EUR.

As all donations have to be made to a special account, donors can be identified through the election campaign accounts and election campaign reports. However, political parties have been hesitant to reveal the names of (all of) their donors, either because the donors themselves want to stay anonymous or because the donors' contributions have not been collected in accordance with the election campaign financing rules. Financial reports submitted by parties to meet their obligations under party finance regulations therefore contain limited information about donors, and have not revealed links between financial contributors and particular policy decisions or contracts. Some parties have even claimed that they do not have any individual donors and that state funding covers all of their financial needs. There has been some speculation in the media (which may well be true) that the same people are financing most or all of the important political parties in order to ensure that their interests will be satisfied, whatever the outcome of the elections may be.

Legal persons are authorised to make donations, but their contributions may not exceed 2% of the funds collected from private sources (some 28,000 EUR). The authorised officer of a political party is required to issue a receipt for the contribution. The shareholders' assembly and managing bodies of the legal entity should also be informed of the contribution to a political party. Article 5, paragraph 3 of the Law on Financing of Political Parties requires a legal entity or natural person providing services or selling a product to a political party to make out an invoice to the political party, regardless of who is to be liable for payment for the services or product and/or regardless of whether the services were

¹² Law on Political Organisations, adopted in 1990, *Official Gazette RS*, No. 37/90, 30/92.

provided or the product was given free of charge. The Law on Financing Political Parties (article 6) prohibits political parties from accepting material and financial assistance from foreign states, foreign legal entities and natural persons.

The legislation does not forbid donations or contributions to foundations or other moral persons that could be owned by, or linked to, political parties.

Financial Reporting

There is an obligation for candidates to maintain campaign accounts. A representative of a registered electoral list and/or of a candidate is obliged to open a special bank account from which all funds intended for the costs of the electoral campaign should be paid and to which all payments of the election campaign should be made.

A political party or its representative is obliged to submit campaign accounts to the State Electoral Commission within ten days of the date of the election, although as from 1 September 2009 this competence is to be transferred to the Anti-Corruption Agency (Law on the Anti-Corruption Agency of 23 October 2008). The Commission then checks the data contained in the report within 90 days of receipt of the report. The Commission may also engage certified auditors to perform specific tasks to audit the accounts, but these have to operate on the data provided by the political parties, without further investigation because the Electoral Commission has limited investigative powers. The new Anti-Corruption Agency will somehow have more powers, although it will not investigate private donors. The report is published in the *Official Gazette of the Republic of Serbia* at the expense of the political party. The financial reports of political campaigns are deemed to be public documents.

The state does subsidize the regular work of political parties outside electoral periods, aiming to achieve a reasonable balance of political party financing from public and private sources. The Law on Financing of Political Parties (article 4) envisages that public source funds appropriated for the regular work of a political party whose candidates have been elected MPs are to be set at the level of 0.15% of the state budget (reduced for transfers to other levels of government and to social security and medical insurance funds), at the level of 0.1% of the territorial autonomy unit's budget (reduced for transfers from other levels of government) and/or the level of 0.1% of the local self-government unit's budget (reduced for transfers from other levels of government). The law further specifies that 30% of this amount shall be allocated in equal amounts to all political parties that have secured their representation in parliament or in local assemblies, while the remaining funds (70%) shall be allocated in proportion to the *number of mandates* that political parties have obtained in representative bodies. The ministry responsible for finance and/or the local self-government unit is obliged to transfer every month the proportionate part of the specified funds to the political parties before the 10th day of the month for the preceding month.

A political party is required to submit to the Finance Committee of parliament an annual statement and certificate by a certified auditor, as well as a report of all higher amount contributions (exceeding 6000 RSD – around 60 EUR) and a report on the property of the political party. The annual statement and reports are published at the expense of the political party in the *Official Gazette of the Republic of Serbia*. As from 1 October 2009, the Anti-Corruption Agency is to take over the Finance Committee obligation to collect reports on higher amount contributions and political party property. However, indirect donations to political parties through partisan foundations and loans to political parties are not reported.

Until the end of April 2009, only the Democratic Party had submitted its financial report for 2008, which has provoked controversy. The report contains the names of a number of relatively small companies, with only one to three employees or companies that are not registered in the Agency for Commercial Registers. This has again raised public concern about the inadequacy of the regulation and supervision of political party financing. This concern was further aggravated by the statement made by a former prominent member of the Democratic Party (who had been charged with financial embezzlement) to the effect that ruling coalition parties were financed from the funds of public enterprises, which are managed by party elites. On the positive side, it seems that public pressure to

make political party financing transparent is growing and that politicians have recognised the need to shed more light on this highly sensitive issue.

In the event of infringement of the rules on electoral campaign expenditures, the president of the Parliamentary Finance Committee, a public prosecutor or an aggrieved party may file charges with the Misdemeanours Court. Sanctions for infringement of the regulations are cash penalties amounting to between 100 EUR and 500 EUR for responsible officers in charge and between 2000 EUR and 10,000 EUR for political parties in breach of the provisions of the law. Furthermore, if a political party is effectively penalised for an offence stipulated under the Law on Financing of Political Parties, it may forfeit the right to receive public funds for the following calendar year. The decision in this regard is made by the Finance Committee and is published in the *Official Gazette RS*.

There has been a debate as to whether additional sanctions should be imposed in case of infringement of the rules on financing electoral campaigns, such as depriving political parties of their obtained mandates in parliament. However, Serbian authorities and the professional public have been of the opinion that these sanctions may not be suitable for the current Serbian circumstances, as there is a danger of misuse and manipulation of MPs' mandates, which would have serious consequences for an already complex election process.

The key problem, however, does not seem to be related to the inadequate sanctions envisaged for infringement of the rules for political campaign financing, but to the poor implementation of these rules. It is interesting to note that six years after passage of the Law on Financing of Political Parties and three extraordinary parliamentary elections (2004, 2007, 2008) no party has been penalised for infringement of the rules on political party financing. Neither the Finance Committee nor the State Electoral Commission has ever raised any issues regarding irregularities in the financing of political campaigns. The main reason for this may be found in the political composition of both of these bodies, whose members have most probably reached consensus on protecting each other with regard to the sensitive issue of political campaign financing.

It is expected that as from October 2009 the Anti-Corruption Agency will take over supervision of electoral campaign financing from both the State Electoral Commission and the Parliamentary Finance Committee. The government has taken into account the criticism of the Committee for the Fight Against Corruption and of civil society that neither the State Electoral Commission nor the Finance Committee is an independent oversight authority capable of guaranteeing the respect of the rules on electoral campaign financing. Therefore, it proposed amendments to the Law on Financing of Political Parties, which were adopted by parliament in December 2008. These amendments provide that, as from 1 October 2009, the Anti-Corruption Agency is to take over responsibility for reviewing the reports of the Electoral Commission on funds raised and spent during an election campaign, which is a positive development. However, it remains to be seen to what extent the Anti-Corruption Agency will be able to investigate the origin of financial resources used for political campaigns and to ensure compliance with political campaign financing rules. Once the State Audit Institution is fully established and becomes operational, it will also be able to examine election campaign accounts.

Conclusion

The main vulnerabilities to corruption concerning political party and electoral campaign financing stem from outstanding regulation loopholes, unclear legal definition of the scope of entities (political parties, electoral associations, etc.) and of the funds to be controlled, proliferation of practically unenforceable legal provisions, and especially very deficient control mechanisms, at both the regulatory level and the institutional level. Defective regulations and inadequate control bodies make real and effective control impossible. The newly created Anti-Corruption Agency will only partially contribute to solving the problem, as it cannot investigate private persons contributing funds to political parties or financing political activities.

ROLE OF PARLIAMENT IN COMBATING CORRUPTION IN GOVERNMENT

Political Accountability to Parliament

Integrity and corruption issues are often the subject of parliamentary discussion. However, these discussions rarely yield any concrete results. Usual practice is that opposition parties accuse the government of corruptive practices, which cannot be substantiated before parliament. Therefore, the parliamentary arena is used primarily as a means of political battle and fight for votes, especially as parliamentary sessions are directly broadcast by the public broadcasting company Radio Television of Serbia. Corruption issues were extensively debated, for example, during the parliamentary discussion on the Law on the Anti-Corruption Agency in December 2008, when opposition leaders accused the government of several cases of corruption. However, these debates and accusations did not influence the law-making process, simply due to the fact that the current government has sufficient political support in parliament. Discussion of the budget is also an opportunity to focus on integrity and corruption issues. However, the obligatory nature of the adoption of the budget is often used as a political means of threatening the government with dissolution and at the same time of testing whether the government has enough support in parliament.

The lack of a substantial effect of parliamentary debate on the resolution of corruption and integrity issues should perhaps not be surprising, given that MPs often do not have sufficient clout to make the government accountable, due to strong party control over MPs and the rather ineffective work of parliamentary committees. As in many other countries, parliament is de facto subordinated to political party leadership, which usually wield the executive powers. Therefore parliament may hardly exercise its institutional function of controlling the government. Article 102-2 of the Constitution was criticised by the Venice Commission for granting excessive power to political party leadership and, consequently, to the executive, to the detriment of parliament.

Parliamentary Inquiries, Questions and Interpellations

The government's and ministers' responsibility before parliament is enshrined in the Constitution. In accordance with Article 105 of the Constitution, parliament appoints the members of the government and decides on the termination of mandates of the government and ministers, i.e. parliament is constitutionally mandated to holding the government accountable for its operations. Furthermore, article 7 of the Law on Government prescribes that the government is responsible to parliament for the formulation and implementation of policies, laws and other general acts of parliament, for the state of affairs in all of the areas within its competence and for the performance of the organs of the state administration.

In reality, however, there is little scrutiny by parliament of the functioning of the government. This is primarily due to the already mentioned high degree of dependence of MPs on political party leadership and also due to the Serbian parliamentary tradition, rooted in the European continental mainstream, whereby MPs are primarily interested in the legislative process and are not accustomed to carrying out a substantive supervisory and scrutiny role with regard to the work of the executive. This is in contrast to the parliamentary tradition of Anglo-Saxon countries, where parliamentary scrutiny, by calling the government to account for its actions, is a key means of controlling the executive. Nevertheless, there are several instruments at the disposal of the Serbian Parliament for it to hold the government to account for its actions: the no-confidence vote, interpellation, posing questions to ministers, creation of special inquiry committees, and discussing reports submitted by the government and other bodies.

According to the Constitution a minimum of 60 MPs may initiate a motion of no confidence in the government or in a minister. A no-confidence motion against the government is successful if it is voted by the majority of votes of the overall number of members of parliament.¹³ A minister may also

¹³ Article 18 of the Law on Government, adopted on 22 June 2005, *Official Gazette RS*, No. 55/05, 71/05, 101/07.

be subject to a no-confidence vote and acquitted by the majority vote of the MPs¹⁴. A motion of no confidence in the government was initiated by opposition parties relatively recently, in November 2008, because of the disagreement over the establishment of the EULEX mission in Kosovo, but it was not successful as the government had sufficient political support in parliament.

The current 2006 Constitution established the institution of interpellation as a constitutional instrument for the first time. In accordance with article 129 of the Constitution, at least 50 MPs are required to submit an interpellation on a certain issue with regard to the work of the government or individual ministers. The government is obliged to respond to the interpellation within 30 days. Parliament debates and votes on the reply submitted by the government or by the member of the government to whom the interpellation was directed. By voting for the acceptance of the reply, parliament continues to work according to the adopted agenda. If parliament votes not to accept the reply given by the government or by the government member, parliament will then take a vote of no confidence in the government or in the government member. Although it was hoped that the constitutional establishment of the instrument of interpellation would contribute more dynamism to the work of parliament and increase the transparency and accountable operation of the executive power, the interpellation instrument has not fulfilled expectations and has so far never been used in parliamentary practice.

Another instrument for holding the government accountable for its actions is the posing of questions to ministers by individual MPs. This can be done in two ways: 1) by sending questions in writing to the government, and 2) by posing oral questions at special parliamentary sessions. The number of written questions submitted and the subsequent government responses is rather low. In principle, MPs from the ranks of ruling parties do not pose questions to MPs due to strong party control and under the pretext that parliament needs to work faster. Interestingly enough, the opposition also fails to ask questions, probably because it is used to receiving unsatisfactory replies, if any.

On a positive note, over the last few months parliament has started to organise special sessions during which MPs can pose questions to ministers (on every last Thursday of a month). Three such sessions have been organised so far. Although the results of these sessions are still unsatisfactory, the establishment of this practice is a positive innovation in parliamentary life, which may contribute to enliven democratic habits.

Parliament has also a possibility of setting up committees for special inquiries, but they are rarely created. These committees are formed on an *ad hoc* basis to examine specific cases and have the right to summon the civil servants involved in the case. Over the last couple of years only two *ad hoc* committees were established that were known to the general public: the Board of Inquiry for the Privatisation of the “Knjaz Milos” Enterprise in Arandjelovac and the Board of Inquiry for Establishing the Truth about Newly Born Babies from Maternity Wards of Several Serbian Towns, both formed in 2005. The work of these committees was given some attention in the media, but it was nevertheless still insufficient to provoke strong public debate on the issues. In general, Serbian parliamentary committee support services are weak, and their organisation is neither flexible nor adaptable to workload changes. Therefore, there has been unanimous consent across all political spheres that parliamentary committees need expert, specialised research assistance to fulfil their mandates as prescribed¹⁵.

Public Bodies Reporting to Parliament

Parliament has not established a practice of thorough or even regular use of reports submitted to it by other public bodies. The government submits annual reports on its work to parliament, which are regularly adopted. As for reports of other bodies, the parliament does not have a practice of discussing their reports at all, or at least no notice about that use has been heard of. Several examples may illustrate this point. For example, the State Committee for Resolution of Conflict of Interest has sent

¹⁴ Article 21, *ibid.*

¹⁵ Southeast Europe Parliamentary Program (SEPP), Parliamentary Centre, *Join Baseline Report on the Internal and Human Resources Management in the Parliament of the Republic of Serbia*, November 2003

to parliament its four annual reports produced so far and none of them has been discussed by parliament yet. No reports have been sent to parliament by the State Audit Institution, as it is not yet operational. Furthermore, up to now only two reports from the Ombudsman have been sent to parliament (as the Ombudsman institution became operational only in 2008), but they have also not been used yet by MPs.

Reasons for such a practice could be found in an unstable political situation (two extraordinary general parliamentary elections and a constitutional referendum have occurred in the last three years), a fairly heavy parliamentary law-making agenda, frequent obstruction of the work of parliament by opposition parties in the course of the last ten months and the above-mentioned tradition of the Serbian Parliament acting mainly as a legislator and to a much lesser extent as a scrutiniser of the government's operation. Moreover, it is important to take into account the fact that a number of MPs do not have sufficient experience of parliamentary operations. Approximately 80% of the current MPs in parliament obtained MP status for the first time within the past five years and in rare cases are they devoted entirely to parliamentary work, as they are allowed to perform various other duties, as indicated above.

It is expected that the gradual consolidation of democracy and of political parties will bring about more stable parliamentary membership, which will be better able to devote itself primarily to issues of parliamentary work and to build expertise on how to use the reports of other bodies and hold the government accountable for its work. It is also hoped that the new Law on the National Assembly, which is currently being prepared, will strengthen the scrutinising role of parliament.

The Law on the Anti-Corruption Agency of 23 October 2008 (due to enter into force on 1 January 2010) creates an Anti-Corruption Agency (ACA) reporting to parliament, justified on the grounds of article 6 of the United Nations Convention against Corruption (UNCAC), and also because its establishment has been required by the European Commission, despite the fact that the UNCAC may be implemented in various ways and through a number of different institutional models. The choice of a powerful central agency in which a significant number of powers are concentrated may be counterproductive, as shown by the already substantial amount of evidence gathered worldwide on the poor and problematic performance of specialised anti-corruption agencies monopolising all of the powers in this area.

Article 3 of the law states that the Agency is to be accountable to parliament, while at the same time indicating, in a quite confusing way, that it is "an autonomous and independent government body". It is not quite clear how will it be possible for the Agency to be an independent government body reporting to parliament and what the practical consequences of this contradictory legal nature will be. On the other hand, it is also not clearly understandable how the Agency will be able to control MPs if it is to be accountable to parliament.

The ACA Director has strong competences, ranging from issuing decisions on the violation of the law and pronouncing measures to passing general and individual acts, in addition to the usual management powers. However, quite unusually, the director represents the Agency by law, not by delegation of the board. Usually this should be the role of the board chairman. There is a lack of legal clarity, and this ambiguity could result in the Agency becoming subservient to the interests of the main political parties, in which case its proclaimed independence and autonomy would be just rhetorical.

The Anti-Corruption Agency will take in the responsibilities of the current State Board for Solving Conflicts of Interests in the Performance of Public Office, which was created in 2004 and started operations in 2005 as an autonomous and independent body. However, the Board was given no legal powers to sanction breaches of the law and could only issue declarative "shaming and blaming" public statements. At a first stage public officials tended to comply with the law in order to protect their political reputation, but this lasted only for a while, as the possibility of risking their political reputation lost little by little its power to give officials an incentive to comply with the law. Given the fact that the Board lacks any power, it has managed to stave off any political pressure on its operations, as few people have cared about its opinions. The Board nevertheless published two compendia on legal doctrine on incompatibilities. Some of its opinions have been incorporated in the new regulation of conflict of interest contained in the Anti-Corruption Agency Act of 2008.

The Commissioner for Free Access to Information of Public Importance created by the homonymous law of November 2004 started operations in 2005 with the mandate to protect citizens' access to public information. In 2008 the protection of personal data was added to the Commissioner's responsibilities, starting from 1 January 2009. The Commissioner points out in his 2008 and 2009 reports that "the effects of implementation of the Law on Free Access to Information would undoubtedly have been far better if only the competent authorities had been more willing to eliminate certain administrative and other obstacles impeding the implementation of the law. In order to convey a more realistic sense of the actual achievements, this report reiterates facts about key obstacles that significantly affected the implementation of the law, to which we have been drawing the attention of competent authorities for three years with little success" (page 19 of the 2009 report).

Among these obstacles, the Commissioner singles out the following: 1) failure to enforce the law and absence of liability for infringements; 2) failure to enforce the decisions of the Commissioner; 3) inadequate normative environment, with blatant inconsistencies between the Law on Free Access to Information of Public Importance (LFAIPI) and other laws and the fact that competent authorities seem unaffected by this lack of consistency of the legal system; 4) lack of relevant complementary legislation, such as a sound law on state secrets and confidentiality and sound legislation on data protection; 5) absence of sanctions for non-compliance with the law on access to information.

In spite of these shortcomings, one conclusion may be drawn from the 6000 odd cases dealt with by the Commissioner in the last four years and that is that the resistance to provide information originates in areas that are most vulnerable to corruption: privatisation, public procurement, political party donations, unjustifiable budget allocations, etc. Almost all corruption scandals that occurred during those years passed through this office. One example is the highway toll, which ended with the indictment of several high state officials. In the minds of citizens, the Commissioner is associated with anti-corruption, even if he has no formal anti-corruption mandate.

All observers conclude that the absence of an operational supreme audit institution is hampering anti-corruption efforts. The State Audit Institution was legally created in 2005, but is not operational yet.

The current Law on the Ombudsman predates the 2006 Constitution, as it was adopted in September 2005. According to provisions in the law, parliament was supposed to appoint the Ombudsman within six months of adoption of the law (i.e. by January 2006), but this appointment did not occur until June 2007, and the appointed Ombudsman took office in July. The expert service or secretariat of the institution was established in December 2007 and contains 39 staff on its staffing table, but it is not yet fully staffed. The institution is facing some additional difficulties in relation to its intended fast and steady capacity-building, as the four deputies foreseen in the law were appointed by parliament only in October 2008. Due its very nature, an ombudsman institution has powers only to recommend, not impose, measures or sanctions. The Ombudsman has no formal anti-corruption mandate, but may help to disclose corrupt situations.

Conclusions

The institutions reporting to parliament have only recently been established and are therefore still in a consolidating phase. They could have an impact on anti-corruption if parliament adopted a more proactive stance regarding reports and recommendations, which is not the case. The parliamentary tradition in Serbia, as well as in other countries, of little scrutiny by parliament of the functioning of the government makes it quite unlikely that parliament will use these institutions as parliamentary instruments to control the executive bodies of the administration. However, some of them may be very useful for citizens and for the media engaged in societal control of politicians. Moreover, parliamentary committees need more expert, specialised research assistance to fulfil adequately their mandates.

INTEGRITY IN GOVERNMENT

Remuneration of Members of the Government

The salary of a minister amounts to around 1400 EURO net. Ministers' remuneration is subject to the same tax rules as for other employees, namely an employee tax of 14% of total gross income, and social contributions are 16.8% of gross income to be paid by the employer and 16.8% to be paid by the employee.

Penal and Legal Accountability

The Constitution in Article 134 proclaims that members of the government enjoy the same immunity as MPs. Government members are also not accountable for opinions expressed at the government session or in parliament or for votes cast at the government session. Article 134 further stipulates that the government is authorised to decide on the immunity of members of the government. It should be noted that this provision is not in line with Article 105-7 of the very same Constitution, which proclaims that parliament is to decide on the immunity of government members.

Except for these inconsistent constitutional provisions, there are no detailed rules on the procedure for deciding on the immunity of government members, either in the Law on Government or in the Rules of Procedures of the government. Existing immunity rules do not apply to former government members. Several Serbian ministers of previous governments (Kostunica Government 2003-2007 and the subsequent Kostunica Government 2007-2008) have claimed immunity from prosecution, mainly on charges of libel, however.

Incompatibility of Members of the Government

The issue of conflict of interest for members of the government is regulated by the Law on Prevention of Conflict of Interest in Discharge of Public Office and in the Law on Government. Article 2 of the Law on Prevention of Conflict of Interest prescribes that an official may not be in any relationship of dependence with persons that could affect his/her impartiality, nor may he/she use public office to acquire any benefit or privileges for himself/herself or a related person. The Law on Government specifies that a member of the government may not occupy another public function in a state organ or an organ of an autonomous province, municipality, town or the city of Belgrade; may not engage in an activity that is, according to the law, incompatible with the function of a member of the government; and may not create a possible conflict between public and private interests¹⁶. There are no further specific regulations on conflict of interest for members of the government and politically appointed personnel.

Declaration of Assets by Members of the Government and Other Officials

There are no special regulations on assets declaration and registration for members of the government. Just like MPs and other officials, members of the government are obliged to submit to the State Board for Resolution of Conflict of Interest, within 15 days of the date of appointment to public office, a report on their income and property and the property of their spouse and lineal relatives by consanguinity, according to their status on the date of their election¹⁷.

Conclusions

A similar conclusion as the one reached concerning MPs (see above) may be applied to members of the government concerning conflict of interest, incompatibilities and immunities.

¹⁶ Article 11 of the Law on Government, adopted on 22nd June 2005, *Official Gazette RS*, No. 55/05, 71/05, 101/07.

¹⁷ Article 12, paragraph 1 of the Law on Prevention of Conflict of Interest in Discharge of Public Office, adopted on 20 April 2004, *Official Gazette RS*, No. 43/04.

INTEGRITY IN THE JUSTICE SYSTEM

Recent Legal Reforms

A package of laws on the judiciary and prosecutors was passed by parliament on 22 December 2008, and most of the laws will enter into force on 1 January 2010. The package of judicial laws includes the following: Law on the High Judicial Council, Law on Judges, Law on Organisation of Courts, Law on the State Prosecutorial Council, Law on Public Prosecution, Law on Seats and Territorial Organisation of Courts and Public Prosecutors' Offices, and Law on Amendments and Additions to the Law on Misdemeanours.

These laws are intended to organise the judicial system in a completely different way, according to the Ministry of Justice, and to improve the quality of the judiciary and enhance its independence. The reform establishes a Supreme Court of Cassation (highest court replacing the existing Supreme Court), appellate courts and an administrative court system, which subsequent regulations will develop. The existing 138 courts of general jurisdiction will be merged to form 34 basic courts, within which some degree of functional specialisation will be introduced; these basic courts will be supervised by a number of higher courts and appellate courts. As for special jurisdiction courts, the following have been created: commercial courts supervised by the Higher Commercial Court, misdemeanour courts supervised by the Higher Misdemeanour Court, and finally the Administrative Court. Appellate courts will hear appeals against rulings of basic and higher courts and administrative courts. A draft Law on the Judicial Academy for Judges and Prosecutors, which will replace the relatively poor judicial training system currently in place, is expected to be discussed in parliament as from June 2009.

Human Resources Management Practices affecting Judicial Independence

The 2006 Constitution has introduced important changes in the procedure for of the election of judges: when judges are to be elected to their position for the first time, the election is carried out by parliament, on the proposal of the High Court Council, a new independent judicial institution. After the election by parliament, judges do not enjoy tenure of office, but need to be reappointed to their positions by the High Court Council after a period of three years. As a result of these constitutional changes and the need to align the existing legislation with the Constitution, no single judge was appointed over the last two years, except for judges of the Constitutional Court. As indicated above, a new package of judicial legislation, aligned with constitutional provisions, was eventually adopted by parliament on 22 December 2008; this legislation provides a new basis for the appointment of judges.

According to the new legal framework, the key independent body for judges' appointment is the High Court Council. The Constitution defines the High Court Council as an independent and autonomous body that is to provide for and guarantee the independence and autonomy of courts and judges. The Council is to have 11 members: three *ex officio* members, the President of the Supreme Court of Cassation, the Minister of Justice, and the president of the authorised parliamentary committee, as well as eight members elected by parliament. Of these eight members elected by parliament, six are to be judges holding the position of permanent judge, one of whom is from the territory of autonomous provinces, and two members are to be prominent lawyers with at least 15 years of professional experience, one of whom is a solicitor and the other a law professor. The tenure of the appointed Council members is five years, while that of the *ex officio* members is linked to the duration of their respective mandates.

The Venice Commission, in its opinion on the Constitution of Serbia, was critical of these arrangements, describing the composition of the Council as flawed. It stated that at face value the composition seemed pluralistic, but that this appearance was deceptive, as all of the Council members were to be elected directly or indirectly by parliament and not by the respective institutions. The Venice Commission further noted that judicial appointments were under the double control of parliament, as the proposals for judges are made by the High Court Council, which is elected by

parliament, and the decisions for the appointment of judges are then again made by the parliament itself, which seems to be a recipe for politicisation¹⁸.

Effectively, at the end of March 2009, parliament elected five of the eight members of the first composition of the High Court Council (i.e. not its *ex officio* members). Although three prominent lawyers and one municipal court judge were proposed to parliament as candidates to become High Court Council members, sufficient parliamentary support could not be raised. This demonstrates, as the Venice Commission predicted, a rather significant degree of politicisation in the process of election of High Court Council members.

Currently, the key burning issue related to judicial independence is the process of re-appointment of all judges, as prescribed by the new Law on Judges adopted in December 2008.¹⁹ Although the Constitution proclaims the principles of judicial independence and non-removability of judges, Article 7 of the Constitutional Law on Implementation of the Constitution contains one disputed provision, which states that judges and presidents of newly established courts shall be elected no later than one year after the date of the establishment of the High Court Council. This provision has been subject to various interpretations as to whether it concerns only courts that are established for the first time or also courts that have been reorganised.

As the new Law on Organisation of Courts, adopted also in December 2008²⁰, envisages the reorganisation of the overall court network, the interpretation prevailing so far is the one held by the government, and subsequently by parliament, whereby all judges need to be re-appointed to their positions. This means that in practice all judges will have to apply anew for their current or other judicial positions and that the decision on their re-appointment will be made by the High Court Council, which is rather politicised. Although judges, particularly through the Association of Judges, continue to raise questions and concerns about the process of their re-appointment, the position of the executive and parliament remains unchanged, and the re-appointment process is to commence shortly. This situation makes many judges feel uncertain and vulnerable with regard to their position, thus undermining their feeling of independence.

The High Court Council will be responsible for determining the number of judges and for developing the criteria for the re-appointment of judges. However, it should be noted that since December 2008, well in advance of the establishment of the High Court Council (established on 30 March 2009), a working group under the responsibility of the Ministry of Justice and funded by the European Commission (consisting mainly of the current court's presidents) had already started to develop the criteria for the re-appointment of judges²¹, supported by the European Commission; this task was finalised in February 2009. Even if these criteria have only the status of a recommendation, this approach implies a certain – perhaps disproportionate – degree of encroachment of the executive in this re-appointment process, which legally is under the responsibility of the High Court Council.

The activism of the Ministry of Justice in this regard may pre-empt the implementation of articles 45 and 69 of the new Law on Judges, especially the interpretation of the vague notion of “worthiness of candidates” established in article 45, which the Ministry of Justice interprets as being linked to a fuzzy idea of ethical worthiness. This could be explained by the widespread feeling within the Ministry of Justice and elsewhere that the main problem of the judiciary is the judges themselves, as the judicial system has so far been incapable of facing up to organised crime and corruption and engaging in the protection of democratic values. Furthermore, the judiciary is regarded as one of the most corrupt institutions in the country. According to the Ministry of Justice, the challenge now is to strengthen the trustworthiness of the judicial system.

¹⁸ Venice Commission Opinion No. 405/2006, adopted at its 70th plenary session on 17-18 March, CDL-AD (2007)004, paragraph 70).

¹⁹ Law on Judges, adopted on 22 December 2008, *Official Gazette RS*, No. 116/08.

²⁰ Law on the Seats and Territories of the Courts and Public Prosecution Offices, adopted on 22 December 2008, *Official Gazette RS*, No. 116/08.

²¹ Ministry of Justice, Introductory on the Progress Achieved in Judicial Area in the Republic of Serbia, material obtained in April, 2009

Whatever the case may be, it would be judicious for the criteria for re-appointment to be well designed and agreed as much as possible with the judiciary so as to ensure procedural fairness and transparency. In this vein, all High Court Council decisions on judges' appointments should be motivated and accessible to the public. The decision on the number of judges should also be made with caution, taking into consideration the specific conditions that now exist in the country, because the demand for justice in a democracy will increase insofar as the trustworthiness of the judiciary also increases.

It should be noted that the independence of the judiciary has for some time been inappropriately undermined by the direct or indirect intrusion of the executive. One of the latest examples of the government's meddling in the judiciary occurred in early March 2009, when the State Secretary of the Ministry of Economy sent an official letter to the State Secretary of the Ministry of Justice, requesting him to instruct the judiciary to stall all employment-related lawsuits brought against private companies, in which employees claimed their due payments, in order to protect private companies from bankruptcy in this time of economic crisis. This request was then forwarded by the State Secretary of the Ministry of Justice to the President of the Supreme Court, who submissively sent it to all district courts, requesting them to distribute the executive request to municipal courts. After the scandal broke out, the State Board for Resolution of Conflict of Interest discussed the case and issued a recommendation that both the State Secretary of the Ministry of Economy and the State Secretary of the Ministry of Justice resign as they were in a position of conflict of interest. The government heard the recommendation of the State Board but decided not to follow it.

This sort of disrespect for judicial independence is likely to linger unless both the political culture and the mentality of judicial independence develop and become more robust by clearly embracing the values of democracy and the rule of law. It is also peculiar that the State Board considered the initiative of the two state secretaries as a case of conflict of interest, which obviously it is not, while considering that the attitude of the Supreme Court President did not deserve any public reproach.

Remuneration of Judges

The entry salary of a judge is equivalent to some 860 EUR a month. Judges' salaries, like the salaries of other public employees, increase yearly at the rate of 4% of the basic salary per year of service. This means that the salary of a municipal judge, after 10 years of service, would amount to 895 EUR, while if a judge obtained a higher position in the district court his/her salary would be equivalent to some 935 EUR.

Although the remuneration levels in the judiciary have substantially increased since 2001, it still does not seem to attract young professionals to become judges. To understand the scarcity of talented candidates in the judicial profession, in addition to the low pay are a low professional prestige, difficult working conditions, uncertain career perspectives, and allegedly political influence in recruitment and promotion. It should also be noted that a certain number of highly qualified judges left their positions for the political sphere or for better pay in the private sector, which raises serious concerns about the human resources conditions and management within the judiciary.

Integrity and Accountability of Judges

As indicated earlier, the judiciary is perceived as one of the most corrupt institutions in the country. According to the legislation in force up to 2008, judges' performance was relevant only for the promotion or dismissal of judges. This was done on the basis of records of statistical data and in accordance with criteria and indicators specified by the High Personnel Council of the Supreme Court, composed of nine judges of the Supreme Court. These criteria, however, were rather imprecise and incoherent, and the evaluation procedures were non transparent.

The new Law on Judges of 22 December 2008 should contribute to improving the situation with regard to the performance evaluation of judges. Under the new legislative framework, the work of all judges and of the court president will be subject to regular evaluation, involving all aspects of judicial

work, and will be the basis for the election of judges, their mandatory training, allocation of pay grades, dismissal, and disciplinary proceedings.

The Venice Commission positively assessed these provisions, stating that the procedure set out in the new law was transparent and fair and that it contributed to improving the quality of judicial services and to guaranteeing the professionalism of judges. The Venice Commission stressed, however, that an efficient performance evaluation system must be based on a clear definition of the goals to be achieved²². It should also be pointed out that the new Law on Judges does not yet define the criteria for evaluation. Development of these criteria will also be the responsibility of the High Court Council, which will have a delicate task in distinguishing between performance factors within the control of the individual judge concerned and external factors relating to the performance of the court system (such as court management issues, caseload per court, availability of competent assisting staff, etc.).

Prior to 2009, there were no disciplinary rules and procedures for judges, and this situation was identified as one of the key problems of judicial accountability. This issue has been addressed by the newly adopted Law on Judges (22 December 2008), which prescribes disciplinary rules and procedures. The new law defines disciplinary offences and severe disciplinary offences in a quite detailed manner. A considerable number of disciplinary offences relate to work performance (rather than breaching ethics rules or the obligation of impartiality), such as unjustifiable delays in the drafting of decisions, frequent tardiness for hearings, apparently incorrect treatment of participants in the proceedings and of court staff, and unjustified prolongation of the proceedings. Proposed bodies for conducting procedures are the Disciplinary Prosecutor and the Disciplinary Commission, the composition of which is determined by the High Court Council. Decisions of the disciplinary commissions will be subject to appeal to the High Court Council.

There are several ways in which citizens may submit complaints pertaining to the negligent performance of courts: to the respective court president, the Department for Supervision of Courts, misdemeanour organs and prosecutors' offices of the Ministry of Justice, and parliamentary committees dealing with complaints. The procedure for processing individual complaints is regulated by the Law on Court Organisation and the Law on Seats and Territorial Jurisdictions²³. If a complaint is filed to the court president, he/she is obliged to take the complaint into consideration and to inform the citizen who filed it whether the complaint is justifiable and which measures will be taken to remedy the contested behaviour. If a court president fails to respond, a citizen can file a complaint to a higher court, which is authorised to scrutinise the operations of the lower court. There is a special Complaints Service in the Supreme Court Secretariat, which receives a high number of complaints, usually concerning lengthy court procedures and responses to complaints from lower court presidents²⁴.

Citizens can also file a complaint for defective functioning of justice to the Ministry of Justice, in which case the ministry will carry out a review of the respective case and prepare a short report (minutes) on its findings, which is sent to the court president, the president of the higher court and the President of the Supreme Court. The court president is obliged to take the necessary measures proposed in the Ministry of Justice's report within 15 days of the submission of the report and has to inform the Ministry of Justice of the actions taken. This mechanism may jeopardise the independence of the judiciary, because it encourages the government's meddling in the functioning of the courts.

It seems that citizens are not well informed of the existing mechanisms of complaints for the defective performance of judges. This can be seen through the operation of the recently established institution of the Ombudsman, which in its first year of operation (2007) received a very high number of complaints (almost 50% of all complaints received) related to lengthy or unjust court procedures. However, as the Ombudsman does not have any authority with respect to the judiciary, all of these

²² Venice Commission Opinion no.464/2007, 19 March 2008, CDL-AD(2008)007, N.46ff.

²³ Law on the Seats and Territories of the Courts and Public Prosecution Offices, adopted in 2001, as amended on 22 December 2008.

²⁴ UNPD Serbia, *The Fight against Corruption in Serbia: An Institutional Framework Overview*, June 2007, p. 14.

complaints had to be rejected on the grounds of this lack of competence. In response to citizens, the Ombudsman's Office has indicated the institutions that are responsible for dealing with citizens' requests related to the work of the judiciary. In addition, the Ombudsman has met with the Ministry of Justice and the Supreme Court to inform them of citizens' concerns related to the operation of the justice system.

According to the Constitution, the state is liable for the defective functioning of all state bodies, including the judiciary. Article 35-2 proclaims that everyone has the right to compensation for material or non-material damage caused by illegal or irregular work of a state organ, holder of public authority, organ of local self-government or local self-government unit. A citizen can file a request for compensation with a court of first instance, which will decide in civil proceedings. However, since Serbia has become a member of the Council of Europe (on 3 April 2003), citizens usually lodge cases for defective functioning of justice with the European Court of Human Rights (ECHR). Up to now around 20 judgments have been made by the ECHR, and in most of the cases citizens had declared an infringement of Article 6 of the European Convention on Human Rights (right to a fair trial) and of Article 13 of the Convention (right to effective legal remedy); they have received compensation for defective functioning of justice.

Prosecutors

Apart from holding the accusatory principle in criminal cases, public prosecutors represent the state in cases initiated by means of extraordinary legal remedies in civil legal proceedings and administrative dispute proceedings before the Supreme Court and in extraordinary administrative procedure before second-instance administrative bodies. The State Public Prosecutor is the chief state prosecutor, whose office is the highest prosecutorial office. The Public Prosecutor represents the state in cases initiated by means of extraordinary legal remedies. The Public Prosecutor can also represent the state in appellate proceedings (for instance, in cases where district courts decide in the first instance). In accordance with the 2006 Constitution and the new legal framework, the Public Prosecutor is appointed for a six-year period and may be re-appointed. A candidate for the position is proposed by the government, recommended by a special parliamentary committee and then elected by parliament.

The 2006 Constitution introduced important changes to the manner of selection and appointment of prosecutors and deputy prosecutors. The Constitution prescribes that (similar to the election of judges) when prosecutors are elected to their positions for the first time, their election is to be carried out by parliament upon the proposal of a new body, the State Prosecutors Council. After a probationary period of three years, public prosecutors are to be re-appointed to their positions by the State Prosecutors Council. It is to be noted that the Constitution and subsequently adopted legislation have improved the position of public prosecutors by providing them with permanent tenure of office and therefore a reasonable degree of stability, which they did not have before.

Since the adoption of the Constitution in 2006, no elections of public prosecutors have been held, due to the need for the alignment of the legislation with the constitutional provisions. Legislation regulating the position of prosecutors was aligned with the Constitution by the adoption of the new Law on Public Prosecutors and the new Law on the State Prosecutors Council, which were adopted together with other judicial laws on December 2008; they will enter into force on 1 January 2010.

Article 146 of the Constitution defines the State Prosecutors Council as an autonomous body which shall provide for and guarantee the autonomy of public prosecutors and deputy public prosecutors. The Council is to be constituted of the State Public Prosecutor, the minister responsible for justice and the president of the authorised parliamentary committee as members *ex officio* and of eight electoral members elected by parliament. Electoral members should include six public prosecutors or deputy public prosecutors holding permanent posts, one of whom should be from the territory of autonomous provinces, and two respected and prominent lawyers with at least 15 years of professional experience, one of whom shall be a solicitor and the other a professor in the law faculty. Tenure of office of the State Prosecutors Council's members will be five years, except for the members appointed *ex officio*. The first State Prosecutors Council was elected by parliament at the end of March 2009.

The package of judicial legislation adopted in 2008 stipulates that an evaluation of public prosecutors' work will provide the basis for election, promotion and relief from duty as well as for the initiation of disciplinary procedures. Thus, the new Law on the State Prosecutors Council prescribes that, in proposing candidates for public prosecutor positions to the State Prosecutorial Council, consideration should be given to competence, qualifications and worthiness of the candidates as well as to the establishment of rules for the evaluation of their work expressed by means of grades. This is a positive development, although the concept of worthiness is vague and problematic.

Conflict of Interest of Judges and Prosecutors

General rules on conflict of interest have already been discussed in earlier sections on conflict of interest of MPs and government members. It should just be noted that in accordance with the new Law on the Anti-Corruption Agency, judges and prosecutors will also be subject to provisions on conflict of interest, which is not the case with the existing (as from April 2004) regulations on conflict of interest.

Conclusions

The judiciary is perceived as one of the most corrupt institutions in the country and as an obstacle to the development of the rule of law. A package of laws on the judiciary and prosecutors was passed on 22 December 2008, and most of the laws will enter into force on 1 January 2010. These laws are intended to organise the judicial system in a completely different way and to improve the quality of the judiciary and enhance its independence.

It should be noted that the independence of the judiciary has for some time been inappropriately undermined by the direct or indirect intrusion of the executive. This disrespect for judicial independence is likely to linger unless both the political culture and the mentality of judicial independence develop and become more robust by clearly embracing the values of democracy and the rule of law.

Although the remuneration has substantively increased since 2001, it still does not seem to attract young professionals to become judges. To understand the scarcity of talented candidates for the judicial profession, in addition to the low pay are low professional prestige, difficult working conditions, uncertain career perspectives, and excessive political influence in recruitment and promotion.

The new Law on Judges of 22 December 2008 should contribute to improving the situation with regard to the performance evaluation of judges. Under the new legislative framework, the performance of all judges and of the court president will be subject to regular evaluation, involving all aspects of judicial work, and will be the basis for appointment, mandatory training, allocation to pay grades, disciplinary proceedings and dismissal.

A positive new development is that in accordance with the new 2008 Law on the Anti-Corruption Agency (due to enter into force on 1 January 2010), judges and prosecutors will be subject to the same provisions on conflict of interest as any other public officials, which is not the case with the existing (as from April 2004) regulations on conflict of interest, which excludes judges and prosecutors from the scope of the law.

ANTI-CORRUPTION POLICIES AND ADMINISTRATIVE REFORMS

Legislative Activity against Corruption

A package of anti-corruption laws was passed by parliament on 23 October 2008, which includes the following: Law on the Anti-Corruption Agency, Law on Amendments and Additions to the Law on Financing Political Parties, Law on Seizure and Confiscation of Crime Proceeds (in force as from 1 March 2009), Law on Liability of Legal Entities for Criminal Offences, Law on Personal Data Protection and Law on the Recognition of the Additional Protocol to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The Criminal Code adequately describes the main corruption-related crimes, and it seems that the Criminal Procedural Code is also to be amended soon.

Anti-Corruption Policies, Administrative and Institutional Reforms

Anti-Corruption Strategy

The need for a comprehensive anti-corruption policy was addressed through the adoption of a National Anti-Corruption Strategy in late 2005. The Strategy comprises three key elements: a) efficient enforcement of anti-corruption legislation, b) prevention of corruption by reducing or eliminating opportunities for corruption, and c) awareness-raising and education of the general public aimed at strengthening public support for the implementation of the Strategy.

The main reform areas identified in the Strategy include the political system, judiciary and police systems, public administration, public finance system, economic system, media and participation of civil society in the fight against corruption. The objectives of the Strategy were to reduce corruption to levels comparable to those in neighbouring countries and to improve the overall efficiency of the public administration in order to facilitate economic development and foster foreign direct investment. The Strategy was operationalised through an Action Plan adopted in late 2006.

However, the implementation of the Strategy and Action Plan has not been smooth, mainly due to a lack of clear political commitment of the previous governments to pursue an anti-corruption agenda and because political attention was focused on other highly pressing issues (two general parliamentary elections and a constitutional referendum took place during the last three years).

Nonetheless, a number of measures have been taken in recent years to improve the performance of the police and justice authorities in charge of corruption cases. Key measures comprise strengthening of the institutional framework for the judiciary and the police and training of their staff.

Ministry of the Interior and the Police

With regard to the strengthening of the institutional framework, important improvements were made in the Ministry of Interior. The ministry has strengthened the capacities of a Special Police Unit for Combating Organised Crime/SBPOK (established in 2001), which has an Anti-Corruption Department. Furthermore, the Internal Control Sector (in 2007 the Office of the Inspector-General, established in June 2003 in the Ministry of Interior, was renamed the Internal Control Sector of the ministry), which has the powers to conduct investigations into alleged corruption and other misconduct of staff, has also been strengthened. In 2007, a Special Investigative Techniques Service of the Ministry of Interior was provided with additional technical and human resources (its staff was doubled). The premises for the Service were re-furnished and equipped so as to provide adequate working conditions.

Special Prosecutorial Department for Combating Corruption

In 2008, prosecutors' offices were also strengthened by establishing the Special Department for Combating Corruption within the State Public Prosecutor's Office. The department deals with corruption offences, including economic crime linked to corruption. The work plan of the Special Department for Combating Corruption includes specific measures to enhance co-operation between police and prosecutors. The department is also authorised to monitor the application of corruption-related provisions at local level in order to ensure uniformity and consistency in implementation, as well as to provide specialised assistance and expertise in the fight against corruption. Regional anti-corruption departments have also been formed in the District Public Prosecution Office of Belgrade, Novi Sad, Niš and Kragujevac. In order to promote the role of the Special Department for Combating Corruption, a series of roundtables are being organised at regional level with the assistance of the US Department of Justice²⁵.

²⁵ GRECO, *Compliance Report of the Republic of Serbia, Joint first and second evaluation rounds*, June 2008.

As regards the performance of the Special Department for Combating Corruption, it may be noted that between January and May 2008, this department was working on 345 corruption-related cases and provided advice and expertise to district and municipal public prosecutor's offices in relation to 212 matters.

Training of Judges on Anti-Corruption

A number of training activities on anti-corruption measures have been conducted by the Judicial Training Centre in recent years. In the course of 2005, the Judicial Training Centre organised special seminars for judges and prosecutors, attended by around 500 participants. The topics were: "Special investigative actions and the use of evidence" and "Measures in combating corruption". This practice was continued in the course of 2006, when the Judicial Training Centre conducted a number of anti-corruption seminars, which included topics such as "Challenges and good-practice examples in combating corruption, organised crime, money laundering and corruption".

Upon the adoption of the new Criminal Procedure Code in 2006, the Judicial Training Centre organised a number of seminars and training courses to build the capacity of judges, prosecutors and the police in the various phases of corruption cases. Furthermore, a number of projects (e.g. EU twinning project with Germany, PACO and CARPO projects of the Council of Europe) developed joint training to further encourage regular contact routines between police officers and prosecutors in respect of key actions to be taken during the pre-investigative phase of corruption offences (e.g. use of special investigative means).

In 2007 the Judicial Training Centre included the topic of combating corruption in its regular training programme for judges, prosecutors and police officers. A total of 1,835 participants attended the seminars, which included the following topics: "Investigation and investigative activities in combating corruption"; "Special investigative actions and the use of evidence gathered through special investigation actions"; "Investigation and investigative actions – Relations between the prosecution and the police"; "Challenges and good-practice examples in combating corruption in Serbia"; "Criminal offences against the economy and criminal offences against official duty"; "Organised crime and corruption". Similar training was also conducted in 2008. As indicated above, the Judicial Training Centre will be replaced soon by a Judicial Academy, within the framework of the current reform of the judiciary and prosecutors.

It is too early to evaluate the outcome of the measures taken to improve the performance of judicial and police authorities in combating corruption. However, overall, it may be concluded that the situation has somewhat improved, as a number of corruption cases have been investigated by the Ministry of Interior and processed by the prosecutors' offices and are being tried before competent courts.

One of the most important corruption cases that is being processed concerns the so-called "bankruptcy mafia". In April 2006, the police arrested the first nine of 34 persons charged with operating a lucrative scam which involved collusion of the 1) commercial court, which was deciding on the sale of insolvent enterprises below market value to associates in exchange for payment; 2) the partially state-owned Postal Savings Bank, which provided favourable loans to the same individuals to conclude the transaction; and 3) inspectors in the Ministry of Interior. Several high public officials were among those arrested, most notably the President of the Commercial Court in Belgrade, the directors of two banks, including the Postal Savings Bank, and an official from the Inspector General's Office of the Ministry of Interior. The indictment for this case, presented in October 2006, was one of the largest in Serbian judicial history to date. The Head of the Special Police Unit for Combating Organised Crime/SBPOK on one occasion explained that he believed that this case was an important achievement and that it demonstrated the improved capacity of the police and prosecutors to fight complex corruption cases²⁶.

²⁶ See M. Trivunovic, V. Devine, H. Mathisen, *Corruption in Serbia 2007: Overview of Problems and Status of Reforms*, CMI Report R2007:4, May 2007, p. 28. Available at www.cmi.no/publications

Although a number of corruption cases have come to light over the last couple of years, the perception of the public is that prosecution for corruption charges, especially in high profile cases, is rather selective and that decisions on which cases will be processed still very much depend on political pressure rather than on the incriminating evidence that has been gathered.

Local Self-governments

There has been progress at the local self-government level regarding enhancing integrity of public officials and increased transparency. Codes of ethics have been adopted in 150 municipal assemblies and in some 20 municipalities bodies have been established to take responsibility for the supervision of implementation of the ethics codes, consisting of local council members, NGOs and respected citizens. The overall impact of these measures has been positive. There have been a number of cases in which local office-holders abstained from participating in certain procedures or resigned from their functions in order to comply with recommendations of the ethics supervisory bodies that had disclosed a conflict of interest, especially with respect to public procurement procedures. There has also been an increase in transparency, especially with regard to the involvement of citizens in the preparation of local budgets, introduction of e-government in public procurement procedures, and establishment of 24-hour special telephone lines in some municipalities. Municipal ombudsman institutions established prior to the national ombudsman have contributed to the oversight of the administrative functioning of municipalities. The financial control of local self-governments is carried out by the Treasury in the Ministry of Finance. An association of local governments – the Standing Conference of Towns and Municipalities – has played an important role in enhancing the integrity framework at local level, by providing advice and assisting local governments in the above-mentioned activities.

However, in spite of all of these efforts, local governments are still highly susceptible to corruption, especially in the areas of urban planning and public procurement. One of the latest corruption cases involves the prosecution of local government officials in the city of Zrenjanin for irregularities in public procurement in the construction sector, which caused a loss to the local government budget of around 3.5 million EUR. The key accused person, the mayor of Zrenjanin, is a prominent member of the ruling Democratic Party. All of the members of the incriminated group were arrested on 1 October 2008.

Customs Administration

The Customs Administration has undergone important reforms aimed at reducing the level of corruption and bringing the border management closer to EU standards. Although the Customs Administration in the former Yugoslavia was a respectable state body, during the 1990s its prestige and integrity were significantly undermined, and it became one of the most corrupt institutions in Serbia. Since 2001 a number of measures have been undertaken in order to revitalise the institution and combat corrupt practices. More specifically, over the last two years, a 24-hour hotline was established to receive citizens' complaints. Although the call centre receives a significant number of complaints, only 7% of these complaints can be used for instituting proceedings against responsible officials²⁷. A Central Internal Control Unit has also been established, together with dislocated control units, within Customs Administration units. Customs unit heads are obliged to report to the Central Internal Control Department any detected irregularities; if they fail to do so, they could be subject to disciplinary proceedings. The Customs Administration has also created special control departments such as: customs investigation, intelligence control and ex post control units, which are in charge of ex post control of customs operations. Good co-operation has also been established with other bodies, such as the Ministry of Interior, prosecutors' offices and courts, especially with a special court for the fight against organised crime. Staff are customarily rotated between offices, not only at border-crossings but also between services within the Customs Administration. All of these efforts

²⁷ It should be noted that over the last two years around 100 customs officers have been charged with criminal offences.

have brought about positive results and have reduced the number of corruption cases in the Customs Administration.

Tax Administration

Some evidence does exist of bribes being given and taken in the Tax Administration, especially in the branch offices spread throughout the territory. Certain working procedures have been modified through administrative instructions and rulebooks in order to reduce opportunities for corruption, such as the requirement for any tax operation to be supervised by three persons. Other mechanisms have been established: a) a special working group under the Director General of the Tax Administration ensures administrative supervision, internal control of anomalies or illegal acts, and the initiation of disciplinary proceedings or the filing of criminal proceedings; b) strengthened co-operation with the Ministry of Interior (police) in the investigation of suspected individuals; c) amendments to the Tax Code prepared by the working group, which entered into force in March 2009. These amendments were aimed at increasing transparency and providing stricter rules on conflict of interest of tax inspectors, but due to the low salaries, more and more often tax inspectors are moving to the private sector, and no legal provision forbids tax inspectors from being employed by formerly inspected taxpayers.

Anti-Corruption Council

The first anti-corruption institution established after democratic changes in Serbia in 2001 was the Council for the Fight against Corruption. The Council was defined as an expert advisory body with the task of advising the government on preventive and repressive measures in the fight against corruption and of overseeing the implementation of these measures. The Council has raised important corruption-related issues and investigated a number of corruption cases, which has put it in a rather conflicting relationship with the government, which has not been responsive to its findings.

State Board on Conflict of Interest

The State Board for Resolution of Conflict of Interest was established in early 2005. The mandate of the Board is to maintain the Register of Property and Assets of officials and to decide whether an action or failure to act by an official constitutes a conflict of interest and violation of other provisions of the Law on Prevention of Conflict of Interest. The measures that the Board is authorised to impose consist of (a) confidential warning, not disclosed to the public, and in the case of non compliance, (b) public notice of violation of the law in the case of directly elected officials, or (c) public recommendation of dismissal for appointed officials.

Although the initial results of the Board's work have been encouraging, the lack of sanctioning power of the Board have to some extent limited its potential. At the beginning of its operation, the Board was faced with a number of cases of accumulation of functions, which were resolved through officials' resignations following the Board's public recommendations. The problem, however, was that officials would usually resign only three to six months after the Board's recommendation, which would allow them to continue acquiring substantial benefits in the time interval.

Anti-Corruption Agency (see also above)

Instead of strengthening the authority of the State Board for Resolution of Conflict of Interest, the government decided to create a new institution, the Anti-Corruption Agency. The legal basis for its establishment is provided by the Law on the Anti-Corruption Agency²⁸, passed by parliament in October 2008. According to the transitory provision of the Law on the Anti-Corruption Agency, the State Board is to continue to perform its functions only until 1 January 2010, when the new Anti-Corruption Agency will take over its responsibilities, caseload, databases and staff. The law

²⁸ Law on Anti-corruption Agency, adopted on 23 October 2008, *Official Gazette RS*, No. 97/2008.

contains new provisions on conflict of interest, which will also enter into effect on 1 January 2010, when the current Law on Prevention of Conflict of Interest will cease to be effective.

The Anti-Corruption Agency is envisaged to have up to 150 staff and should have a wide variety of competences, which include the current competences of the Board for Resolution of Conflict of Interest and the supervision of the financing of political parties. The Agency should have stronger sanctioning powers with respect to cases of conflict of interest²⁹ and, as mentioned above, will also be a key supervisory body in the area of political party financing. It is, however, questionable whether the Agency will be able to carry out all of its assigned tasks, especially before it has developed its operational capacities, which will require time. There are also concerns as to whether it is a good idea to create such a large body and to concentrate such a large number of responsibilities in one institution instead of distributing these responsibilities to a number of different, smaller-scale institutions, such as the existing Government Committee for the Fight against Corruption and Board for Resolution of Conflict of Interest³⁰.

With regard to the management of the Agency, key management bodies will be the Administrative Board and the director, who is to be appointed by the Board. It should be noted that on 18 March 2009 parliament elected members of the Administrative Board of the Agency.³¹ However, in spite of the fact that the government seems to be determined to establish the Agency and frequently emphasizes the importance of this institution, there has been a certain degree of uncertainty in the process of appointment of the members of the Administrative Board. One of the Board members recently resigned due to other commitments. It has, however, been emphasised in the media that no politics were involved in this decision. Two of the Board members are current members of the Board for Resolution of Conflict of Interest, which provides a certain degree of continuity in the work of these two institutions and is therefore a positive development.

Ombudsman

Although the Ombudsman is not an institution designed to combat corruption, the performance of this institution may increase transparency in the performance of public institutions and therefore may be a deterrent to corrupt practices in certain cases.

Two years after the adoption of the Law on the Ombudsman³², the Ombudsman's Office was established in mid-2007. Over the last two years, the number of complaints filed by citizens with the Ombudsman's Office has doubled, from 465 in 2007 to 1030 in 2008.³³ As mentioned above, a majority of these complaints is related to the operation of the judiciary – around 50% in 2007 and around 30% in 2008. However, as the Ombudsman is not authorised to deal with these complaints, citizens have been advised to refer their complaints to other competent bodies. The remaining complaints for the most part concern either a failure of the administration to act or lengthy administrative procedures. Around 30% of all administrative procedure complaints were related to the right to pension insurance and to proceedings against the Pension Insurance Fund. The Ombudsman

²⁹ The Agency will be able to also require officials to return all of the funds they had obtained during the period of accumulation of functions, which is not possible under the current legal framework. It is also interesting to note that the Law on the Anti-Corruption Agency prescribes criminal offences for the failure of a public official to provide data on his/her property or for the provision of false data with the intention to conceal the facts on his/her property, which carries a prison penalty for a duration of between six months and five years. See Article 72 of the Law on the Anti-Corruption Agency.

³⁰ M. Trivunovic, V. Devine, H. Mathisen, *Corruption in Serbia 2007: Overview of Problems and Status of Reforms*, CMI draft report, May 2007.

³¹ Nine members of the Board are elected by parliament following the nomination by the Administrative Committee of parliament; the President of the Republic; the government; the Supreme Court of Cassation; the State Audit Institution; the Protector of Citizens and Commissioner for Information of Public Importance, through joint agreement; the Social and Economic Council; the Bar Association of Serbia; the Associations of Journalists of the Republic of Serbia, in mutual agreement.

³² Law on Ombudsman, adopted on 14th of September 2005, *Official Gazette RS*, No. 79/05.

³³ There have also been around 2000 oral complaints from citizens.

has therefore established good co-operation with the Pension Insurance Fund and its 25 regional offices in Serbia in order to expedite pension insurance proceedings. A high number of complaints are also related to the work of the Ministry of Interior, especially the right to obtain personal documents, such as identity cards and new passports.³⁴ Up to now, the Ombudsman has prepared two annual reports – for 2007 and 2008 – which, as mentioned earlier, were sent to parliament but have not been discussed by MPs. In addition to its annual report, the Ombudsman is currently preparing a special report on the rights of the Roma in Serbia.

Commissioner for Access to Information of Public Importance and Personal Data Protection

It is also important to mention the Commissioner for Access to Information of Public Importance and Personal Data Protection, who is responsible for providing legal remedy to citizens whose rights of access to information have been denied and for monitoring the quality of information disclosed by public authorities. After some initial difficulties in establishing the Office of the Commissioner in early 2005, it is now operational and has achieved noteworthy results in disclosing individual corruption cases in the public administration. There was an obvious lack of support for the Commissioner's work in the first months after his appointment, but the Office of the Commissioner is now adequately equipped and staffed. The key problem faced by the Commissioner concerns the great deal of resistance of public bodies to provide the required information. This is the consequence of the traditional opaqueness of the public administration and the existence of illegitimate interests of public officials.

Notwithstanding all of the difficulties, the Commissioner has managed to establish his reputation as well as good relationships with citizens, who have helped him to reveal some substantial corruption cases, the most notorious of which was a scam carried out by toll officers on the Belgrade-Nis highway, who as employees of the public enterprise "Serbian Roads" were illegally charging up to 300 vehicles a day, mostly foreign trucks, and pocketed illegally huge amounts of money over the period 2004-2006. More than 50 toll booth employees were indicted for theft for a minimum of 6.5 million EUR.

Supreme Audit Institution

Finally, it should be noted that the key institution responsible for holding the government to account for spending taxpayers' money, the supreme audit institution (State Audit Institution), is still struggling to establish itself. Although the Law on the State Audit Institution was passed in 2005, the institution is not yet operational due to a lack of financial support, office space and adequate staff resources. The absence of an operational supreme audit institution represents a significant institutional gap in the accountability and anti-corruption framework, which needs to be addressed urgently.

Conclusions

The Anti-Corruption Strategy was adopted in late 2005, and a package of anti-corruption laws, passed by parliament on 23 October 2008, includes the following: Law on the Anti-Corruption Agency, Law on Amendments and Additions to the Law on Financing Political Parties, Law on Seizure and Confiscation of Crime Proceeds (in force as from 1 March 2009), Law on Liability of Legal Entities for Criminal Offences, and Law on the Recognition of the Additional Protocol to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The Criminal Code describes adequately the main corruption-related crimes.

A number of measures have been taken in recent years in order to improve the performance of the police in charge of corruption cases. Key measures comprise strengthening of the capacity of the Ministry of Interior (police) to combat corruption through a co-ordinated, specialised department under the responsibility of the Public Prosecutor, with intensified training of judges and prosecutors

³⁴ This was to be expected due to the recent introduction of new passport documents and the request that all citizens have to change their existing passports in the course of 2008 and 2009.

on anti-corruption, etc. Although a number of high-profile corruption cases have come to light over the last couple of years, the perception of the public nevertheless is that prosecution for corruption charges is politically selective.

Likewise, certain measures have been taken in the Customs and Tax Administrations to improve the resistance of these departments to corruption. Moves in the right direction are also observed in municipal administrations.

The long-awaited supreme audit institution (State Audit Institution) could play a significant role in the control of the use of public money, but it is not yet fully operational.

Especially important is the creation of the Anti-Corruption Agency, which will start operations at the beginning of 2010. Doubts nevertheless exist concerning the soundness of according responsibility for an important group of anti-corruption measures to a single, very powerful institution.

INTERNATIONAL CO-OPERATION AGAINST CORRUPTION

OECD Anti-Bribery Convention

Serbian authorities consider that Criminal Code provisions are aligned with the OECD Convention on Combating Bribery of Foreign Public Officials, even if Serbia is not a signatory to that Convention. Within the framework of a project dealing with combating economic crime in Serbia, the Ministry of Justice received an expert opinion on the Criminal Code and on the Code of Criminal Procedure from the Council of Europe, which analysed the extent to which the content of these laws was aligned with international standards in the area of fighting against corruption. The experts were of the opinion that the Criminal Code was in line with the OECD's Anti-Bribery Convention.

Council of Europe Conventions

With regard to conventions of the Council of Europe, the Criminal Law Convention on Corruption³⁵ was ratified on 18 December 2002 and the Additional Protocol to the Criminal Law Convention on Corruption³⁶ was ratified on 9 January 2008. The Civil Law Convention on Corruption³⁷ was ratified on 9 January 2008.

United Nations Convention against Corruption (UNCAC)

The United Nations Convention against Corruption (UNCAC)³⁸ was ratified on 20 December 2005. In fact, the Anti-Corruption Strategy was formulated in accordance with Article 5 of the UNCAC and contains all of the elements envisaged by the UN's manual for the technical implementation of the Convention. Furthermore, it was Article 6 of the UN Convention that was invoked as the legal mandate and conceptual basis for the creation of the Anti-Corruption Agency as an independent body tasked with preventive anti-corruption activities and responsibility for handling corruption issues in a comprehensive and systemic manner. However, as indicated above, there are other ways of complying with article 6 of the UNCAC that are less prone to promoting the emergence of anti-corruption overlords.

³⁵ Law on ratification Criminal Law Convention on Corruption, *Official Gazette of Federal Republic of Yugoslavia (FRY)*-International contracts, number 2/2002 and *Official Gazette of Serbia and Montenegro*-International contracts, number 18/2005

³⁶ Law on ratification Additional Protocol to the Criminal Law Convention on Corruption, *Official Gazette RS*, -International contracts, number 102/2007

³⁷ Law on ratification Civil Law Convention on Corruption, *Official Gazette RS* -International contracts, number 102/2007

³⁸ Law on ratification UN Convention against corruption, *Official Gazette of Serbia and Montenegro*-International contracts, number 12/2005

Progress has been made in implementing the provisions of international conventions in the area of anti-corruption to which Serbia is a signatory party, namely the UN Convention against Corruption (UNCAC) and the Council of Europe Conventions. Some of the provisions of these conventions have been implemented by the adoption of the Law on the Liability of Legal Entities for Criminal Offences, the Anti-Corruption Agency Law, and the Law on Seizure and Confiscation of the Proceeds of Crime. The Ministry of Justice is also involved in the UN pilot project on the self-assessment of the enforcement of the UNCAC. Serbia is also a member of GRECO (Group of States against Corruption of the Council of Europe), whose next compliance report is due in December 2009.

General Conclusions

Serbia has made important progress in improving the national integrity system since the beginning of the transition in late 2000. A number of anti-corruption laws have been passed and institutions established in order to create a more systematic framework for combating corruption. Several important integrity areas have been regulated for the first time: financing of political parties, conflict of interest, public procurement, access to information, transparency of government institutions. Furthermore, the capacity of enforcement agencies to investigate and prosecute organised crime and corruption is constantly increasing.

Although considerable efforts have been invested in the establishment of an anti-corruption climate, these efforts have still not yielded sufficient results, primarily due to weaknesses in the institutional system, which is still to be fully established. Critical general domains that need to be enhanced are as follows: improvement of law enforcement through the strengthening of institutional capacities of anti-corruption institutions, co-ordination of anti-corruption activities between various institutions, and creation of a uniformed approach to statistics on corruption.

More specific recommendations include the continuation of comprehensive reform of the judiciary aimed at strengthening judicial and prosecutorial professionalism, efficiency, independence and accountability. In this respect, it would be very important to ensure that judicial and prosecutorial re-appointments are merit-based, through transparent criteria and procedures elaborated in consultation with relevant stakeholders, including associations of judges and prosecutors. It would also be important to introduce transparency in the re-appointment process, by making all High Court Council decisions on the appointment of judges accessible to the public. Decisions on the number of judges should also be made with a high degree of caution and taking into consideration the specific conditions of a country where citizens will make more intensive use of the judicial system as the trustworthiness of the judiciary increases.

Finally, it is important to continue strengthening the capacity, professionalism and efficiency of the public administration so as to minimise corruption at both central and local self-government levels and to create a high integrity working environment that would meet the challenges of the EU accession process. It is important to invest further efforts in increasing the knowledge and capacity of civil servants, especially those in senior positions, to diagnose corruption and to design targeted remedies for corruption in each sector of the public administration.