



**SIGMA**

**Support for Improvement in Governance and Management**

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**SERBIA**

**ADMINISTRATIVE LEGAL FRAMEWORK**

**ASSESSMENT MAY 2009**

## 1. Summary

### 1.1 Main Developments since last year

The Law on Prohibition of Discrimination, passed on 26 March 2009 (*Official Gazette of the Republic of Serbia*, no. 22/09), establishes a Commissioner for the Protection of Equality. This piece of legislation is of poor quality, and it is doubtful whether it was actually necessary, given that the Constitution (article 21) already protects equality and that the Commissioner has been given weak executive powers.

A Law on Personal Data Protection, passed in October 2008, attributes the competence for data protection to the Commissioner for the Access to Information as from 1 January 2009 and renames the position as Commissioner for Information of Public Importance and Personal Data Protection. This approach may create difficulties and future conflicts, as the goal of access to information is diametrically opposed to the goal of personal data protection.

A new set of laws, adopted in December 2008, regulates the status, organisation and authority of the Public Prosecutor – Law on the Office of the Public Prosecutor, Law on the State Prosecutorial Council, and Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Office (*Official Gazette RS*, no. 116/08). The attribution of competence to the Public Prosecutor for the protection of legality outside the penal procedure seems to depart from European standards.

As part of the 2008 judicial reform package, the Administrative Court was established – specifically in the Law on the Organisation of Courts (*Official Gazette RS*, no. 116/08). However, the adoption of a new Law on Administrative Disputes was not included in that reform package; no reason was officially given for its exclusion.

### 1.2 Main Characteristics (strengths and weaknesses)

All administrative institutions are bound by the Constitution and laws and must observe the principle of legality in their decision-making processes. The rule of law is proclaimed by the Constitution as the fundamental principle of the state and contains sufficient guarantees that public authorities will be bound by law and will implement their competences as defined by and within the limits set out by law. Legal remedies are also constitutionally foreseen, although their development still needs to be improved in practice. However, the attribution of competence to the prosecutor for the protection of legality outside the penal procedure seems to depart from European standards.

The principle of equality before the law is also constitutionally proclaimed, although this principle is not always fully respected in practice. The recent adoption of the Law on the Prohibition of Discrimination has introduced new provisions for protecting the fundamental human right to equality but, given its poor legal quality, its effectiveness remains to be seen.

The supreme audit institution (State Audit Authority) is not operational. The nationwide Ombudsman is a very recently established institution and needs to be consolidated and strengthened. The institution is still little understood by the public and by politicians, and its standing could be diminished with the accumulation of various commissioners and ombudsman-like institutions across the country, often with overlapping remits and competences. The Commissioner for the Access to Information of Public Importance is becoming a key institution for ensuring transparency and accountability but lacks sanctioning powers; the combination of this competence with that of personal data protection is likely to damage effectiveness.

There is a gap between the existing system of liability for damages caused by public administrations in Serbia and common standards set in EU Member States, as laid down in national legislation or as defined by the case law of the European Court of Justice. European standards include state liability for damages caused in the case of lawful and regular operation of public services (objective or strict liability without tort), not only if that operation was irregular or illicit.

The procedure of judicial review of administrative acts in Serbia is only partially consistent with procedural standards derived from recommendations of the Council of Europe. The system remains

weak and cannot guarantee full and adequate protection of citizens' rights and legitimate interests from unlawful actions and decisions of state authorities and other public bodies; it therefore jeopardises the rule of law and legal certainty in administrative decision-making. The introduction of a proper administrative court system, envisaged by the 2008 package of laws on judicial reform, may improve the situation if adequate legislation on administrative disputes is enacted and correctly applied; without such legislation the administrative court cannot work.

In spite of the Law on State Administration, it seems that overlapping tasks and functions between various ministries and state administration authorities are common, which causes confusion in citizens' dealings with administrative authorities. The organisation of the administration seems to be excessively complex and confusing. Furthermore, public agencies in general are producing poor results and are in practice unaccountable to the government, as the accountability mechanisms established in the legislation are rarely applied in practice.

The internal administrative control based on administrative inspectorates seems to be rather formalistic and not concerned with results. Inspectors are only concerned with legality and procedural regularity, which is positive, but they could also be legally empowered and trained to assess the efficiency and effectiveness of public organisations and to evaluate the outcomes of public policies.

Public enterprises are frequently used to finance political parties and to sustain patronage networks, as they are outside the scope of the civil service legislation and are not controlled by the supreme audit institution (the State Audit Authority is not operational). The lack of clear and precise legislation with regard to salaries and bonuses of officials in public enterprises and the non-functional status of the State Audit Authority have often led to unmonitored spending of budget funds and partisan increase of salaries and financial bonuses for the top management.

Although progress has been made, the quality of legislation and regulation is poor.

### **1.3 Recommendations for Reform**

- 1. Respect for the principle of legality needs to be upgraded.** Although public bodies are bound by law in their decisions and activities, practice has shown that the observation of legality and equality before the law in administrative decision-making and administrative action needs to be upgraded. This could be furthered by modernising administrative procedures. The existing law needs to be updated so as to provide higher legal standards – by better balancing the protection of individual and public interests – and to attain a better alignment with European principles of administrative decision-making, especially in terms of a more solid legal certainty. A new law should also set the basis for the introduction of electronic administrative procedures and the transposition of certain principles, as required by the EC Directive on Services. Accountability and non-judicial control institutions need improvement and consolidation. Administrative justice needs to be better established and developed, and made more capable of protecting individual rights.
- 2. The quality of legislation needs improvement.** Strengthening the Council for Regulatory Reform and improving the training and co-ordination between bodies working on legislative projects are needed. The elimination of outdated regulations through a comprehensive regulatory revision would probably impact on the general quality of regulation in a positive way.
- 3. More transparency is needed in the state administration.** The situation with regard to free access to information, the lingering tendency towards secrecy in the public administration, and citizens' distrust in the administration all hamper the attainment of transparency in the public administration, despite the efforts of some leading public figures. A better regulation is needed to ensure transparency on the one hand and on the other to protect state secrets, personal data and confidential information so as to set a sounder balance between transparency and confidentiality in administrative action.
- 4. The organisation of the administration lacks clarity and accountability.** Agencies, as specific “ad hoc” organisational forms of administrative technical services, appeared in Serbia

after 2000, allegedly as an answer to the need for harmonising national legislation with that of the EU. In practice they were a political attempt to create a parallel state administration, which would be free of Milosevic's affiliates. Now it has become a maze of administrative agencies without clear accountability lines, which complicates significantly the state administrative organisation.

5. **Public enterprises should cease to be used to sustain patronage networks.** Tensions arise between political parties as they struggle to ensure that "their people" are appointed to senior management positions in public enterprises, since public enterprise top management is not appointed in public competition procedures but according to political party interests. This has opened a controversy on the remuneration of political officials and the financing of political parties.
6. **Local self-administration and decentralisation are hampered by the still unresolved issue of allowing local self-governments to own municipal property.** A Law on Local Public Finance was enacted in 2006 and came into effect in the 2007 budgets. There has been no substantial change in local government responsibilities since 2004. Municipalities retain a wide range of communal and utility services, but all property is owned by the state. A law establishing municipal rights to the ownership of property is still missing, which causes difficulties in the management of communal and utility services.

## Introduction

This report updates Sigma's May 2008 assessment report on the General Administrative Law Framework in Serbia. The general legal framework for the administration is comprised, first and foremost, of administrative law. We understand administrative law as a part of the national public law that regulates the powers, competences (responsibilities), organisation and functioning of public authorities or of the public administration as a whole. It is inspired by a constitution that promotes democratic values and respect for individual civil rights. Administrative law, which includes the general legislation on administrative procedures, regulates the relations established internally between administrative bodies and externally with other administrative bodies and the general public.

This assessment is a natural offshoot of the public service assessment because administrative law is the instrument used by civil servants to perform their obligations. Consequently, reforming the civil service without reforming accordingly the general legal administrative law framework would be an incomplete reform. The thrust of this assessment is thus to answer the following question:

***Do Serbian administrative practices and the legal administrative framework guarantee sufficiently the democratic principle of legality in administrative decision-making, and are they sufficient and appropriate to guide civil servants and public officials and to make them accountable for their performance?***

## Protection of Legality by the Law and in Administrative Practice

Article 1 of the 2006 Constitution declares Serbia as a state of Serbian people ruled by law and social justice, the principles of civic democracy, and commitment to European principles and values, thus amalgamating the notions of a civic democracy based on the individual citizen and an ethnic-based state ("the state of Serbian people and all citizens who live in Serbia") in a rather bewildering way, which counters the mainstream European understanding of liberal democracy based on individual rights rather than on ethnic or collective rights.

Article 198 states that "individual acts and actions of state bodies, organisations with delegated public powers, bodies of autonomous provinces and local self-government units must be based on the law" and the "legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessing before the court in an administrative proceedings, if another form of court protection has not been stipulated by law". Article 36 grants to citizens access to courts and other state bodies to seek legal remedy against any decision concerning their rights, obligations or lawful interests. Article 67 provides for the right to professional legal assistance under the conditions established by law.

Article 35 establishes the right of citizens to obtain compensation for material or immaterial damages inflicted by the unlawful or irregular work of a state body, entities exercising public powers, and bodies of the autonomous provinces or local self-governments.

Article 51 recognises the right to obtain accurate, timely and complete information on issues of public importance and imposes on the media (but not on state bodies) the obligation to respect this right.

Article 56 establishes the right to petition; it states that "no person may suffer detrimental consequences for opinions stated in the petition or proposal unless they constitute a criminal offense".

Article 136 declares that the public administration is bound by the Constitution and the law, and that it is autonomous, bound by the law and accountable to the government. Public administration affairs are the competence of ministries and other public bodies according to the law. The internal organisation of ministries and other public bodies is to be regulated by the government.

The law may allow for the delegation of public powers to the autonomous provinces and local self-governments (article 137) as well as to other public bodies or enterprises. Article 12 states that "the state power is restricted by the right of the citizens to provincial autonomy and local self-government" and only subject to supervision in terms of its constitutionality and legality. A

similarly unusual configuration of autonomy of provincial and local governments as a right of the citizens is stated in article 176.

The Constitution ensures legal remedies and judicial review of administrative acts by stating that: “everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations, or lawful interests” (article 36-2). “The legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessing before the court in an administrative dispute, if other form of court protection has not been stipulated by the Law” (article 198-2). The Ombudsman (Protector of Citizens) is given constitutional standing (article 138) to “monitor the work of public administration bodies”. Courts are excluded from the remit of the Ombudsman.

The Public Prosecutor is given the task of taking measures “to protect constitutionality and legality” (article 156), a responsibility that departs from the Council of Europe recommendation to the effect that the public prosecutor should be competent only in criminal cases<sup>1</sup>. Moreover, the possibility given to the public prosecutor to re-open a procedure on which a final administrative decision has been taken (see below) jeopardises the principle of legal certainty because that decision may be declared null and void *ex officio*. In addition, this responsibility is somewhat shared by the Constitutional Court (article 166), which is attributed by article 167 a number of functions that usually belong to administrative courts. The Constitutional Court may undertake actions on its own initiative (article 168), which is counterproductive, since it means giving to the Court an unwelcome legislative role and therefore unduly pushing it into the political arena.

The role of the Public Prosecutor in the protection of the principle of legality in administrative action is manifested through several modalities. The Law on the General Administrative Procedure (*Official Journal FRY*, nos. 33/97 and 31/01) states: “The Public Prosecutor and the Public Attorney, if empowered by law, may file an appeal against a decision violating the law to the detriment of the public interest” (article 213-2); “The Public Prosecutor may request reopening of procedure under the same terms and conditions as the party (article 240-4)”; “A decision may at any time be declared null and void *ex officio* or at the request of the party or the Public Prosecutor” (article 258-1); “The Public Prosecutor shall be entitled to submit a request for protection of legality against the decision adopted in an administrative matter where an administrative dispute proceeding is not allowed and court protection is not provided outside the administrative dispute proceeding, if such decision is deemed to violate the law” (article 252).

The Law on Administrative Disputes (*Official Journal FRY*, no. 46/96) prescribes: “An administrative dispute may be initiated by the Public Attorney or Public Prosecutor when the administrative act violates the law and produces damage to the state, unit of local self-government or organs or other legal person which he represents on grounds of the law” (article 2-4). Also, “against a final decision of the court which is not the highest court in administrative dispute proceeding, the Public Prosecutor may submit to the Supreme Court a request for protection of legality...” (article 20).

A new set of laws, adopted in December 2008, regulates the status, organisation and authority of the Public Prosecutor – Law on the Office of the Public Prosecutor, Law on the State Prosecutorial Council and Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor’s Office (*Official Gazette of the Republic of Serbia*, no. 116/08). The Association of Prosecutors of Serbia evaluated these laws as “successful”, but criticised the solution, which provided that a single negative mark could be used as grounds for dismissal<sup>2</sup>. In March 2009, the Serbian Parliament elected members of the State Prosecutorial Council.

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<sup>1</sup> Council of Europe Recommendation No. (2000)19 states that “public prosecutors are public authorities who, on behalf of society and in the public interest, ensure the application of the law where the breach of the law carries a criminal sanction, taking into account both the rights of the individual and the necessary effectiveness of the criminal justice system”. Implicitly this recommendation may mean that the public prosecutor should not be entitled to intervene outside criminal justice cases.

<sup>2</sup> [www.uts.org.rs](http://www.uts.org.rs)

Civil servants also have an obligation to protect legality in the performance of the public administration, as according to article 18 of the Law on Civil Servants (Law No. 79/2005), a civil servant is obliged to execute his/her superior's verbal order unless he/she deems that the order is contrary to the law or rules of the profession, or that its execution might cause damage. In such cases, the civil servant is to communicate this objection to the superior, and in the event that the superior re-issues the same order in writing, the civil servant must then execute the order and notify in writing the "principal" (secretary of ministry or director of the relevant authority). A civil servant must refuse to execute a verbal and/or written order that, if executed, would represent a criminal offence, and he/she must notify the head of the authority (principal) of the case in writing, indicating when the order was issued. However, given the authoritarian administrative culture that still exists in Serbia, it is unlikely that civil servants will have the resolve to object to the fulfilment of illegal instructions.

An adequate hierarchy of legal acts is contained in articles 194 and 195 of the Constitution, which is a key reference for promoting the principle of legality and the legal certainty of administrative decision-making.

### **Problem of Equality before the Law**

However, the notion of constitutionally guaranteed equality of every individual before the law and before the public authorities remains open to interpretation, as the ambiguous wording of article 1 on the "state of Serbian people and citizens living in Serbia" could open the door to ethnic or other kinds of discrimination.

Ordinary law may supplement these constitutional shortcomings. In this vein the recently adopted Law on Prohibition of Discrimination of 26 March 2009 (*Official Gazette RS*, no. 22/09) proclaims: "All are equal and enjoy equal treatment and equal legal protection, regardless of individual features. Everyone must observe the principle of equality and the prohibition of discrimination" (article 4). Discrimination is prohibited in all procedures before public authorities: "Everyone has the right to equal access and equal protection of his rights before the courts and organs of public authority. Discriminatory behaviour by officials and the responsible person in the organ of public authority is deemed as a serious breach of work duty, in accordance with the law" (article 15).

The Law on Prohibition of Discrimination was passed at the request, among others, of the European Commission, which in its 2008 Progress Report on Serbia (page 18) stated: "There is no general law against discrimination. Widespread discrimination is particularly noticed against the Roma community, persons with disabilities, against ethnic minorities and persons with different sexual orientation. The protection against discrimination in the labor market is also weak". In addition, the Council of Europe Commissioner for Human Rights complains in his 11 March 2009 Report on Serbia: "Serbia does not yet have a general anti-discrimination law covering all forms of discrimination, jeopardizing the effective protection of minorities and vulnerable groups" (page 3).

It is nonetheless disputable whether a general law like this one is the adequate policy instrument for combatting illicit discrimination and in fact whether this law was necessary at all, given that article 21 of the Constitution prescribes a general protection of equality: "Prohibition of discrimination: All are equal before the Constitution and law. Everyone shall have the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited. Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens shall not be deemed discrimination." Instead of adopting yet another new law, perhaps a better approach would have been to reinforce the mechanisms to ensure that the constitutional equality principle is more respected and more enforceable by reviewing, if necessary, the relevant sectoral legislation.

The creation of a Commissioner for the Protection of Equality (articles 28 and ff of the law) may convey the idea that ensuring equality before the law and respect of the right to equal treatment of all human beings is the responsibility of the Commissioner and not of all public – and private—

institutions in the country. In addition, the institution of the Commissioner largely overlaps with the competences of the Protector of Citizens (Ombudsman institution), which was created in 2005 and started its operations in 2008. However, some may unconvincingly argue that the Commissioner for the Protection of Equality is a hybrid institution, combining the authority of an administrative supervising agency (because it adopts administrative decisions and conducts administrative procedures) and that of an ombudsman (who is legally entrusted to provide protection from all forms of discrimination), while the authority of the Protector of Citizens (Ombudsman institution) focuses on protecting the rights of citizens vis-à-vis administrative agencies.

Whatever the policy case may be, this Law on the Prohibition of Discrimination is of poor quality and raises concerns about its usefulness. In addition, doubts do exist that this law will ever be implemented, as it creates a confusing set of responsibilities involving several authorities: a) A Commissioner for the Protection of Equality reports to parliament and has responsibilities overlapping with those of the Ombudsman. The Commissioner has weak executive competences, as he/she has competence only to recommend action to the relevant authorities, to attempt a reconciliation, to “name and shame” publicly the authority or the individual who committed the discrimination and to lodge a lawsuit on behalf of the party supposedly aggrieved by a discriminatory act. b) The Ministry of Human and Minority Rights has a vague responsibility for monitoring the implementation of the law. c) The courts have unclear roles for the time being, as they do not have full jurisdiction because, among other reasons, the administrative court system still has to be created and developed. In addition, article 45 contains a legally risky inversion of the burden of the proof, which could render an anti-discrimination lawsuit unfair to the defendant, who is obliged to prove that a discriminatory act has not occurred. The fines stipulated in articles 50 to 60 of this law will be difficult to apply, as their definition seems to be in itself discriminatory and is deficiently worded so as to probably render the penalisation unviable. In addition, it is unclear who has the competence for imposing fines, although from the context it seems that this competence lies with the same administrative authority that committed the discriminatory offence, which may be tantamount to allowing many discriminatory acts to remain unpunished.

***In conclusion, in the decision-making process, all administrative institutions are bound by the Constitution and laws and must observe the principle of legality. The rule of law is proclaimed by the Constitution as the fundamental principle of the state. The Constitution contains sufficient constitutional guarantees that public authorities will be bound by law and will implement their competences as defined by and within the limits set out by law. Legal remedies are also constitutionally foreseen, although their development still needs to be improved in practice.***

***However, the attribution of competence to the prosecutor for the protection of legality powers outside the penal procedure seems to depart from European standards.***

***The principle of equality before the law is constitutionally proclaimed, although this principle is not always fully respected in practice. The recent adoption of the Law on the Prohibition of Discrimination has introduced new provisions for protecting the fundamental human right to equality, but the effectiveness of these new legal provisions remain to be seen because of the poor quality of that law and other shortcomings explained above.***

***In summary, although public bodies are bound by the law in their decisions and activities, practice has shown that the observation of legality and equality before the law in administrative decision-making and administrative action needs to be upgraded.***

### **Ombudsman (Protector of Citizens)**

The Serbian Constitution of 1991 did not recognise the Ombudsman as having a constitutional standing. The 2006 Constitution recuperates that standing for the Ombudsman in article 138, where the “civic defender is described as an independent state body which shall protect citizens’ rights and monitor the work of public administration bodies, body in charge of legal protection of proprietary rights and interests of the Republic of Serbia, as well as other bodies and organisations, companies and institutions to which public powers have been delegated”. It is not allowed to monitor the work of

the National Assembly, the President of the Republic, the government, Constitutional Court, courts and public prosecutor's offices.

The Ombudsman, or Protector of Citizens, is appointed and dismissed by the National Assembly and is accountable to it. According to the Venice Commission of the Council of Europe, "it is regrettable that there is no protection of the Civic Defender [Protector of Citizens] against unjustified preterm dismissal by the National Assembly. While the Civic Defender [Protector of Citizens] should indeed present reports to the National Assembly, it seems questionable to state that the National Assembly supervises the Civic Defender [Protector of Citizens] (see Article 99) and that the Civic Defender [Protector of Citizens] shall account for his/ her work to the National Assembly"<sup>3</sup>, especially if this accounting for is understood as the possibility of early removal of the incumbent from office for reasons not foreseen in the law.

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 2007. 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 deputy Ombudsmen foreseen in the law were not appointed by parliament until October 2008.

The Ombudsman has jurisdiction in two main areas: human rights and the functioning of the administration in all areas dependent on the executive branch of the government; its remit does not include judicial offices. In addition, the Ombudsman decided on his own to initiate ten investigations – nine on human rights and one on corruption against the Direction for Common General Affairs under the Prime Minister. The Serbian population apparently had its doubts about the establishment of the Ombudsman institution, but the Ombudsman's Office hopes to progressively overcome this mistrust. However, the confusion that surrounds the institution may increase in the public eye with the creation in March 2009 of the Commissioner for the Protection of Equality. In fact the Ombudsman is currently preparing a special report on minority rights concerning the use of official languages, which could overlap with the competences of the above-mentioned Commissioner.

In 2008 more than 1000 written complaints were registered with the Ombudsman and some 2000 oral complaints. Approximately 30% of the total number refer to shortcomings in the public administration (lack of administrative response, lengthy procedures, pension rights, passports, identity cards, naturalisation, poor treatment in prisons, etc). The analysis of the citizens' complaints lodged with the Ombudsman should be a source of serious reflection on the social demand for administrative reform and also for judicial reform because, even if the Ombudsman has no competences for complaints against the judiciary, some 30% of the total number of complaints referred to the malfunctioning of the court system.

The Ombudsman's Office has temporarily overcome its capacity shortage by delegating certain cases to local Ombudsman institutions, appointed by cities/towns or municipalities (currently numbering 14); the Voivodina Ombudsman was appointed by the provincial assembly. The Local Government Act of 2002 provided the legal basis and the possibility for units of local self-government to establish a civic defender or ombudsman to protect individual and collective rights and interests of citizens and to conduct overall control of administrative functioning. This law envisages the possibility, not the obligation, of establishing civic defenders at local self-government level, but only if such an institution is considered to be necessary and if it is possible to be organised and financed. The institution of local ombudsman may add to the confusion with regard to bodies that are responsible for protecting human rights.

Constitutionally (article 138-1), the Republic's Ombudsman has the competence to monitor provincial and local government administrations. Legal regulations have not yet set out in full the relationship

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<sup>3</sup> See Venice Commission's *Opinion on the Constitution of Serbia*, Opinion No. 495/2006 adopted by the Commission at its 70<sup>th</sup> plenary session, Venice, 17-18 March 2007 [CLD-AD(2007)004, page 13].

between local self-government ombudsmen and the Republic's Ombudsman. Essentially they both have the same attributions, i.e. protection of human rights and supervision of the administration. Their work is complementary with regard to a violation of human rights at either local or state level. It is often impossible to clearly distinguish local violations of citizens' human rights if these violations are caused by decisions and actions of state administrative authorities<sup>4</sup>. There are real possibilities of mutual encroachment between ombudsmen at the various levels, and this problem has to be worked out carefully if these institutions are to perform smoothly.

In addition, another possible source of conflict has arisen concerning children's rights. According to the Law on the Ombudsman, one of the deputy ombudsmen is given the responsibility of protecting children's rights. However, a separate law on the establishment of a special ombudsman for children is now being drafted, with foreign assistance. This proliferation of overlapping institutions should be halted.

*The Ombudsman is a very recently established national institution and needs to be consolidated and strengthened. The institution is still little understood by the public, and its standing could be diminished with the accumulation of various commissioners and ombudsman-like institutions across the country, often with overlapping remits and competences.*

### **Commissioner for Free Access to Information and Personal Data Protection**

Article 51 of the Constitution recognises the right to obtain accurate, timely and complete information on issues of public importance and imposes on the media (but not on state bodies) the obligation to respect this right. Everyone has the right of access to information kept by state bodies and organisations with delegated public powers, in accordance with the law. On the other hand, while article 42 of the Constitution also guarantees the protection of personal data, its article 46 authorises the restriction by law of the right of free access to information when that restriction is required to protect, among others, "the morals of a democratic society and the national security of the Republic".

The Law on Free Access to Information of Public Importance (LFAIPI) has been in force since November 2004. This law gives any person the right to demand information from public authorities, including state bodies, organisations vested with public authority, and legal persons funded wholly or predominately by a state body. The request should be in writing, but if it is made orally, the public authority should record it and treat it in the same way as a written request. Public authorities are required to respond to a request within 15 days.

Access to information is restricted or limited in the cases described in article 9 of the LFAIPI. This includes the denial of the right to access if that access would "make available information or a document qualified by regulations or an official document based on the law, to be kept as a state, official, business or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh the access to information interest" (article 9-5).

Article 13 of the law confers a rather arbitrary power to public authorities by stipulating that "a public authority shall not allow the applicant to exercise the right to access information of public importance if the applicant is abusing the rights to access information of public importance, especially if the request is irrational, frequent, when the same or already obtained information is being requested again, or when too much information is requested".

To implement the right of access to information of public importance held by public authority bodies, a Commissioner for Information of Public Importance is established by the law (article 1) as an autonomous state body, independent in fulfilling its authority. Article 35 describes the competences of the Commissioner, who is to monitor compliance with the law, hear cases relating to denial of access to information, delays, excessive fees, and refusal to provide information in the form or language requested by the applicant. The Commissioner can also propose amendments to legislation and inform

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<sup>4</sup> See Dimitrijević, Predrag (2005), "Do We Need Local Ombudsman –Protector of Human Rights?" in: *Facta Universitatis*, Series Law and Politics, Vol. 3, No. 1, pp. 25–35.

the public of ways in which it can make use of the rights granted by law. The Commissioner's decisions are binding on public authorities. If the relevant body fails to release the information requested, the Commissioner can ask the government to enforce the decision.

The Law on Personal Data Protection of October 2008 attributed the competence for data protection to the same Commissioner as from 1 January 2009 and renamed the position as Commissioner for Information of Public Importance and Personal Data Protection. This approach, which follows a Slovenian model, may create difficulties and future conflicts, as the goal of access to information is diametrically opposed to the goal of personal data protection. Effectively, the Commissioner or a person specially authorised by the Commissioner, in order to establish the facts, is legally enabled to have access to personal data, data filing systems, and all documentation involving the collection of data and other means of processing information. This competence is limited only in the event that it seriously jeopardise the interests of national or public security, the country's defence, or actions to prevent, detect, investigate or prosecute a criminal offence<sup>5</sup>. Giving to the Commissioner or his/her representative the authorisation to consult personal data on the basis of the right of free access to information may counter the individual's right to privacy, which is protected by legislation on personal data protection. Only the personal discretion of the Commissioner can ensure a sound balance between the two, and this arrangement may make the whole system too reliant on the personal judgment of an individual.

The Commissioner published reports on implementation of the LFAIPI in March 2006, March 2007, March 2008 and March 2009. The Commissioner's Office is understaffed, although the budget allocation seems to be sufficient. The effects of understaffing have now acquired more seriousness with the new competences on personal data protection attributed to the Commissioner.

The decisions of the Commissioner may be appealed before the Supreme Court. Appeals of denials relating to the National Assembly, President, Cabinet, Supreme Court, Constitutional Court and Public Prosecutor are not allowed to be heard by the Commissioner because these institutions have a higher standing than the Commissioner. Appeals in those cases can only be made directly to the Supreme Court.

The Commissioner's 2008 and 2009 reports indicate 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 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.

Effectively, many procedural laws, including the Law on Criminal Procedure (*Official Journal FRY*, nos. 70/01 and 68/02 and *Official Gazette RS*, nos. 58/04, 85/05, 115/05, 49/07, 122/08 and 20/09), still contain provisions that effectively restrict access to information to certain persons (e.g. parties in the proceedings) or impose a requirement according to which a person has to demonstrate "justified"

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<sup>5</sup> According to the Report of the Commissioner, this limitation – set by article 45, para 2 – is contrary to the Council of Europe's *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data and Additional Protocol to the Convention*. A provision introducing restrictions in the authority of a competent authority that by definition is independent is an unprecedented solution in comparative law. Source: <http://www.escort.co.rs/poverenik/images/stories/dokumentacija-nova/izvestajiPoverenika/izvestaj-za-08en.pdf>

or “grounded” interest to access information. This is contrary to the provisions of the LFAIPI, which explicitly provides that “(...) it shall be deemed that there is a justified interest of the public to know, unless proven otherwise by the public authority” (article 4).

Other laws also contain restrictive provisions on the access to public information. For example, the Law on Police (*Official Gazette RS*, no. 101/05) and the Law on Tax Procedure and Tax Administration (*Official Gazette RS*, nos. 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 61/07 and 20/09), refer to the confidentiality of data. These provisions were intended to deny access to requested information by default even in cases when this was not justified under the LFAIPI, i.e. when there was no evidence that such an action was necessary to safeguard a legitimate interest and that disclosure of the requested information could result in severe legal or other consequences.

There is no specific law protecting state secrets, although the Criminal Code prohibits the disclosure of state secrets. This absence of a sound regulation presents no obstacle to the State Security Information Agency (BIA), which disputes the right of free access to information by administratively classifying documents as confidential on a discretionary basis. The legal situation is chaotic concerning the balance between administrative transparency and confidentiality or secrecy. Many disparate regulations still impose confidentiality obligations dating from the Milosevic and Tito eras. These regulations, which were mainly concerned with keeping state activities away from the public eye, are obsolete and represent an obstacle to the free access to information.

A priority should be the urgent adoption of a law on confidential data classification that would be complementary to the LFAIPI, as too many documents have been qualified as confidential. In the present legal system, there are over 400 regulations containing provisions related to the “secrecy” and classification of information. This significantly hampers the implementation of the LFAIPI and confuses the persons responsible for ensuring compliance with the LFAIPI.

The Ministry of Justice has formed a working group to prepare a draft Law on Classification of Confidential Data, which is not ready yet. On the other hand, a draft Model Confidential Data Classification Law, prepared by an NGO expert and supported by the Commissioner in the absence of initiatives from competent public authorities, was forwarded to parliament for approval in February 2009. There was a “scandal” related to this “model law”, as it was supported by over 35,000 signatures and submitted to the National Assembly in December 2007. The draft law was lost in the “administrative procedure”, but thanks to the inquiry of the Protector of Citizens (Ombudsman),<sup>6</sup> it was found and re-entered the parliamentary procedure in February 2009.

***The situation with regard to free access to information, the lingering tendency towards secrecy in the public administration, and citizens’ distrust of the administration all hamper the full implementation of the law. Transparency in the public administration has not yet been achieved, despite the efforts of NGOs and leading figures in the administration. A better regulation of state secrets and confidential information is needed to ensure a sounder balance between transparency and confidentiality in administrative action.***

### **Modernisation of Administrative Procedures**

The Law on General Administrative Procedures is based on the former Yugoslav law of 1986, which in turn was based on the Austrian law of 1925. Some changes were made when the Federal Republic of Yugoslavia passed a new law in 1997. This law was last changed in 2001, when the penalties regulations were amended. A wholly new draft was produced in 2004 and submitted for public consultation, but it was never tabled in parliament. Comments from various sources, including Sigma, were aimed at improving the draft and ensuring its alignment with European standards. At present amendments to the law, formulated by the government in January 2009, are pending the parliamentary procedure. These amendments do not deal with substantive issues related to administrative procedures but focus on terminology (e.g. article 20 of the amendments states that the term “federal or republic government” is to be substituted by the term “government”). However, one significant amendment

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<sup>6</sup> cf Regular Annual Report of the Protector of Citizens for 2008; source: [www.zastitnik.gov.rs](http://www.zastitnik.gov.rs).

(article 22) deals with the changed procedure of deciding the “request for the protection of legality”. It is unclear when these amendments will be passed.

Apart from the Law on General Administrative Procedures, numerous special material laws prescribe “special administrative procedures”, which make administrative decision-making confusing and hamper the principle of legal certainty.

According to the Law on General Administrative Procedures, “the legal provisions, which due to the specific character of administrative matters in certain administrative domains provide for the necessary exceptions to the rules of the general administrative procedure, shall comply with the basic principles specified herein” (article 3). These guarantees are provided through basic procedural principles, *inter alia*: the principle of legality in administrative decision-making; the principle of the protection of civil rights and the protection of public interest; the principle of efficiency; the principle of truth; the principle of conducting hearings; the principle of admission of evidence; the principle of autonomous decision-making; the principle of higher instance (the right of appeal); the principle of finality of decisions; the principle of cost-effectiveness and the principle of assistance to the parties (art. 5-15).

The existing law regulates the basic principles of administrative procedures, but it is rather complicated and creates lengthy procedures. In addition, as indicated above, there are numerous special administrative procedures regulated by special laws, which further complicate administrative decision-making processes and, more generally, adversely affect the transparency of public decisions. Moreover, several issues that are important for a modern administration are not regulated in the law, such as issues linked to electronic tools or certain legal constructs.

The law regulates, in special provisions, the “inspection of documents and information on progress of the procedure”, whereby “the parties with a legal interest have the right to inspect the case files and to write down or photocopy the necessary documents at their own expense. (...)The authority may request the requesting persons to provide a written or oral explanation of the existence of their legal interest. An appeal may be filed.” (article 70)

The law sets out an obligation of public authorities to inform the interested party of his/her right to appeal: “Written decisions shall contain the preamble, wording (text), rationale, notice of legal remedy, name of the authority, number and date of the decision, signature of the officer and stamp of the authority. In the cases provided for under the law or other regulation, decisions need not contain all of those elements.” (article 196). Moreover, the right to be informed of the right to appeal is ensured by the principle of assistance to the parties (article 15).

The Serbian administrative procedure applies the principle of double instance within the administration. Citizens have the right to request the review of an administrative act by a supervisory agency, and this review is also an essential precondition for filing an administrative lawsuit in court. Individual decisions or rulings of state administration authorities addressed to specific parties can be appealed and overruled through an internal timely recourse. If the decision was taken by a minister, the adjudication of the internal appeal belongs to the government. A consequence of this double administrative instance before going to court is that the subject matter of an administrative dispute is most frequently an administrative act decided in the second instance.

Nevertheless, an administrative act decided in the first instance may become final and as such constitute the subject matter of an administrative dispute if the petition to the second-instance administrative authority in specific matters is expressly precluded by law or if the rules of organisation of the agency whose administrative act is in question do not provide for administrative review.

***The 2004 draft Law on General Administrative Procedures of the former Federal Republic of Yugoslavia never managed to move beyond the status of draft law, although it had been earmarked by the Strategy of Administrative Reform to be adopted as part of the new set of laws. Although a draft was produced, and a public debate was held, the draft never made it to parliament.***

*The existing law needs to be updated so as to provide higher legal standards – by better balancing the protection of individual and public interests – and to attain a better alignment with European principles of administrative decision-making, especially in terms of more solid legal certainty. A new law should also set out the basis for introducing electronic administrative procedures and the transposition of certain principles, as required by the 2006 EC Directive on Services<sup>7</sup>.*

### Administrative Justice

The legality of individual acts of public and delegated authorities that impinge on rights, duties or “legally grounded interests” is always subject to judicial review (article 198 of the Constitution).

Currently the judicial review of administrative acts is carried out in accordance with the Administrative Disputes Act of 1996, which slightly amended the Act of 1952. The adoption of a new Law on Administrative Disputes was expected with the adoption of the judicial package in late 2008, but that reform was finally not carried out. No reason was officially given for this.

Within the Serbian legal context<sup>8</sup>, the term “administrative act” does not refer to all acts of public authorities, but only to individual acts: “Consequently, normative acts (rules), material acts, and contracts cannot constitute the subject matter of administrative lawsuits because they are not administrative acts by definition, even though they are acts of public administration. An unlawful material act of government administration or a contract may be challenged in a regular civil or commercial lawsuit. A normative act (rule) of the administration or some other government agency cannot be directly challenged in an administrative judicial action.”<sup>9</sup>

This notion of an administrative act that may be subject to judicial review departs from the recommended doctrine of the Council of Europe. Recommendation (2004)20 of the Council of Europe’s Committee of Ministers considers that it should be possible to challenge administrative acts – both individual and normative legal acts, as well as physical acts of the administration (*faits accomplis*) taken in the exercise of public authority – that may affect the rights or interests of natural or legal persons, including the refusal to act in cases where the administrative authority is under an obligation to implement a procedure following a request. These assumptions impose severe limitations on the possibilities for judicial control of the administration and hamper the legality of administrative action.

Judicial review applies the principle of double instance within the administration. Citizens have the right to have an administrative act reviewed by a supervisory agency of the second instance. Such a review is an essential precondition for taking an administrative dispute before the courts. An administrative act is subject to review in an administrative proceeding, but when such a complaint has not been filed within the statute of limitations, and if *restitutio in integrum* is not an option, the decision becomes final, since no administrative suit can be raised against it. As a result, the subject matter of an administrative dispute is most frequently an administrative act decided in the second instance. Nevertheless, an administrative act decided in the first instance may become final and as such may constitute the subject matter of an administrative dispute if the petition to the second-instance administrative authority in specific matters is expressly precluded by law or if the rules of organisation of the agency whose administrative act is in question do not provide for administrative review.

In addition, the current system assigns the judicial review of the administration to ordinary district courts, which are not specialised in administrative law. At the top of the system, the Administrative Chamber of the Supreme Court deals with the review of individual acts of the highest state administration authorities, and it is the Constitutional Court that deals with the review of acts of general application and regulations.

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<sup>7</sup> Directive 2006/123/EC

<sup>8</sup> See Vučetić, Dejan (2005), “Serbian Judicial Review of Administrative Acts and European Standards for Administrative Disputes” in: *Facta Universitatis*, Series Law and Politics, Vol. 3, No. 1, pp. 73-90.

<sup>9</sup> Vučetić, op.cit., page 75

At present, the bulk of administrative cases falls under the jurisdiction of the Supreme Court's Administrative Chamber. There are 15 judges and 15 advisers in the Chamber, and the influx of cases was 16,000 in 2006; 12,000 in 2007; and 10,035 in 2008. The Court solved 11,349 cases in 2008, which represents an average per judge of 58.79 cases in the year. The Chamber is organised in five panels of three judges each, deciding on general administrative law matters.

The most common cases concern the legality of final administrative acts issued by state administrative bodies in the first instance. The Supreme Court hears these cases in the first and final instances in a three-judge panel. An appeal against a decision in an administrative dispute is permitted only in exceptional cases. Such an appeal is heard by the Administrative Chamber in a five-judge panel. These proceedings are closed to the public, however, due to the complexity that a certain disputable matter may entail; whenever the Court finds it necessary, in order to have a better presentation of the facts, it may decide to hold a hearing.

The Supreme Court, represented by a three-judge panel, hears in the second instance appeals against judgments issued by district courts. A five-judge panel hears appeals on extraordinary legal remedies to review an already firm judgment. A special panel hears cases concerning conflicts of jurisdiction between panels on administrative disputes within district courts and litigation panels of district and municipal courts.

The judicial review of administrative decisions seems to focus on the correct application of legislation in the decisions made by the administration, but usually does not involve a full review of the factual basis upon which such decisions have been made. However, the court usually does not use this prerogative, but sends the case back to the administration, with the request for a new decision to be made in view of the court's opinion. Consequently, it may be said that the administrative justice system does not have full jurisdiction, except in some cases (when, for example, compensation for damages or restitution is sought simultaneously with the annulment of an act).

The current arrangements for judicial review of administrative decisions have many flaws: e.g. a too narrow concept of reviewable administrative acts; no full redress because courts have no independence in establishing the facts; the absence of an obligation to hold oral hearings on *ex parte* requests; or the absence of an obligation to publicise the decision. These flaws and some others render judicial review inadequate and severely weaken administrative accountability. They also diminish guarantees of adequate and just administrative decisions that respect basic democratic principles and individual rights.

This problem becomes even greater in view of the considerable room for administrative discretion that is recognised in general by the legislation. Together with unclear procedures and limited possibilities for appeal, this wide discretionary scope in legislation can easily lead to arbitrary decision-making in the administration, legal uncertainty and proliferation of corruption.

In any event, the 2006 Constitution (articles 166 and 167) further complicates judicial review – and also weakens constitutional justice – as it attributes to the Constitutional Court the protection of ordinary legality, which should be the competence of the administrative courts. The remit of the Constitutional Court should be confined to the protection of the constitutionality of laws and the conformity of their individual application with constitutional values.

The new Law on the Organisation of Courts (*Official Gazette RS*, no. 116/08) provides that one type of court of special jurisdiction is the Administrative Court: “The Administrative Court adjudicates in administrative disputes. The Administrative Court also performs other tasks set forth by law. The Administrative Court is established for the territory of Serbia with seat in Belgrade, but can have departments outside the seat.” (article 29, 13)

This new law also states that the Supreme Court of Cassation is the court of the highest instance (art. 12) and that it is the immediately higher instance to the Administrative Court. Misdemeanour courts also decide against decisions passed by administrative authorities in misdemeanour proceedings (art. 27). The Supreme Court of Cassation and the Administrative Court are to begin to operate as from January 2010. Temporary decisions on the internal organisation and job classification in the Supreme

Court of Cassation and in the Administrative Court are to be passed by the minister competent for the judiciary as from 1 September 2009.

***Likely impact on administrative justice of the package of laws on judicial reform passed at the end of 2008.***

At present, according to the still applicable (“old”) Law on the Organisation of Courts (*Official Gazette RS*, nos. 63/01, 42/02, 27/03, 29/04, 101/05 and 46/06), the determination of court jurisdiction in administrative dispute cases is ambiguous, as it is insufficiently and unclearly regulated. According to this law, court jurisdiction in administrative disputes is determined by the administrative agency that adopted the administrative decision. However, in reality this provision can refer to any of the following situations:

- determining jurisdiction in administrative disputes according to the administrative agency that adopted the administrative decision in the first instance (municipality, city, province, republic);
- determining jurisdiction in administrative disputes according to the administrative agency that decided the appeal against the administrative decision in the second instance;
- determining jurisdiction in administrative disputes according to the administrative agency executing the administrative decision; or
- determining jurisdiction in administrative disputes according to the subject matter in question (e.g. civil servant protection).

The largest number of dilemmas in determining administrative dispute jurisdiction refers to the cases of “entrusted tasks”. There are two modalities of “entrusting tasks” in deciding administrative matters: a) entrusting authority to decide in the first instance, and b) entrusting authority to decide in the second instance. The issue here is whether court jurisdiction is determined according to the administrative agency that entrusted the tasks, or according to the administrative agency to which the tasks were entrusted. In practice, the most disputed cases deal with jurisdiction regarding Belgrade City agencies and provincial administrative agencies. The Supreme Court adopted a legal opinion that “for jurisdiction in regard to processing administrative dispute cases against provincial administrative agencies, whose authority in the second instance is prescribed by law, the jurisdiction is with the district courts.”<sup>10</sup>

As indicated above, the new Law on the Organisation of Courts (*Official Gazette RS*, no. 116/08) will enter into force on 1 January 2010 (article 98). This law enhances access to justice in administrative disputes, as it provides that “courts of special jurisdiction are commercial courts, the Commercial Appellate Court, misdemeanour courts, the Higher Misdemeanour Court, and the Administrative Court” (article 11-4). By determining that the Administrative Court is the court of “special jurisdiction” for administrative disputes, the law resolves the previous dilemmas whereby courts (i.e. the Supreme Court or one of the district courts) had jurisdiction in administrative disputes.

As a mechanism of legal protection, the new Law on the Organisation of Courts introduces the possibility of appeal against court decisions in administrative disputes. At present, appeal of administrative dispute decisions is practically not applicable. This is the consequence of the dissolution of the Yugoslav Federation, the termination of the former Federal Court, and the de-activation of respective provisions regarding legal remedies of the (initially federal) Law on Administrative Disputes (*Official Journal FRY*, no. 46/96), which is still in force in Serbia.

Subsequently, at present there is no possibility of second-instance review of administrative dispute decisions (e.g. in rather numerous civil servant cases). This makes the current system of administrative disputes less efficient from the point of view of protecting rights. For example, the Law on Civil Servants (*Official Gazette RS*, nos. 79/05, 81/05, 83/05, 64/07, 67/07 and 116/08) provides

<sup>10</sup> George Šordan (retired judge of the Supreme Court of Serbia), *Some Open Issues of Court Jurisdiction in Administrative Disputes* (Neka sporna pitanja sudske nadležnosti u upravnom sporu), Pravni informator, [http://www.informator.rs/tekstovi/sporna\\_403.htm](http://www.informator.rs/tekstovi/sporna_403.htm)

that the protection of statute rights of civil servants be conducted in administrative dispute procedures before the Supreme Court, but as an appeal in these cases is practically impossible, the result is insufficient protection of statute rights of civil servants.

As administrative disputes in Serbia almost never result in court decisions of full jurisdiction, i.e. decision on subject-matter (only several such decisions can be found), and as civil servant statute rights' disputes by nature need to be decided in full jurisdiction, administrative justice in this regard needs to be upgraded to a higher level and made more efficient. On the other hand, civil servants in Serbia are in an enviable position compared to other employees for whom the Labour Law (*Official Gazette RS*, no. 24/05) and the Law on Civil Procedure (*Official Gazette RS*, no. 125/04) apply.<sup>11</sup>

In addition, the establishment of a specialised Administrative Court creates a pressure on judges to feel permanently obligated to enhance their professional capacities, in particular in the context of European legislation, so as to ensure that citizens have legal protection in their own country and do not have to refer their cases to respective European institutions (e.g. European Court of Human Rights in Strasbourg). It is seen as a negative mark for a judge if his/her rulings are quashed in Europe.<sup>12</sup>

***The procedure of judicial review of administrative acts in Serbia is only partially consistent with procedural standards derived from recommendations of the Council of Europe. The system remains weak and cannot guarantee full and adequate protection of citizens' rights and legitimate interests from unlawful actions and decisions of state authorities and other public bodies; it therefore jeopardises the rule of law and legal certainty in administrative decision-making. The introduction of a proper administrative court system, envisaged by the package of laws on judicial reform, may improve the situation if adequate legislation on administrative disputes is enacted and correctly applied.***

### **Accountability, State Liability and Compensation**

Concerning accountability, the existing legislation foresees the accountability of the bodies of the state administration – of the relevant minister to the government and of the government to parliament. To this end, ministries and special organisations all have to submit annual performance reports, giving an account of the implementation of their respective annual business plans, which are adopted in December for the following fiscal year.

The existing legal framework and the Law on Civil Servants regulate the accountability and direct liability of staff in the public administration. However, implementation of the accountability principle is still limited, as hardly any responsibility is delegated to the staff, i.e. the minister signs nearly everything and often takes responsibility for even routine decisions. Since staff are usually not empowered to take responsibility, it may take some time before they will think in accountability terms when preparing or taking decisions. Nevertheless, a recent amendment to the Law on Civil Servants (*Official Gazette RS*, no. 116/08) authorises the dismissal of a civil servant on the recommendation of the Protector of Citizens (Ombudsman).

Article 35 of the 2006 Constitution establishes the right of citizens to obtain compensation for material or immaterial damages inflicted by the unlawful or irregular work of a state body, entities exercising public powers, or bodies of the autonomous provinces or local self-governments.

Article 5 of the Law on State Administration states the liability of the state for damages caused to natural or legal persons by unlawful or improper operations of state administration authorities. The proceedings for recovery of damages caused to citizens or private legal persons by illegal acts or unlawful actions of public officials are decided, on the petition of the aggrieved party, by the regular

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<sup>11</sup> Goran Josifov (advisor to the Supreme Court of Serbia), *Judicial Labor Law Protection of Civil Servants in Administrative Disputes* (Sudska radno-pravna zaštita državnih službenika i nameštenika u upravnom sporu), Pravni informator, <http://www.informator.rs>

<sup>12</sup> Ljubodrag Pljakić (judge of the Supreme Court of Serbia), *Possible Internal Organization of the Administrative Court and Court Administration in the Republic of Serbia* (Moguća unutrašnja organizacija upravnog suda i sudske uprave u Republici Srbiji), Pravni informator. <http://www.informator.rs>

district courts that have competence in the location where the damage occurred. This damage is compensated by the state or local government whose official is deemed to be responsible for the damage. The municipal or district courts of general jurisdiction also decide on suits arising from contracts concluded between government administrative agencies and private physical or legal persons.

The aggrieved party has the right to claim compensation directly from a civil servant when the damages were caused by him/her intentionally or as the result of gross negligence. In such cases, after the state or local government administration has compensated the third party for the damages caused, the administration may then – within six months of the date of payment – reclaim compensation from the civil servant. Therefore, the state or local government is entitled to recover any compensation paid for damages from the person whose unlawful or negligent action caused the damages. Public officials discharging administrative duties are criminally liable before regular municipal or district courts, and can be prosecuted without any previous hierarchical permission.

*There seems to be some gap here between the existing system of liability for damages caused by public administrations in Serbia and common standards set in EU Member States, as laid down in national legislation or as defined by the case law of the European Court of Justice, which also include state liability for damages caused in the case of lawful and regular operation of public services (objective or strict liability without tort).*

## **Organisation of the Administration**

### ***State Government***

The government is fully subject to the Constitution and to the legislation adopted by the National Assembly, as stated in article 2.1 of the Law on the Government (*Official Gazette RS*, nos. 55/05 and 71/05), which predated the 2006 Constitution. According to this law, the government oversees the functioning of state administration authorities as well as the constitutionality and legality of “acts of general applicability” of autonomous provinces, local self-governments, and any other institution or body exercising public powers (by delegation from institutions of the Republic). The government is politically accountable to the National Assembly for the state of affairs and execution/implementation of laws in all policy areas under its jurisdiction, as well as for the performance of state administration authorities. A new Law on Ministries was passed in 2008 (*Official Gazette RS*, no. 65/08).

The Law on the Government was implemented by means of a number of organisational and functional regulations: Rules of Procedure of the Government, Organisation of the Cabinets of the Prime Minister and Deputy Prime Minister, General Secretariat of the Government, Office for Accession to the EU, Office for Co-operation with the Media, and other services of the government.

However, the actual implementation and compliance with these rules of procedure seem to be defective, especially with regard to the requirements and procedures to be followed for submission, discussion and approval of government decisions (bills of laws, by-laws, general acts and even singular decisions). Such requirements and procedures are circumvented when ministers want the government to adopt urgent decisions, a situation which seems to happen too frequently and has an obvious impact on the quality of decisions, both in formal terms and in terms of the proper assessment of the implications and impact of these decisions (see below under the section on quality of legislation).

### ***State Administration***

With regard to the state administration, the Law on State Administration (*Official Gazette*, nos. 79/05 and 101/07) sets forth the following “working principles” (articles 7-11):

- autonomy and legality: although autonomous in the execution of their tasks, state administration authorities are to act “within and in accordance with the Constitution, statutory

legislation (laws), other regulations and acts of general applicability and under the supervision of the government;

- expertise, impartiality and political neutrality, by providing for everyone's equal legal protection in exercising rights, obligations and legal interests;
- efficiency in dealing with parties' rights;
- balance (proportionality) and respect for rights, personality and dignity of parties;
- transparency (principles of publicity and free access to information).

Primarily, public administration in Serbia is regulated by the Law on State Administration. According to this law, the main organisational forms of public administration bodies are ministries, administrative organs within ministries, and special organisations. The Law on Ministries defines the number of ministries and special organisations as well as their scope of competence. Since July 2008 there are 24 ministries and 23 special organisations in Serbia. The state administration is considered as a direct administration exercising state powers and comprised of ministries, administrative authorities within ministries, and special organisations and administrative districts (article 1).

However, according to article 28, within a ministry there may be several administrative authorities with differentiated legal personality and autonomy (called "integrated authorities"), which causes confusion when considering the notion of a public agency regulated by a separate law. Integrated authorities are of three types, namely "authorities", "inspectories" and "directorates", with a bewildering attribution of responsibilities, which are set out in article 29. In addition to these authorities, there are "special organisations" (article 33), whose differentiated existence is justified by the need for "greater autonomy" than that required by an "integrated authority". A "special organisation" (article 34) may be a secretariat or bureau and may also have a differentiated legal personality.

The de-concentrated administration of the state is entrusted to the administrative districts in the territory (article 38 ff.), established by a decision of the government. The 29 districts are managed by a head and co-ordinated within the state administration and with local governments and provinces by an administrative district council (article 42), which includes the head of the district and the presidents of municipalities and mayors of the cities located within the district's territory.

According to the Law on State Administration, the competences or "domain" (area of responsibility, mandate) of state administration authorities are to be regulated by statute (article 2). The competences of the state administration are summarised as policy analysis and law-drafting, monitoring (inspection), and implementation of legislation, including adjudication of administrative decisions and issuing of administrative acts (article 17).

The law devotes a chapter (articles 45-50) to internal oversight and administrative inspection (see below) and to the monitoring of tasks delegated by the state, referred to as "conferred state administration tasks" (articles 51-57). The resolution of conflicts of attribution among administrative authorities is regulated in articles 58-60 and is attributed to the government. These articles also regulate the system of administrative appeals within the state administration.

Article 64 establishes the principle of compulsory administrative co-operation and information-sharing among administrative authorities.

The Law on State Administration was followed by the adoption of a number of by-laws: on Principles of Internal Organisation and Staffing of Ministries, Special organisations and Services of the Government; on Administrative Districts; etc.

### **Public Agencies**

Rules on the establishment and common legal regime of agencies are provided in a separate law (Law on Agencies, *Official Gazette RS*, nos. 18/05 and 81/05). Agencies are defined as organisations established to carry out developmental, specialised and/or regulatory tasks of public interest that do

not require a constant direct political supervision, provided that such tasks can be more efficiently performed by this type of organisation than by a state administration authority and in particular when the tasks can be entirely or mainly financed from the fees or charges paid by the users of the services rendered. The establishment of an agency with competences over the whole territory of Serbia must be authorised by an act of the government (article 8) and published in the *Official Gazette*. Sub-national governments (provinces and local self-governments) may also establish public agencies for the implementation of their own competences.

In the Serbian system of public administration, a distinction should be made between “administrative agencies”, “public agencies” and “special agencies”. The establishment of “administrative agencies” has its legal base in the Law on State Administration (e.g. Agency for the Protection of the Environment within the Ministry for the Environment and Area Planning). The establishment of “public agencies” has legal grounds in the Law on Public Agencies (e.g. Privatisation Agency). The establishment of “special agencies” has a legal basis in special laws (*lex specialis*), e.g. Law on BIA – Security Information Agency (*Official Gazette RS*, no. 42/02).

Agencies may be given the power to issue normative acts to implement primary legislation in the relevant area. They have their own separate legal entity. The rules related to the state administration apply to a public agency with regard to legality of its operations, professionalism, political neutrality, impartiality and other aspects (use of official language and script, etc.). As public entities, public agencies are entrusted with certain public administration authority, but they are not state administration organs. Public agencies are autonomous in their work and the government cannot directly instruct them.

The Law on Agencies foresees all necessary mechanisms for ensuring the accountability of an agency to the founding state or local administration authorities, as well as oversight of its functioning and performance. This oversight is carried out in principle through a supervisory system for the appointment and dismissal of members of the management board and the director and through the approval of annual action and financial plans. Public agencies should be publicly accountable to customers and users of their services, and transparency in the work of public agencies should be one of the main elements of their public accountability. In practice, however, the situation is quite different, as explained below. A number of pre-existing organisations are now ruled by this law (Privatisation, Development of SMEs, Tobacco, Spatial Planning, Commercial Registries, Medications and Medical Equipment, etc.).

Agencies, as specific “ad hoc” organisational forms of administrative technical services, appeared in Serbia after 2000, allegedly as an answer to the need for harmonising national legislation with that of the EU. The term “agency” was used to distinguish them from other administrative services, as they differed in terms of the tasks they were to perform, i.e. technical tasks without political supervision (i.e. “at arm’s-length from the government”).

At the beginning, the largest number of agencies was established in the form of administrative services, and subsequently some of these services were set up as either a) “agencies”, i.e. special organisations performing technical tasks related to the promotion of development in certain fields, or b) “public agencies”, which on the basis of special legislation, apart from performing technical tasks in certain fields, were entrusted with performing particular administrative tasks. Public agencies were also supplied with concrete authority to enact regulations as well as individual decisions.

A number of agencies have not achieved the aims for which they were established (as was the case of the Agency for the Development of Local Self-Government Infrastructure and the Agency for Energy Efficiency). The poor results of some agencies may be due to the “artificial” detachment of a narrow segment of administrative tasks from the ministries to special organisational forms, the unsatisfactory communication of the agencies with their parent ministry, and the general lack of supervision. The poor results of the agencies may also be the result of the failure of ministries in policy formulation and drafting legislation.

### ***Administrative Inspectorate***

The Law on State Administration contains a chapter on internal oversight. In this chapter, a distinction is made between “supervision of work”, “inspectoral control” and “other forms of supervision regulated by a separate statute”. Supervision of work – the sole form of internal control regulated in this law – has two main modalities: legality (compliance with and adequate implementation of laws and regulations pertaining to the service) and “purpose”. The second modality aims to assess the “efficiency, cost-effectiveness and purposefulness” of the organisation of business and of decisions. Ministries are mainly responsible for both types of supervision with regard to integrated authorities and, if so established by law, to special organisations as well.

Specifically, the internal supervision of the work of the administration is addressed in article 45 of the Law on State Administration. “Inspectoral control” is to be regulated by a separate law, which has not yet been enacted. However, an Administrative Inspectorate has been in operation since 1995, first within the Ministry of Justice and since 2003 within the Ministry for State Administration and Local Self-Government. Inspectors are not concerned with internal financial control or with ensuring the quality of public services, but only with the regularity and legality of administrative operations. Inspectors act according to an annual inspection plan, but may also act upon the request of a citizen or civil servant.

There are two administrative inspectors, based in Belgrade, who inspect all authorities of the central government and 15 other authorities, covering two districts each. The competence of the Administrative Inspectorate embraces all public administrations (state and local administrations as well as judicial offices). These inspectors examine compliance with existing laws and regulations and the proper application of the Law on Civil Servants and the general Labour Law, the use of the official language and script, the use of the state stamp/seal, the electoral census, etc. Each inspection activity must result in minutes, which could contain, inter alia, a list of measures that the inspected state or local authority must take to rectify the irregularities that have been found. The Inspectorate is also competent to inspect court offices. The Administrative Inspectorate reports to a deputy minister of the Ministry of Public Administration and Local Self-governments.

Heads of offices are personally liable to comply with the Inspectorate’s requirements. Non-compliance is administratively described as an abuse of power and may lead to a criminal offense (articles 359 and 361 of the Penal Code). Inspectorate minutes constitute presumptive evidence in court cases.

Ministries and other central administration bodies do not have specific internal inspection services or units. Only the city of Belgrade has its own administrative inspectorate, which performs its functions with total separation and independence from the state inspectorate. There is usually co-operation between the Administrative Inspectorate and other state bodies, such as the state Ombudsman or existing municipal or provincial ombudsman institutions.

### ***Public Enterprises***

Public enterprises are regulated by the Law on Public Enterprises and Performing Activities of General Interest (*Official Gazette RS*, nos. 25/00, 25/02, 107/05, 108/05). The activities of public enterprises are autonomously regulated by their internal decisions – statutes and other documents (article 17).

The appointment of directors and members of the management board of the most significant public enterprises was in the spotlight of public controversy in 2008. The director (article 12) and members of the management board of public enterprises (article 14) are appointed by the founder (e.g. the republic, city, municipality). Tensions rose between political parties, as they struggled to ensure that their “people” were appointed, since public enterprise top management is not appointed in public competition procedures, but according to political party interests.

The media uncovered numerous affairs, including the enormous earnings of the director of the JAT airline company, while the salaries of employees were reduced. This opened the issues of the

remuneration of political officials and the financing of political parties. The government was forced to take action, and in early 2009 publicly disclosed the salaries of ministers and other officials whose income was funded from the state budget.

### **Local Self-Administration and Decentralisation**

The role of local self-governments in providing public services is regulated by the Constitution of Serbia as well as in the following laws: Law on Local Self-Government (*Official Gazette RS*, no. 129/07), Law on Territorial Organisation of the Republic of Serbia (*Official Gazette RS*, no. 129/07), Law on the Capital City of Belgrade (*Official Gazette RS*, no. 129/07), and Law on Local Elections (*Official Gazette RS* no. 129/07). According to the Law on Territorial Organisation, there are 150 municipalities and 23 towns in Serbia.

The Constitution specifies provincial autonomy and local self-government (article 176). There are three types of local self-government – municipalities, towns and the City of Belgrade (article 188). The Constitution lists the competences of municipalities (which at the same time are the competences of towns and the City of Belgrade). “The municipality shall, through its bodies, and in accordance with the law: regulate and provide for the performing and development of municipal activities; regulate and provide for the use of urban construction sites and business premises; be responsible for construction, reconstruction, maintenance and use of local network of roads and streets and other public facilities of municipal interest; regulate and provide for the local transport; be responsible for meeting the needs of citizens in the field of education, culture, health care and social welfare, child welfare, sport and physical culture; be responsible for development and improvement of tourism, craftsmanship, catering and commerce; be responsible for environmental protection, protection against natural and other disasters; protection of cultural heritage of the municipal interest; protection, improvement and use of agricultural land; perform other duties specified by the law” (article 190).

The Law on Local Self-Government enumerates 39 original competences of municipalities (art. 20), thereby regulating the number of original constitutional municipal competences in greater detail. As in the Constitution (art. 178), this law also provides that the Republic may entrust particular administrative tasks to all or some of the municipalities if it is in the interest of more efficient and more rational realisation of the rights and duties of citizens and the fulfilment of the needs of their everyday life and work. Means for the realisation of the delegated tasks are provided in the budget (article 21).

As mentioned above, the Constitution of Serbia does not make any substantial difference between municipalities and towns with regard to competences and the provision of services. However, there is a specific feature introduced by the Law on Local Self-Government, which relates to the possibility of establishing a local (city) police force (article 24-2).

According to the Law on the Capital City (article 8), the City of Belgrade performs the competences of both the municipality and the town, as established by the Constitution and the law. Belgrade has wider competences related to particular areas, such as water management, construction and reconstruction of streets and roads, city police and fire prevention. The City of Belgrade is also authorised by this law to establish television and radio stations.

A Law on Local Public Finance was enacted in 2006 and came into effect in the 2007 budgets. There has been no substantial change in local government responsibilities since 2004. Municipalities retain a wide range of communal and utility services, but a law establishing municipal rights to ownership of property is still missing, which causes difficulties in the management of communal and utility services. Some new pieces of legislation are under preparation, but are still not enacted, including a new law on local self-government (expected to regulate municipal ownership rights) and a new law on territorial organisation. The devolution of tax collection and tax administrative functions to local governments has produced mixed results because of poor political and technical management of the process.

Serbia is probably the only country in Europe in which local self-government units do not possess property. The Constitution (*Official Gazette RS*, no. 98/06) stipulates that the Republic of Serbia

regulates and protects property relations and all forms of property [(article 97-1(7)]. The Constitution introduced a new type of property – public property, which it defines as “state property, property of the autonomous province and property of local self-government units” (article 86). The Constitution also distinguishes “state property” from other types of property and provides that the property of the autonomous province and the property units of local self-government, as well as the mode of its use and disposal, are to be regulated by law (article 87).

The current legislation, namely the Law on the Means in the Possession of the Republic of Serbia (*Official Gazette RS*, nos. 53/95 and 3/96), determines that all possessions used by the republic, autonomous province, city, municipality, public enterprise, public institutions, and other legal entities whose founder is the republic, autonomous province or unit of local self-government are owned by the state. The provisions of this law are not in compliance with the present Constitution and must therefore be corrected and harmonised.

According to this law, municipalities and cities must have the consent of the Republic’s Directorate for Property for every action regarding property. This lowers the efficiency of the utilisation of state property and limits the options for local self-government units to invest in modernisation, infrastructure and local development. Substantive local autonomy, to which Serbia is committed by having ratified the European Charter on Local Authorities in 2007, calls for the adoption of new legislation in this area. In 2008 in Belgrade and other cities, a public debate was held on the draft Law on Public Property, Property, and Other Property Rights of the Republic of Serbia, Autonomous Province and Units of Local Self-Government (prepared by the Ministry of Finance). The draft law had been in urgent parliamentary procedure in December 2008, but was subsequently withdrawn.

*In spite of the Law on State Administration, it seems that overlapping tasks and functions between various ministries and state administration authorities are still not uncommon, which causes confusion in citizens’ dealings with administrative authorities. The organisation of the administration still seems to be excessively complex and confusing. In this regard, the passage of the Law on State Administration would have offered a good opportunity for increasing transparency in the organisational set-up of the state administration. Carrying out a systematic review of the state administration would be useful in clarifying the responsibilities of the various administrative bodies and organisations.*

*The distinction is confusing between the various categories of existing public agencies, which contributes to creating a rather opaque administrative environment. Furthermore, public agencies in general are producing poor results and in practice are unaccountable to the government, as the accountability mechanisms established in the legislation are rarely applied in practice (e.g. the State Audit Authority is not yet fully operational).*

*The administrative control based on administrative inspectorates seems to be rather formalistic and not concerned with results. Inspectors are only concerned with legality and regularity, which is positive, but they could also be legally empowered to assess the efficiency and effectiveness of public organisations.*

*Public enterprises are frequently used to finance political parties and to sustain patronage networks, as they are outside the scope of the civil service legislation and are not controlled by the supreme audit institution (the State Audit Authority is not operational). The lack of clear and precise legislation with regard to salaries and bonuses of officials in public enterprises and the non-functional status of the State Audit Authority have led to unmonitored spending of budget funds and partisan increase of salaries and financial bonuses for the top management, which were incommensurate with the results achieved by public enterprises.*

## Quality of Legislation

Article 64 of the Law on State Administration contains the obligation for ministers to consult with other ministries and special organisations while preparing a draft law or regulations of general application. Article 39 of the Rules of Procedure of the Government sets as a mandatory requirement for draft laws to be adopted by the government and submitted to parliament the elaboration of a

detailed and comprehensive Regulatory Impact Analysis (RIA), which should be submitted with the draft unless the proposing ministry provides a sufficient and satisfactory explanation not to do so. The preparation of government regulations is not constrained by that obligation. However, the elaboration of comprehensive RIA has not yet become a standard practice in the Serbian Government and in the state administration system.

The Legislative Secretariat is in charge of checking the constitutionality and legality, including the compatibility with the existing legal framework, of each new legislative act, and it is also in charge of drafting certain legislation (see above). However, the Secretariat is understaffed (only 25 staff) and therefore usually has too little time to thoroughly check new legislation. About 40 legislative items are on the agenda of the Council of Ministers (CoM) every week, and it is considered that too many issues placed on the CoM agenda should in fact be resolved by the ministries. Constant pressure to propose new legislative acts – without allowing the Legislative Secretariat to take the time to properly assess the proposed legislation – has increased considerably and eroded the effectiveness of the Secretariat. Review of EU-related legislation is carried out by the Serbian Office of European Integration (SEIO), which has 42 staff. There are often conflicts of attribution between the Legislative Secretariat and the SEIO on the issue of which body is responsible for “certifying” the harmonisation of legislation.

The Council for Regulatory Reform was set by ordinance in 2003 (*Official Gazette RS*, no. 41/03). The Council is presided by the Minister of Economy, and other Council members are deputy ministers of all relevant ministries. Initially the Council was, inter alia, tasked “to launch initiatives and proposals for amendments of the current laws, regulations and general acts and for the enactment of new ones and to give prior opinions on draft laws, regulations and general acts examined by the boards of the Government of Serbia insofar as these are relevant for the operation and development of private entrepreneurship and enterprises”. The opinion of the Council is a mandatory requirement (as is the opinion of the Legislative Secretariat) before a draft law may be sent to the government for decision.

Amendments to the Rules of Procedure of the Government (RoP) and to the Ordinance on Setting up of the Council for Regulatory Reform (*Official Gazette RS*, no. 113/20) expanded the role of the Council. Article 34 of the RoP regulates in a rather detailed way the memorandum that has to accompany a draft proposal submitted to the government, stating the reasons for adopting the proposal as well as an analysis of the foreseeable effects of the submitted draft law, other regulation or general act. This analysis includes in particular an evaluation of the costs to citizens and to the economy, in particular to SMEs, and of whether the possible effects of adoption justify the costs. The Council for Regulatory Reform is very much geared towards economic development, and its work is targeted to implement the OECD guidelines on regulatory reform. Mention has been made of plans to broaden RIA and to possibly move the Council to the centre of government rather than housing it in the Ministry of the Economy.

For the time being, however, the quality of draft legislation prepared by ministries and submitted to the government for adoption is too often very poor or highly unsatisfactory. In general, the proposed legislation lacks consistency, provides too many contradictory definitions, is badly written, includes no impact assessment, and does not respect the hierarchy of legal instruments. Furthermore, draft regulations are too often submitted to the Legislative Secretariat at a later stage or at the very last moment and sometimes they even go directly to government sessions without any quality screening. Legislative planning is not carried out, and legislation is prepared in a rather impromptu manner. Drafting techniques in ministries are considered to be poor, as the drafters have not been properly trained and staff turnover is too high.

In Serbia, identified problems preventing the production of better quality legislation include: lack of capacities for RIA implementation of civil servants in ministries and incomplete coverage of legislative activities of the government (some draft laws and in general decrees and by-laws are not submitted for an opinion to the Council for Regulatory Reform; amendments to proposed laws are not submitted for an opinion, etc.).

A Regulatory Reform Strategy and Action Plan for the period 2008-2011 were adopted by the government in October 2008 (*Official Gazette RS*, no. 94/08). The Strategy covers the following three main areas: 1) Introduction of Principles of Good Regulatory Practice; 2) One-time Elimination of Redundant and Unnecessary Regulations – Comprehensive Regulatory Reform (CRR); and 3) Strengthening RIA – The Existing Regulatory Quality Control System in the Course of Creating and Adopting Regulations. In order to deal with RIA implementation problems in the 2008-2011 period, the following activities will be continued: 1) training of civil servants for conducting RIA; 2) performance of detailed RIA on eight laws (at least two per year); and 3) establishment and management of an RIA Web Portal, which will serve to facilitate communication and disseminate information provided by local and foreign experts and stakeholders as well as to inform the wider public about activities of the Council and the implementation of RIA. Two planned activities are the publication and distribution of a manual for conducting RIA and the elaboration of a report form for the performance of RIA. The Strategy also provides for the establishment of a Comprehensive Regulatory Reform Unit, which is to carry out an inventory of all existing regulations. As of March 2009, 5500 regulations had been reported by over 100 different regulatory bodies (24 ministries and 76 other regulatory bodies).

The SEIO drafted a document entitled National Programme for the Integration of Serbia into the EU (NPI) in October 2008. The NPI serves as a mean of co-ordination of reforms on the road towards the EU. The Legislative Secretariat is in charge of examining the constitutionality and legality, including compatibility with the existing legal framework, of each new legislative act. According to the NPI: “The regulations governing the state administration bodies’ organisation and mode of operation should delegate the responsibility for conformity assessment of the proposed regulations to line ministries and, within the scope of their competences, gradually include into this process the Secretariat for Legislation. For this purpose, it is necessary to strengthen human resources capacities of all sectors by hiring staff fluent in EU official languages and with adequate knowledge of European law”.

*Although progress has been made, the quality of legislation and regulations is still poor. Strengthening the Council for Regulatory Reform and improving the training and co-ordination between bodies working on legislative projects are needed, particularly for incorporating various aspects into a coherent piece of legislation (e.g. Law on Administrative Procedures, Law on Administrative Disputes). Efforts are being made by regulatory bodies to elaborate mid-term strategies that formulate uniform standards for evaluating the impact of future legislation and regulations. The elimination of outdated regulations through a comprehensive regulatory revision will probably impact on the general quality of regulation in a positive way.*

## Conclusions and Recommendations

1. The legal framework of the administrative system guarantees the principle of legality, equality before the law and, to a large extent, predictability of administrative decisions and actions. However, general and special administrative procedural provisions need to be made more efficient so as to improve timeliness –while improving quality – in administrative decision-making, in the conduct of administrative legal remedy procedures and in the resolution of administrative disputes.
2. A new law on general administrative procedures is needed, and special procedures need to be reduced to a very minimal number. The new general legislation should be clearly aligned with the basic principles of administrative law prevailing in the majority of EU Member States and should guarantee the respect of individual and collective rights and interests as well as the principle of legal certainty in administrative decision-making.
3. Work should be completed on the effective establishment of a more comprehensive system of specialised administrative justice that is fully aligned with European standards and fully guarantees the rights of individuals. This work should include the training of judges dealing with administrative disputes and the functional reorganisation of the established (but not operational) system of courts. The competences and efficiency of the Administrative Court

and the Supreme Court of Cassation need to be fully harmonised with European standards to enable the system to render administrative justice, uphold the principle of legality and protect human and civil rights.

4. In spite of the clear improvements represented by the Law on State Administration and the Law on State Agencies, the organisation of the administration still seems to be excessively complex and confusing. In this regard, more transparent structures and distribution of competences among administrative bodies and authorities are still necessary. The system of public administration – which includes the state administration, state agencies, public agencies and special agencies – is cumbersome and needs reform in terms of capacity-building, streamlining of expenditures and confidence-building in relation to citizens as clients and recipients of the public services these institutions provide.
5. Protection of legality by civil servants, democratic accountability mechanisms, and legislation on administrative and personal liability as well as compensation rights should be better aligned with democratic standards, by adding the possibility of strict state liability for the proper or poor functioning of state services and by promoting a culture of responsibility within the administration.
6. Transparency in administrative decision-making needs to be politically promoted and procedurally improved. Harmonisation is urgently needed between the existing Law on Free Access to Information of Public Importance and the new Law on the Protection of Personal Data. Legislative intervention is also urgently required in the area of classification of confidential documents, as this relic of the past is a burden on the democratic process of administrative transparency and efficient rendering of public services. A sound balance needs to be struck between the competing values of transparency and confidentiality in dealing with public affairs, and the consistency of the various pieces of legislation regulating these matters should be ensured.
7. Means and efforts should be invested in increasing the overall quality of administrative legislation, including planning, training, and close monitoring of law-drafting processes. The introduction of Regulatory Impact Analysis (RIA) should be standardised in legislative and regulatory drafting. The introduction of RIA is of particular significance in the process of harmonising the administrative legislation with EU standards.
8. The Ombudsman should be supported and its staff and IT equipment completed, and the relationships between the Republic's Ombudsman and its local and provincial counterparts better regulated so as to avoid any conflict of attributions and to enable the development of smooth and co-operative working arrangements. Care should be taken to avoid further increasing confusion and overlap with the recently created Commissioner for the Protection of Equality.
9. Accountability institutions, which include the Protector of Citizens (Ombudsman), State Audit Authority and judicial control of the administration, should be supported technically, legislatively and politically. The functioning of these institutions should be considered as vital for eventual EU integration.