

## Corruption in Serbia 2007

Overview of Problems and Status of Reforms

Marijana Trivunovic  
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Harald Mathisen

**R 2007: 4**



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# 1. Executive Summary

Corruption is one of the most important problems facing Serbia. While there are some indications that corruption may have become less rampant in recent years, available evidence suggests that corruption levels are still high, while trust in key institutions is low. The impact on citizens is significant: day-to-day corruption can put a substantial strain on the poorest and most marginalized groups, while frequent scandals involving corruption among highest public officials undermines people's, particularly young citizens', confidence in the future.

Serbia has yet to consolidate its own statehood – it has only recently separated from Montenegro, and is currently confronting the challenges of Kosovo's final status. It is a deeply divided society, experiencing a political deadlock between reformist and anti-reformist forces that has undermined the reform process. Overcoming it is key to further progress toward EU accession.

Serbia is a country in transition. It is important to tackle corruption systematically to avoid its becoming institutionalised. However, while good news and perceptions are thin on the ground, we find that the country is on a positive track in several areas: there are signs of greater control of public procurement, conflict of interest has begun to be regulated, access to information and transparency of the government institutions have improved significantly, and the capacity of enforcement agencies to investigate and prosecute organised crime and corruption is increasing. The burden of rules and procedures has eased for private business, cutting opportunities for corruption.

However, the political nature of the problem is constant, and more ambitious reforms are often effectively blocked by entrenched elites. A lasting impact on corruption levels cannot be achieved without sustained political will at the highest levels of government.

An assessment of the current state of corruption in Serbia reveals many problems common in all post-communist states: corruption arising from large, inefficient and non-merit based bureaucracies; a large and uncompetitive state sector and an insufficiently developed market economy, and depleted budgets struggling to finance service delivery to citizens.

However, some forms of corruption are specific to Serbia. They originate in the country's recent legacy of authoritarianism and war, the confrontation with which is the basic source of current political divisions. Corruption is also influenced by Serbia's particular institutional design and weaknesses: the constitutional and electoral set-up consolidates power with political party leaderships and the executive branch, while a weak parliament and judiciary are unable to provide the necessary checks and balances.

Sectors which are typically considered to be the most vulnerable to political or 'grand' corruption are those with significant financial transactions and, correspondingly, the greatest potential rewards. These include public procurement, privatisation, and other large budgetary expenditures such as, in the case of Serbia, the National Investment Plan. Indeed, a number of scandals have surrounded some of the large privatisations in Serbia. However, few have produced conclusive evidence of corrupt transactions, and studies claim that the privatisation to date has taken place by and large observing the rules. The crux of the problem is in the immense *potential* for corruption and fraud in a system lacking adequate control. Similar vulnerabilities exist in the process of restructuring and/or bankruptcy of state-owned companies.

While public procurement is still an area vulnerable to abuse, there have been improvements. Legislation which is broadly in line with international standards is being implemented. The work of

the Public Procurement Office succeeded in reducing the number of non-competitive tenders to levels comparable with international good practice. However, opportunities for corruption remain – through deliberate misinterpretation of provisions exempting purchases from the competitive tender procedure; or in later stages of the process, such as contracting and the execution of the agreements.

The absence of a rigorous audit system exacerbates the weaknesses not only of the new public procurement regime. There are many serious inadequacies in the mechanisms to oversee the use of public funds. Serbia has neither effective internal nor external audit of budgetary funds. A Supreme Audit Institution (SAI), although foreseen by law to begin functioning in May 2006, has not yet been established. The lack of effective oversight and a programme-based approach to budgeting, taken together with the existence of too many extra-budgetary funds, expose numerous opportunities for corruption. Reform of the budget system, including fiscal decentralisation, is part of ongoing long-term initiatives that will take years to take effect in the best of circumstances. But there have been widely criticised setbacks – such as the management of the National Investment Plan established in 2006 – which disappoint hopes that a public expenditure system is firmly on the right track of reform.

Perceptions and regular media reports of arrests suggest considerable levels of petty corruption in the public administration bodies. However, there is insufficient data to support any firm conclusions about trends. Corruption arising from heavy regulation, licensing and inspections' regimes, as well as taxation and customs, still have the biggest impact on business, and on small and medium-sized enterprises (SMEs) in particular. Administrative corruption is likewise largely responsible for the inequity in the access to social services – healthcare, pensions, and education – hitting the poor and other vulnerable groups hardest.

There are other opportunities and incentives for corruption across the public administration: opaque and contradictory rules, excessive discretion of individual civil servants, non-merit based criteria for employment and promotion. A Public Administration Reform Strategy focusing on fiscal decentralisation and civil service reform began to be implemented in 2005, but results have been modest. Some of the measures, notably the criteria for selection of higher level appointees and the system of evaluation and advancement, appear to have the opposite of the intended effect of attracting and retaining qualified staff. As in some other sectors, notably the police, the distinct lack of a political leadership committed to reform has prevented systemic changes and obstructed a number of ambitious donor projects designed to facilitate these changes.

The judiciary is perceived as one of the most corrupt institutions in Serbia. But as in other sectors, due to a lack of reliable data, the line between corruption and poor management is blurred. There have been some early successes in the law enforcement system with the establishment of special units within the police and prosecution, as well as special courts to investigate, prosecute, and adjudicate war crimes and organised crime. But overall, the process of reforming the entire justice system is progressing too slowly: as in many other countries, judges tend to be conservative and very resistant to change; prosecutors and police can be subject to political influence, and their powers can be used to selectively prosecute political opponents. Although the Judicial Reform Strategy adopted in 2006 acknowledges all these problems, it also leaves some questions as to whether they will be resolved satisfactorily. The appointments of judges and prosecutors are still viewed as being overtly subject to political influence, which reinforces scepticism as to the genuine resolve for decisive reform. The police too, are subject to political influence – exemplified most vividly by the demotion or reassignment of officers who have been performing well on politically sensitive cases. Police reform, while having had a positive start in 2001, has stalled with the last Serbian government, resisting any major policy changes that would further professionalize and depoliticize the institution. Some gains have been made in the fight against organised crime: capacities have increased through the sustained support of international donors and numerous

technical assistance projects. Remaining problems include poor material conditions and remuneration, and a lack of investigative capacity outside the specialised units, and particularly outside of the capital.

In addition to wider reforms of particular sectors, the results of which will implicitly have an impact on corruption, there have also been a number of explicit initiatives.

Civil society organisations, while the early bearers of the issue, have not emerged as forceful leaders in the fight against corruption. The Serbian chapter of Transparency International has been the most prominent among them with notable expertise and a sustained focus on the need for systemic reforms. Other initiatives have been rarer and less systematic, leaving an overall impression of a lack of vibrancy and interest in the fight against corruption. Rare exceptions notwithstanding, the media have demonstrated little interest in systemic issues fundamental in the fight against corruption – focusing instead on corruption scandals, without follow-through on stories to their conclusions. The media in Serbia certainly bears some of the responsibility for the public's undifferentiated perceptions of corruption at all levels, and perceptions of general impunity for corruption offences.

It is too early to judge whether the 2004 Law on Free Access to Information of Public Importance and the Law on State Administration – obliging line ministries and government institutions to publicise their work on websites – will have an impact on the quality of media reporting in the medium to long term. It stands to argue, though, that both laws, and the work of the Commissioner for Public Information, have had a positive impact on the transparency of the work of the government, and on a change of culture inside the public administration. Efforts have to continue to increase transparency and openness of the government's work. Other reforms, such as the mandatory Regulatory Impact Assessment (RIA), is likewise a step in the right direction. Yet, here, as elsewhere, the government and administration appear to have some way to go to fully understand the benefits of consulting and giving a voice to those that will be affected most by government policies.

There have also been high-profile measures from the government to confront the problem of corruption outright. An Anti-Corruption Council was established in 2001. Conceived as an expert advisory body without any further reaching competencies, its effectiveness has been minimal. In addition, a lack of resources, a lack of capacity/knowledge on anti-corruption issues and approaches, as well as a lack of responsiveness from the government it was intended to advise further undermined the Council's efficiency. Over time, the Council has moved to publicly criticise government policies and to bring specific corruption cases into the public eye. However, the lack of access to confidential documentation and the lack of methodological rigour to produce convincing analyses have further damaged its reputation. Nevertheless, there may still be an opportunity to minimise the cost of failure of the Council and reverse the resulting public cynicism and disillusionment with all public institutions. A well thought-out redefinition of the Council's role is urgently needed.

Lack of capacity and competencies is a problem facing also the Committee for Resolving Conflicts of Interest, a body in charge of overseeing the implementation of the 2004 Law on Conflict of Interests. The Law restricts public officials from having positions or other interests that may be incompatible with the public interest they are charged with representing; it also provides for a declaration of assets, and for rules on gifts received in the performance of official duties. The implementation of the law gives reason for cautious optimism: the number of officials submitting asset declarations and resigning from functions that have been ruled as incompatible is increasing. The full implementation of the law would be greatly strengthened by improving the enforcement body's capacities to actually examine the veracity of the financial declarations. There also need to

be more dissuasive sanctions for non-compliance with the rules. Without more effective enforcement there is a risk that the process will be ultimately discredited.

Another explicit anti-corruption measure – the attempt to regulate the financing of political parties and electoral campaigns, including the provision of public funds for these purposes – has been a major disappointment. Not only are there a number of gaps, inconsistencies, contradictions, and incompatibilities in the 2003 Law on the Financing of Political Parties itself: the entire framework for its enforcement is inappropriate. The situation is all the more serious in that parties are awarded public funds without proper oversight over how those funds are actually spent. There has been insufficient pressure in Serbia to close the significant gaps in existing campaign/party finance rules.

A National Strategy for the Fight against Corruption was adopted in late 2005 and translated into an Action Plan in late 2006. The lack of real political will to systematically and decisively address corruption can be seen by the wasting away of this document, the implementation of which had been defined too vaguely in the first place, with overwhelmingly unrealistic timelines, and left largely to the responsibility of a yet-to-be-established Anti-Corruption Agency.

The initial proposal for the Anti-Corruption Agency projects – with an estimated annual operating cost of over 10 million Euro and some 150 staff – an enormous and very expensive body. Its competencies are vast, and include those of the existing Committee on the Resolution of Conflict of Interest. There are obvious concerns of whether such a body could realistically perform all the tasks that it would be assigned. Another concern is the time it might take to develop its operational capacities. International experience also suggests that it would be prudent to review the plan of concentrating so many important competencies in one institution rather than across multiple centres of integrity. But while these technical questions are serious, the main concern is that without demonstrated political will, the Agency could amount to nothing more than expensive window-dressing for the government to be seen – at the national level, but, more importantly, internationally – as tackling corruption, when in fact more systemic reforms are being stalled in the relevant line ministries.

Resulting from the above, there are several important lessons for future anti-corruption efforts in Serbia.

- There are structural factors, particularly the dominance of political party leaderships and the concentration of power in the executive branch that greatly exacerbate certain forms of corruption, and potential efforts to combat corruption in Serbia;
- Serbia continues to exist with enormous political uncertainties that places a number of limitations and incentives on the key actors; these greatly influence the government's as well as individual politicians' ability to pursue meaningful reforms;
- There is very little real understanding about how to effectively fight corruption;
- There is little interest, both within the government, but also civil society, in participating in and taking responsibility for the fight against corruption; the preference is to let someone else do it;
- There is a lack of hard data and reliable analyses, including on corruption; this makes it difficult to design and implement targeted reforms;
- Small gains made to date need to be defended from neglect, political influence, or well-intentioned but inadequately considered reform proposals with potentially serious negative consequences;
- Decreasing corruption is a long-term process, and there are no quick fixes, however tempting some measures may sound;

- Key institutions and processes either vulnerable to corruption (and/or political influence), or key in the fight against corruption, need to be closely monitored and acted upon, as necessary.

Future projects or donor advocacy should focus on:

- Instrumentalising international commitments, and particularly the prospect of EU accession;
- Clarifying international standards to avoid unnecessary and potentially counter-productive measures;
- Protecting the gains made;
- Supporting a more strategic, long-term thinking on anti-corruption;
- Targeted capacity building in anti-corruption;
- Supporting targeted research on corruption;
- Integrating anti-corruption measures into all reform initiatives;
- Monitoring closely institutions and processes most vulnerable to political influence and corruption;
- Supporting the sustainable establishment of a Supreme Audit Institution.

## 2. Introduction

This paper was commissioned by the Swedish International Development Cooperation Agency (Sida) to provide an analysis of corruption and the progress of anti-corruption activities in Serbia with the objective of identifying priority areas and opportunities for potential future engagement. This analysis is to serve as background material for the drafting of a new development assistance country strategy which will be implemented from mid-2008.

Sida recognises corruption as an obstacle to democratic stability, the rule of law and social and economic development in South Eastern Europe, and puts correspondingly a high priority status in Swedish development co-operation with this region. The fight against corruption is seen as one of the principal means that will enable the poor to improve their living conditions, as well as a condition for achieving equitable and sustainable reforms that help Serbia's integration into European structures.

Fighting corruption requires a long-term, sustained effort that must not be abandoned just because quick fixes are rarely achieved. In Serbia today, reforms are pursued in a difficult environment: Serbia is currently struggling to consolidate its statehood and is locked in an indecisive power-struggle between reformist and anti-reformist forces. At the time of writing of this study, a new government had just been formed after months of political deadlock. While this means that there are now counterparts to work with on key reforms, including those that will potentially affect corruption, a decisive break with the past has not been achieved. Overall, popular expectations for the future are low.

At times like this it is very important to look for positive trends and opportunities for advancement. In Serbia, we do find that the country is on a positive track on several parameters. Some achievements of the Serbian authorities are not getting enough recognition. It is on these positive examples and opportunities that future assistance should be developed. Yet, in order to most effectively help Serbia modernise, the international community needs to carefully analyse the incentives and limitations to which key actors are subject. This includes an open-ended self-assessment of what outside actors can and should realistically contribute at a given moment and under given political circumstances.

For the purposes of this report, we define corruption as *any transaction between private and public sector actors through which collective goods are illegitimately converted into private interests, payoffs and other benefits.*

The authors understand that this paper will be used as a reference for Sida staff from different sections and holding different portfolios, therefore we have tried to strike a balance between general and specific observations. This paper is thus organised into short 'theoretical' introductions into the respective problems of corruption and the responses to it, before explaining the Serbia-specific situation, including examples.

The paper is organised into 3 major sections: (a) an overview of the state of corruption in Serbia and its causes, surveying the broad range of sectors where corruption occurs and key manifestations of corruption using both quantitative data and more analytical detail; (b) a review of responses that have the most bearing on the fight against corruption, with an analysis of impact to date and future opportunities whenever possible; and (c) conclusions and lessons learned with recommendations of priority sectors and issues for possible future engagement.

A number of reform projects noted in the section on responses is ongoing, and it is therefore not possible to reach meaningful conclusions as to the impact these projects have had or will have in the different areas we describe below. Hence, any future project design will need to complement this analysis with updates on progress in specific sectors.

We have placed great emphasis on presenting findings that can be independently verified and followed up through information and suggestions for further reading referenced in the footnotes. In absence of reliable research and data in many of the sectors covered, we have indicated the key methodologically sound, though sometimes contradictory, assessments on the topic, without drawing definitive conclusions. Where information was inadequately documented or otherwise substantiated, we have so indicated in an attempt to avoid perpetuating rumour and gossip that are so prevalent in Serbia.

Work on this study was finalised on 30 May 2007 and information presented reflects the developments until that date. The political situation in Serbia is quickly evolving, however, and future project/programme development needs to take note that the analysis and recommendations contained herewith may become outdated.

The authors wish to thank Sida staff for their suggestions and information, and in particular Svetlana Bašcarević who has helped to facilitate the field work in Serbia. Additional thanks go to the individuals who have taken the time from their schedules to speak or correspond with the authors during their research, and to OSCE, UNDP, CLDS and Transparency-Serbia for sharing some unpublished reports. All factual errors or omissions are the sole responsibility of the authors.

## 3. Corruption in Serbia

### 3.1 Data, Perceptions and Experience of Corruption

This section will present some of the available data on corruption in Serbia. It should be noted, however, that most of the data available pre-dates 2006, and therefore, is usually only aggregate data for Serbia *and* Montenegro: extrapolating specific data for Serbia from these surveys is difficult. Also, there are no surveys available that would reveal demographic (i.e. rural and urban divide) patterns of corruption.

Although much has been written on corruption in Serbia, there is a distinct lack of high-quality, reliable quantitative and qualitative data. For example, while the Global Integrity Report for Serbia of 2006 may provide some useful introductory information related to corruption, it provides no systematic evidence of corruption or corruption patterns.<sup>1</sup> In general, a number of methodological problems trouble other surveys, as noted below where relevant.

Using the data from the 2005 EBRD–World Bank Business Environment and Enterprise Survey (BEEPS; quoted throughout this paper), there has been an attempt to analyse how effective anti-corruption policy reforms undertaken in the interim years have been, using quantitative data.<sup>2</sup> Still, a big problem for anti-corruption practitioners is that quantitative surveys such as those cited in this section are mostly of too general a nature to yield clear conclusions that could guide the design of policy.

According to the available research and reports by international organisations, corruption remains a very serious problem in Serbia. In 2006, Serbia achieved a score of 3 out of 10 in the Transparency International Corruption Perceptions Index (CPI).<sup>3</sup> Yet, in a different survey carried out annually by Freedom House, it is also pointed out that “corruption has decreased overall from the excesses of the Milošević era,”<sup>4</sup> and the CPI itself suggests some improvement given the country’s score of 1.3 in 2000. It should be noted, however, that comparisons of the CPI between different years are problematic due to the index’s changing methodology.

Citizens have very high levels of perception of corruption. According to Transparency International’s 2006 Global Corruption Barometer (GCB), Serbian citizens rated a number of key institutions around 4 out of 5 on a scale where 1 means ‘not at all corrupt’ and 5 ‘extremely corrupt’; the worst rated were political parties and healthcare, followed closely by parliament, the business sector, police and the judiciary.<sup>5</sup>

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<sup>1</sup> See *Global Integrity 2006 Country Report Serbia* at <http://www.globalintegrity.org/reports/2006/serbia/index.cfm>.

<sup>2</sup> See *Anticorruption in Transition 3: Who Is Succeeding... and Why?* The International Bank for Reconstruction and Development/The World Bank, 2006, at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/0,,contentMDK:20989777~pagePK:146736~piPK:146830~theSitePK:258599,00.html>.

<sup>3</sup> See *Transparency International Corruption Perceptions Index (CPI)*, [http://www.transparency.org/policy\\_research/surveys\\_indices/global/cpi](http://www.transparency.org/policy_research/surveys_indices/global/cpi). The CPI - probably the best known corruption index – is based on an average of a range of surveys and studies conducted by other organisations; on TI’s scale, 0 is the lowest score possible, while 10 denotes the ‘cleanest’ possible mark; a score of 3 indicates that corruption is ‘endemic’.

<sup>4</sup> See [http://www.freedomhouse.org/inc/content/pubs/fiw/inc\\_country\\_detail.cfm?country=6898&pf](http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?country=6898&pf).

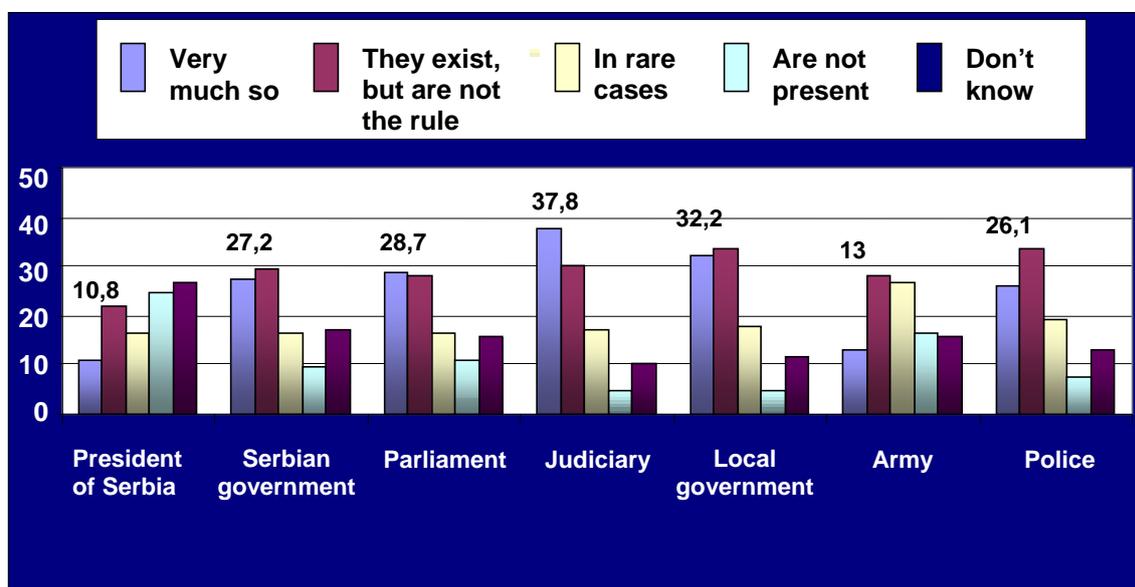
<sup>5</sup> See *Transparency International 2006 Global Corruption Barometer* ([http://www.transparency.org/policy\\_research/surveys\\_indices/gcb/2006](http://www.transparency.org/policy_research/surveys_indices/gcb/2006)), The Global Corruption Barometer is designed to gauge what people think about corruption, and in 2006 was based on surveys carried out by Gallup on some 60,000 people in 62 countries, p. 21.

Another survey on citizen confidence in public institutions<sup>6</sup> conducted by the national chapter of Transparency International in Serbia in 2006 shows that “very high” perceptions of corruption exist for the judiciary (37.8%), followed by local government authorities (32.2%), the parliament (28.7%), the government (27.2%) and sensationalist media (26.9%). Tables below present the complete overview of the findings:

Tables 1 and 2 courtesy of Transparency Serbia:

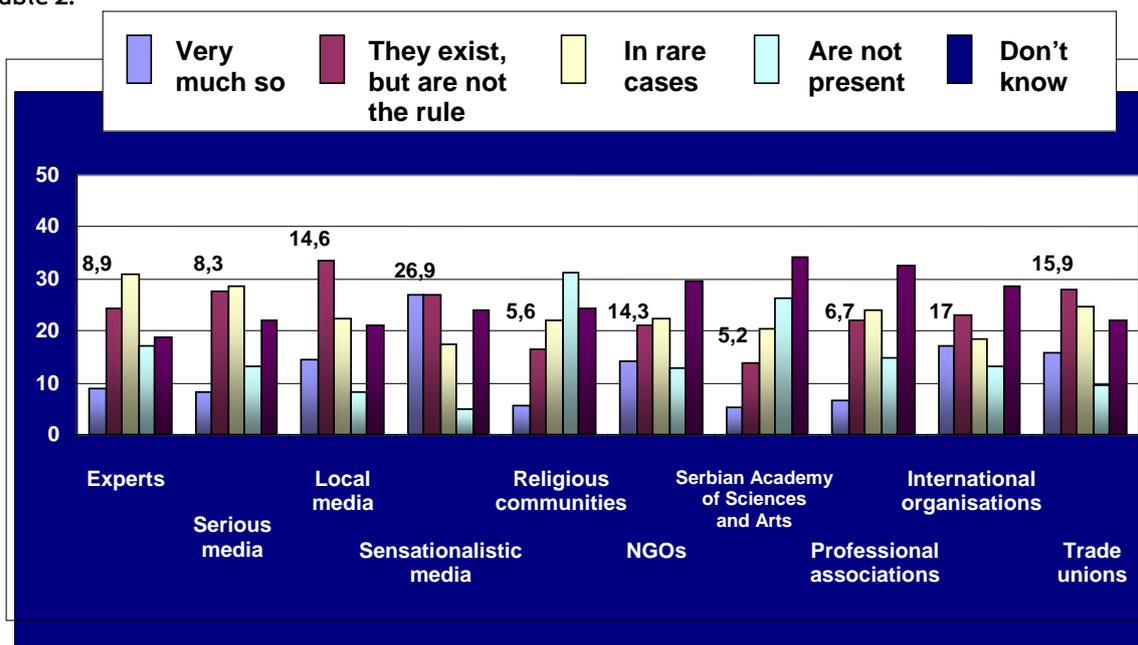
Responses to the question “To what extent are corruption and abuse of power present in the following institutions?”

Table 1.



<sup>6</sup> Result available in Serbian at <http://www.transparentnost.org.yu/aktivnosti/poverenje/20062006.html>.

Table 2.



Surveys of perceptions of corruption (such as the above) should be treated with a high degree of caution, however. There are a number of reasons for expecting citizen perceptions of corruption to diverge from reality or be difficult to interpret. For example, more visible and effective anti-corruption policy may increase perceptions of corruption when corruption is in fact falling, just by bringing more cases to the public eye. In post-communist transition countries, perceptions of corruption may reflect general dissatisfaction (for example with falling living standards) rather than actual levels of corruption. In addition, frequent media reports increase perceptions of corruption in ways that are divorced from actual experience.

Likewise, perceptions change in unpredictable ways the further removed respondents are from the corruption about which they are asked. For example, a corruption survey carried out by the Student Union of Serbia/SUS (*Studentska unija Srbije/SUS*) found that while 98% of respondents believe that corruption exists at their faculty, they are also convinced that corruption involving professors they are not studying with is higher, as is corruption at other faculties.<sup>7</sup>

This is not to argue that perceptions do not matter, however: for example, if the judiciary is being perceived as highly corrupt, it may prevent citizens from approaching courts to resolve problems. This can lead to a serious degradation of the rule of law as citizens increasingly seek remedies outside responsible institutions.

Regarding surveys of actual experience of corruption, according to the Global Corruption Barometer, in 2006, 13% of Serbian citizens reported paying some form of bribe in the previous 12 months; this is higher than in Bulgaria (8%), Croatia (7%) and Macedonia (9%), but lower than in Romania (20%) and Kosovo (66%).

<sup>7</sup> Survey findings received directly from the Student Union of Serbia/SUS.

The 2005 EBRD/World BEEPS survey<sup>8</sup> found that more than one-quarter of firms reported that bribery was frequent, ranking Serbia at the same levels as Azerbaijan, Russia, and Ukraine.<sup>9</sup> In the same survey, firms reported an increase in the frequency of bribes since 2002, although the overall cost to firms decreased,<sup>10</sup> suggesting that the average *size* of bribes fell.

Again, surveys of experience should also be treated with caution. For example, survey respondents may tend to understate their personal experience of bribery for moral reasons or for fear of reprisals. Overall, however, the data point to fairly divergent experiences with corruption at the level of the ordinary citizen. At one extreme, the poorest and otherwise marginalised are hardest hit as bribes and informal payments constitute the greatest percentage of their incomes; in emergencies, they may be denied critical health services, with grave consequences. At the other end of the spectrum, a citizen could go about conducting his/her life, patiently following administrative procedures and waiting to receive social services without engaging in corruption. However, even in the latter case, the citizen will be influenced by the frequent reports of corruption circulated in the media, particularly by allegations against highest public officials.

Consistent with the above are surveys that also strongly suggest that the Serbian public thinks the government fails to fight corruption or even directly participates in it. The Global Corruption Barometer found that only 15% of the Serbian population thought its government is effective at fighting corruption; 21% thought the government does not fight corruption at all and 17% that it actually encourages corruption.<sup>11</sup>

In sum, while an ordinary citizen's direct experience with corruption may be in fact quite limited, high perceptions of corruption have serious negative consequences for Serbia. There is decreasing trust in public institutions and political elites, increased cynicism about the possibility of reform, and less hope for the future. Corruption also destroys the fabric of social and ethical values – a process that is difficult to reverse, and measures against which go beyond the passage of new, more sophisticated legislation.

The consequences are devastating for Serbia. Populist demagogues such as the Serb Radical Party have effectively used corruption as an issue on which to build support, particularly among the losers of the transition process. Rather than vote for the Radicals, pro-European segments of the populations (broadly, the younger and the better educated) instead abstain from participating in the political process altogether. Voter turnout has dropped significantly since 2001, despite continued campaigns to “get out the vote.” In a recent survey, 75% of students of Belgrade University said to be at a minimum considering emigrating from Serbia.<sup>12</sup>

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<sup>8</sup>The BEEPS surveys attempt to obtain data both on ‘administrative corruption’ (corruption in the implementation of laws, rules and regulations) and ‘state capture’ (corruption during the formation of laws, regulations, decrees and other government policies) by surveying a large sample of businesses. For an explanation of the two broad types of corruption see World Bank, *Anticorruption in Transition: A Contribution to the Policy Debate*, at <http://www.worldbank.org/wbi/governance/pdf/contribution.pdf>, pp. xv-xvii.

<sup>9</sup> See *Anticorruption in Transition 3: Who Is Succeeding... and Why?* The International Bank for Reconstruction and Development/The World Bank, 2006, at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/0,,contentMDK:20989777~pagePK:146736~piPK:146830~theSitePK:258599,00.html>, p. 11.

<sup>10</sup> *Anticorruption in Transition 3: Who Is Succeeding... and Why?* The International Bank for Reconstruction and Development/The World Bank, 2006, at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/0,,contentMDK:20989777~pagePK:146736~piPK:146830~theSitePK:258599,00.html>, p. 15.

<sup>11</sup>See Transparency International 2006 *Global Corruption Barometer* at [http://www.transparency.org/policy\\_research/surveys\\_indices/gcb/2006](http://www.transparency.org/policy_research/surveys_indices/gcb/2006), p. 19.

<sup>12</sup> See *Blic Online* article “Vole ‘Egzit’ i ‘plazmu’ i rado bi da odu iz Srbije” (“They Love ‘Exit’ and ‘Plazma’ and Would Like to Leave Serbia”), 14 May 2007 at <http://www.blic.co.yu/drustvo.php?id=3519>

### 3.2 Horizontal Issues: Root Causes and Implications for Reform

Corruption in Serbia shares many characteristics of corruption in other post-socialist states. While more liberal (socially and economically) than the Soviet Bloc, the socialist Yugoslavia also existed under the conditions of a state-managed economy, lack of a strong private sector, scarcity of resources, and bureaucratic mismanagement. Nepotism and connections (“*veze*”) were the primary mechanism of obtaining jobs or higher-quality services, particularly in the health sector. However, it is the legacy of wars of the 1990s and the autocratic rule of Slobodan Milošević that bear most directly on problems of corruption that Serbia confronts today.

The wars of Yugoslav dissolution are to an extensive degree characterised by most egregious crimes against humanity, carried out in particular by paramilitaries and specialised police units that were under the command of the Serbian regime and the secret police. There exists a strong incentive to downplay the extent of those crimes both by individuals involved who have not yet been brought before justice and who still play a role in the economic and political life of the state, as well as by misguided politicians who believe that to pursue the truth would amount to disproportionate blame of the Serbian state and the “Serb people”, or result in the obligation to pay war reparations that would cripple the Serbian economy for decades to come.

In addition, the Milošević era was characterised by what is commonly referred to as a “kleptocratic” regime that plundered the resources of the state both to fund the wars, and for personal enrichment. UN-imposed sanctions also created opportunities for smuggling of weapons, fuel, and other key commodities, including foreign currency, in a system that was orchestrated by the state and subcontracted to organised crime groups and “businessmen” in return for a share of the profits. A number of businessmen – many of Serbia’s present-day tycoons – built their fortunes on monopoly positions granted by the state in a number of industries, including media and telecommunications, again in return for support of the ruling party and its leadership. After the fall of Milošević, many of these business interests have endeavoured to legitimise and protect their wealth through investments in Serbian industry, including through participation in privatisation processes, and through support of political parties in power since 2000.

Further, Serbia’s continued struggle to define its statehood (it became an independent state with the dissolution of the State Union in May 2006) and its borders (internationally recognised independence of the province of Kosovo, which has been administered by the UN since 1999, appears imminent) has helped sustain in the political life extreme nationalists like the Serb Radical Party. Buoyed in number by the losers of the transition process, the Radicals have been the strongest party in parliament since 2003, but unable to secure an absolute majority. The so-called “democratic block” in Serbia has been struggling to prevent the Radicals from forming government, a process which has involved numerous compromises with remnants of the previous regime and other unscrupulous interests that have found opportunities to profit from the stand-off. The political fragility has also led to a stalling of fundamental structural reforms necessary to make Serbia’s economy genuinely competitive, as the political risk associated with such reforms is too high.

An insight of this context, though greatly simplified here, is key to understanding the obstacles to promoting fundamental reforms, including the fight against corruption. The extent of the resistance is perhaps best exemplified by the assassination of Serbia’s first reformist Prime Minister Zoran Djindjić in March 2003. To be effective, future responses need to be designed with these challenges in mind.

### 3.3 Types of Corruption in Serbia

The following sections highlight some of the key manifestations of corruption in Serbia that will have to be addressed. We have not attempted to make an accurate ranking in terms of severity of impact.

#### 3.3.1 Political Corruption

Political corruption, in its many facets, is the most serious challenge Serbia faces. The occurrence – and especially public perception – of such corruption undermines the legitimacy and stability of elected politicians and governments, as well as the ability and willingness of governments to pursue meaningful anti-corruption policies.

Corruption of elected officials around the world typically takes the form of bribery by special interests (such as oil, tobacco, defence industries) of members of parliament to vote in a certain way, or actions by MPs or members of government in their official capacity that serve the interests of companies in which they hold stakes. In countries in transition (such as Serbia), this trend can assume systemic proportions resulting in the phenomenon known as “state capture”. Officials are elected in a transition context where corruption is relatively widespread, oversight institutions (such as parliament) are less developed, and temptations are greater due to more opportunities (such as in the passing of laws that fundamentally affect key interests, privatisation of state property and the like).<sup>13</sup> In Serbia, again, even reform-minded officials are vulnerable, particularly in situations where they are confronted with unethical compromises not necessarily for personal enrichment, but in exchange for staving off from power anti-reformist political options.

No thorough studies of political corruption in Serbia exist, although numerous scandals involving high-level government officials are reported in the media on an almost daily basis. Several cases have been partially investigated and reported on by the Anti-Corruption Council (*Savet za borbu protiv korupcije*), but none of these have been analysed with sufficient methodological rigour to ascertain the facts beyond doubt. While very few of these cases have resulted in completed official law enforcement investigations and court verdicts that would conclusively demonstrate the truth, the anecdotal evidence does shed light on the types of wrongdoing to which Serbian politics are vulnerable at present.

Bearing in mind the scarcity of data and facts, it is important to take extreme care in discussing political corruption and distinguishing facts from rumour. In Serbia in particular, where corruption scandals are numerous but not followed by decisive investigations and lacking clear closure, there is a risk of losing perspective. Populist and anti-reformist parties have been very skilled in instrumentalising corruption scandals to discredit the democratic forces and undermine the pro-European policy agenda. Nevertheless, a systematic analysis of the scandals can provide a picture of the systemic weaknesses where corruption **can** occur.

#### *Structural Factors*

The vulnerabilities to corruption primarily result from institutional weaknesses and political instability that have characterised Serbia. One aspect of this vulnerability rests with the fragility of governing coalitions. The so-called “democratic block” is composed of two major parties with

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<sup>13</sup> For useful overviews of issues surrounding legislative ethics and corruption of elected officials, see G. Carney, *Conflict of Interest: Legislators, Ministers and Public Officials*, TI Working Paper, [http://www1.transparency.org/working\\_papers/carney/index.html](http://www1.transparency.org/working_papers/carney/index.html); and National Democratic Institute for International Affairs, *Legislative Ethics: A Comparative Analysis*, [http://www.accessdemocracy.org/library/026\\_ww\\_legethics\\_1\\_1\\_27.pdf](http://www.accessdemocracy.org/library/026_ww_legethics_1_1_27.pdf).

widely divergent views on key issues facing Serbia, such as Kosovo, co-operation with the International Criminal Tribunal for the Former Yugoslavia (ICTY), confronting war crimes, and the pace of reforms. A minority government without one of the two major democratic parties, as has been the case in the past government (2004–2007), creates a situation where it is hostage to minor parties that are rewarded in a number of unethical ways, including tolerating corruption, in order to sustain their support.

Another vulnerability stems from the lack of internal democracy within the political parties themselves, and a concentration of power within party leaderships. The process of consolidating party discipline began as a number of deputies on different occasions “defected” either to sit in parliament as independent MPs, or to join another party (see box 1 below). A heated debate about whether mandates belonged to the individual deputies or to the parties through whose lists they were elected had been ongoing since 2001, ending with the new Serbian constitution being passed in October 2006, which explicitly stipulates that mandates belong to parties rather than individual MPs.

**Box 1:**

*The most notable defections that have impacted the constitutional restrictions on parliamentary mandates include Tomislav Kitanović's 2003 move to the Serbian Renewal Movement (*Srpski pokret obnove/SPO*) from the Democratic Party of Serbia (*Demokratska stranka Srbije/DSS*); Sredoje Mihajlov, a deputy from the Vojvodina coalition, joining G17 Plus and thus bringing into parliament a party that had not stood for national elections. In May 2005, a Serbian Radical Party MP, Živadin Lekić, joined the Force of Serbia Movement (*Pokret snaga Srbije/PSS*), similarly bringing them into parliament for the first time, in a move that was perceived as motivated by nothing other than financial rewards.<sup>14</sup>*

*In total, 30 MPs left either their party or parliamentary group between December 2003 and November 2005.<sup>15</sup>*

While the constitutional change may have curbed one form of corruption (“buying of MPs”), it has had a serious detrimental effect on the ability of individual deputies to act independently and deviate from the party line in any way. In its “Opinion on the Constitution of Serbia,” the Council of Europe Venice Commission strongly condemned this measure as a “serious violation of the freedom of a deputy to express his/her view on the merits of a proposal or action” concentrating “excessive power in the hands of the party leaderships.”<sup>16</sup> The particularities of Serbia’s electoral system, primarily the closed party list system (whereby party leaderships determine which candidates from the electoral lists receive seats in parliaments regardless of their position on the list) further consolidate the dominance of political party leaderships. In sum, MPs’ mandates are entirely dependent on the good graces of party leaderships, which, in the case of governing parties, occupy key positions in government. The majority in parliament is therefore subordinated to the government, seriously undermining any meaningful possibility of parliamentary oversight of the executive.

<sup>14</sup> See article in Serbian *Počela licitacija: Koga kupuje PSS* (The Auction has begun: Who PSS is buying), 19 May 2005, at [http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=05&dd=19&nav\\_category=11&nav\\_id=168751](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=05&dd=19&nav_category=11&nav_id=168751).

<sup>15</sup> See Freedom House *Nations in Transit* Country Report for Serbia 2006 available at <http://www.freedomhouse.org/template.cfm?page=47&nit=399&year=2006>.

<sup>16</sup> *Opinion on the Constitution of Serbia*, European Commission For Democracy Through Law (Venice Commission), adopted by the Commission at its 70th Plenary Session, Venice, 17-18 March 2007, CDL-AD(2007)004, available at [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)004-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)004-e.asp).

This parliamentary subordination to the executive is compounded by additional deficiencies discussed in section 4.2.1, along with a weak judiciary (discussed in sections 3.1, 3.3.3 and 4.2.3), resulting in an excessive concentration of power within the executive branch. Corruption in the executive branch – the government – will be examined through an analysis of specific sectors in the sections that follow.

**Box 2:**

*In a thought-provoking policy paper, Vesna Pešić, a well-known opposition politician and activist, offered a compelling depiction of political corruption in Serbia that deserves consideration. She described the existing model of state capture as a “political party state”, where corruption is driven by the parties themselves, functioning in symbiosis with, rather than driven by external private interests that exert their influence through elected officials. She describes the state institutions, particularly ministries, as being divided into a “confederation of party ‘fiefs’,” where each of the parties in government completely controls specific state institutions and its resources to their political and financial advantage.<sup>17</sup>*

Further, a powerful and potentially corrupt mechanism available to the executive to assure loyalty is the thousands of jobs available through executive appointments in public institutions and state-owned enterprises. Overall, it is estimated that the government controls nearly 40,000 appointments at all levels of executive authority in Serbia.<sup>18</sup>

**Box 3:**

*The Minister of Education, for example, has the authority to appoint more than 3,000 directors of primary schools, and about 400 directors of secondary schools in central Serbia (excluding Vojvodina); similarly, the Minister of Health controls the appointments of directors for the hospitals and other health institutions funded by the government. In addition to the appointments at the national level, there are even more appointments in the public sector at the local level (governments, public companies, services and institutions which are under the jurisdiction of the autonomous provinces – Vojvodina and partly Kosovo – cities, and municipalities).*

### *Corruption in Parliament*

In addition to its inability to perform oversight of the executive, corruption within the parliament is a separate concern. Corruption scandals involving MPs are fewer than in other sectors, due, in part, to their lack of real power. There have been some media reports about inflated spending reports for travel costs, per diems, and similar transgressions. The most notable scandals, however, relate to the process of assertion of party discipline over individual MPs discussed in the previous section.

<sup>17</sup> See Vesna Pešić, *State Capture and Widespread Corruption in Serbia*, CEPS Working Document No. 262, March 2007, available at [http://shop.ceps.be/downfree.php?item\\_id=1478](http://shop.ceps.be/downfree.php?item_id=1478).

<sup>18</sup> See Vesna Pešić *State Capture and Widespread Corruption in Serbia*, CEPS Working Document No. 262, March 2007, available at [http://shop.ceps.be/downfree.php?item\\_id=1478](http://shop.ceps.be/downfree.php?item_id=1478), pp. 8-9.

**Box 4:**

A full-blown scandal involving bribery of deputies erupted in late November 2005, when allegations were reported widely in the Serbian media that the business tycoon and leader of the Force of Serbia Movement, Bogoljub Karić, had offered between 200–300,000 USD to five deputies to join his party and oppose the proposed 2006 budget in order to jeopardise the survival of the minority government.<sup>19</sup> A criminal investigation was initiated, but the indictment finally brought against him in 2006 covered a different offence.

An area that is also seen as a manifestation of corruption in parliament is the appointment of members of parliament to additional executive functions at the local level, or on managing boards of state enterprises or other public institutions. Until recently, it was possible for an MP to simultaneously act as mayor of his/her municipality and sit on the managing board of one or more state-owned enterprises. In addition to concerns about an individual's ability to adequately perform more than one function, the accumulation of functions has been interpreted as a corrupt system of rewards for loyalty, as each of the positions carries a considerable salary.

Initial attempts to regulate this issue, through the Law on the Prevention of Conflict of Interests in Discharge of Public Office (*Zakon o sprečavanju sukoba interesa pri vršenju javnih funkcija*), were seen as inadequate, primarily as they exempted MPs. The Republic Committee for Resolving Conflict of Interests (*Republički odbor za rešavanje o sukobu interesa*), the body charged with implementing conflict of interest rules, has been at the forefront of a debate on the implementation and the deficiencies of the existing law. The new constitution, adopted in October 2006, stipulates for greater restrictions and should be seen as an improvement to the corruption potential of this practice.

#### *Corruption in the Financing of Political Parties*

Corruption in the financing of political parties and election campaigns may take three main forms: *quid pro quo* contributions to political parties and candidates by individuals, groups or companies in return for benefits; the misuse of public resources by incumbent parties or politicians for electoral purposes; and the buying of votes.<sup>20</sup> All these forms of corruption distort the electoral process by providing illicit advantages to certain parties or candidates at the expense of others, or at the expense of the public purse. Such corruption has knock-on effects, for example compromising the autonomy of governments by making elected parties and politicians hostage to the interests that financed their election campaigns.

There are no studies or analyses of the relationship of parties to their donors in Serbia, although it is widely speculated that a system of rewards is in place for politicians that help certain groups or individuals reap the benefits of state contracts or privatisation decisions, as they do everywhere else in the world, including in established democracies.<sup>21</sup> Informed observers claim, off the record, that many business interests that had supported Milošević during the 1990s at the same time supported

<sup>19</sup> See *Serbian Parliament Passes Budget Amid Bribery Allegations*, 28 November 2005, at <http://www.rferl.org/newsline/2005/11/4-SEE/see-281105.asp> or <http://www.rferl.org/newsline/2005/11/281105.asp#archive>.

<sup>20</sup> For a clear explanation of the types of corruption linked with party and election campaign finance, see Open Society Justice Initiative, *Monitoring Election Campaign Finance: A Handbook for NGOs*, 2004. For the most comprehensive resource on political finance and its regulation see IDEA, *Funding of Political Parties and Election Campaigns*, 2003.

<sup>21</sup> See, for example, an overview of corruption scandals involving primarily illegal party finance of the Germany Christian Democratic Union (CDU) at <http://www.globalintegrity.org/reports/2004/2004/country3cec.html?cc=de&act=timeline> or France's Elf Aquitaine scandal at [http://news.bbc.co.uk/onthisday/hi/dates/stories/may/30/newsid\\_2542000/2542475.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/may/30/newsid_2542000/2542475.stm).

opposition parties, particularly in the later years. The principle of “hedging one’s bets,” or diversification of investments, is a wise business principle, and an entirely plausible explanation. Insiders also believe that the same principles are being applied today.

Financial reports submitted by parties to meet their obligations under party finance regulations contain limited information about donors, and have not revealed suspicious links between financial contributors and particular policy decisions or contracts. Some parties have claimed that they do not have any individual donors and that state funding covers all their financing needs. Both scenarios raise suspicions that a great deal is not being disclosed. As will be discussed in detail in section 4.3.1, there is no effective mechanism for determining the veracity of the financial reports, and there are a number of other loopholes in the regulations. Until the obligations to disclose their supporters are effectively enforced, and the relationship between party donors and policy decisions monitored, any discussion of actual influences of donor funds on politics will remain speculative.

In terms of the misuse of state resources for electoral/campaign purposes, studies and data are likewise missing. While there are no media reports of outright misuses of staff and other institutional resources, the overall lack of transparency, and the absence of effective control of the state budget and the budgets of socially-owned/state-owned enterprises, leaves reason for suspicion that these may be illegally redirected for campaign purposes during election periods.<sup>22</sup>

#### Box 5

*One of the main vulnerable areas for possible redirection of state funds for electoral purposes are contracts with PR houses which receive sizeable contracts for media promotions of state institutions and state-owned enterprises such as the Petrol Industry of Serbia (Naftna industrija Srbije/NIS Jugopetrol) or the state-owned Jat Airways. Such contracts can cover long-term PR campaigns, parts of which can well be ‘transferred’ to the production and/or publication/broadcasting of campaign ads. NGO monitoring of campaign finance identified a complexity in the way that advertising time/space is purchased (in bulk, by large PR agencies), making it near impossible to calculate the exact quantity and price of print space and broadcast time without an analysis of the actual contracts.<sup>23</sup>*

#### *Corruption and Local Self-Government*

As many countries pursue a trend of decentralisation of governmental functions to local (including regional) governments – a trend boosted by the European Union’s encouragement of the application of the principle of ‘subsidiarity’ – the issue of corruption at the level of local government has gained in importance. While the trend towards decentralisation has been strong, there is, however, considerable disagreement over whether it will lead to a decrease or increase in corruption, and in Central and South-eastern Europe, there is considerable anecdotal evidence suggesting that local government is highly vulnerable to corruption.<sup>24</sup>

<sup>22</sup> If there are forms of corruption in political party/campaign finance that do not appear to warrant serious concern that is corruption of electoral officials and vote-buying. Election monitoring reports by both domestic groups and international election observers maintain that since 2000, these have become largely free and fair processes.

<sup>23</sup> See *Monitoring of Financing of Pre-Elections Campaigns*, Center for Free Elections and Democracy (CeSID), 2005, available in English at <http://www.cesid.org/pdf/izvestaj%20eng.pdf>.

<sup>24</sup> The *Transparency International Source Book* provides a brief introduction to the issue of corruption in local government, available at <http://www.u4.no/document/literature/ti-2000-local-government.pdf>. A useful review of the arguments and evidence on whether decentralisation increases or decreases corruption can be found in Tugrul Gurgur and Anwar Shah, *Localization and Corruption: Panacea or Pandora’s Box?*, World Bank Policy Research Working Paper 3486, January 2005, <http://www.u4.no/document/literature/Localization-and-corruption.pdf>.

In Serbia, we find that the mechanisms of corruption functioning at the national level, particularly the dominance of the executive, taken together with the power of political parties, are replicated, if not compounded, at the local level. Pressures to engage in, or simply overlook, corrupt transactions are amplified by much closer personal relationships and family ties between business and political interests in small communities. Further, institutional inconsistencies, taken together with the principle of the dual executive at the local level (mayors and local assemblies' executive councils) cause clashes between directly elected presidents and executive councils elected by assemblies, opening numerous opportunities for corrupt political deal-making.<sup>25</sup>

### 3.3.2 Corruption in the Public Administration

Corruption in the public administration ranges from “petty” (as in the allocation of licenses), through “grand” (as in the allocation of state contracts, covered under public procurement below) or the mismanagement of budget funds by public officials to serve their private interests. There is a consensus that such corruption flourishes under conditions where: regulations are unclear or not publicly accessible; public servants are not recruited and managed on a meritocratic basis; civil servants are poorly paid; civil servants are not subject to/assisted by clear regulations on conflict of interest and standards of conduct; civil service management does not include sound internal control structures; procedures for the spending and accounting for public funds are insufficiently clear and binding; internal audit is inadequate or lacks functional independence; and, external audit lacks powers, is limited to formal audit of accounts or is otherwise inadequate. Public administration reform has been a key condition for EU accession, as it is regarded as a necessary condition for countries to be able to implement the obligations of accession.

Aspects of corruption in the public administration are covered in more detail in separate sections focusing on sectors that are traditionally most vulnerable to corruption, such as high-value financial processes like privatisation, public procurement, customs, and social service delivery.

#### *Public Financial Management*

A necessary condition for curbing corruption in the public sector is the effective planning, prioritisation, allocation and management of budget funds, together with effective audit of the actual use of such funds. Public expenditure should be recorded and reported in a manner reflecting international standards<sup>26</sup>, and approved and subjected to effective scrutiny by parliament. In order to achieve this, there should be an external Supreme State Audit Institution (SAI) with sufficient capacity and powers, which reports to parliament. In turn, in order for the SAI to function efficiently, an integrated system of public internal financial control is needed, comprising decentralised managerial responsibility for the use of budget funds, functionally independent internal audit bodies within state institutions, a harmonised accounting and audit methodology across the public sector and co-ordination and supervision by the Ministry of Finance. Crucially, all of these components are requirements for EU accession.

Serbia is only beginning with the reform of its public finance system, including with the introduction of a new system of programme-based budgeting: there is currently no clear link

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<sup>25</sup> 2004 local elections resulted in stalemates in a number of municipalities with a mayor from a different party than that of the municipal majority. The inability to agree on the division of local executive functions paralyzed a number of municipalities for months. See Freedom House *Nations In Transit Country Report 2006*, available at <http://www.freedomhouse.org/template.cfm?page=47&nit=399&year=2006>.

<sup>26</sup> Relevant international standards have been set by the International Public Sector Accounting Standards/IPSAS issued by the the International Federation of Accountants/IFAC.

between policy and budget allocations; this, in turn, makes it impossible to measure the success of any given policy. A few projects support the introduction of a new approach to budgeting in line with international and EU standards, such as the EAR and DfID. However, it has yet to be fully embraced by the Serbian government, and the resistance to date seems to be rooted in the fact that it would be a significant shift of the way in which government is being done and held accountable against measurable benchmarks. In the meantime, the weakness of the existing internal audit system, the absence of external audit, and non-functioning of parliamentary oversight suggest that there is ample scope for manipulations and plunder of the state budget.

#### *Privatisation of Socially-Owned Enterprises*

Although partial privatisation of enterprises in Serbia has taken place within different legal frameworks and according to different models since 1989, some 800 socially-owned enterprises and many of the around 6,000 state-owned enterprises in Serbia still remain to be privatised.

There are vastly diverging views on corruption of those privatisations that have taken place to date (mainly of companies that are competitive and were therefore attractive to investors). Some observers view the process to have been by and large fair,<sup>27</sup> yet media reports about alleged corrupt deals abound (see box 6). The allegations involve a myriad of issues, ranging from deliberate undervaluing of state property for the benefit of potential buyers, to leaking information about the real value of a property or enterprise to select competitors, to intimidation of potential competitors against participating in the tender. Another concern voiced is that the privatisation process is being used by some to legitimise their illicitly obtained money (see below section on Organised Crime and Corruption).

#### **Box 6:**

*In 2005, Deputy Prime Minister Miroslav Labus was discovered to have had a private meeting in his home with representatives of one of the competitors in the privatisation of the mineral water producer Knjaz Miloš. While no wrongdoing could ultimately be proven, suspicions remain that there had been an attempt at inappropriate influence on the process by Mr. Labus.<sup>28</sup>*

There are more potential opportunities for corruption in the privatisation process. Frequently, information is being leaked to the press about the number and names of bidders; there have also been cases of staff or their spouses of the Privatisation Agency having moved to work for the new owners of recently privatised companies. As conflict of interest provisions are not applicable to all of the staff of the Privatisation Agency, and there are no explicit post-employment restrictions, there seems to be little that can be done about this.

More seriously, perhaps, managers are known to strip off assets of the socially-owned companies they are in charge of by selling parts to private buyers, despite being aware that such sales will be annulled by the Privatisation Agency (the result of such illegal sales are protracted commercial disputes); the Privatisation Agency reports to receive some 20 'tip-offs' each week of such practices.

<sup>27</sup> See *Four Years of Transition in Serbia*, Center for Liberal Democratic Studies (CLDS), 2005, at [http://www.clds.org.yu/pdf-e/4\\_years\\_of\\_transition\\_in\\_Serbia/pdf](http://www.clds.org.yu/pdf-e/4_years_of_transition_in_Serbia/pdf), pp. 195.

<sup>28</sup> See, for example, *Labuse, Čik Govori!* (Dare Talk, Labus!), 12 May 2005, [http://www.transparentnost.org.yu/ts\\_mediji/stampa/2005/05MAJ/12052005.html](http://www.transparentnost.org.yu/ts_mediji/stampa/2005/05MAJ/12052005.html).

There also appears to be ample scope for so-called ‘*private-to-private corruption*’<sup>29</sup> in the post-privatisation process. A successful bidder can, for example, declare insolvency which results in him/her being unable to come up with the instalments to pay for the enterprise. The shares for the enterprise are then auctioned at the stock exchange, where they can be deliberately undervalued against kick-backs, and the same bidder can (through proxy) purchase the company for a fragment of the price bid at the auction.

#### *Corruption in State- and Socially-Owned Enterprises*

Without adequate financial supervision (see section 4.2.5 for problems with internal audit and lack of external audit systems), and political appointments to directorships and oversight boards in public companies (as noted in section 3.3.1), the potential for corruption in state- and socially-owned enterprises in Serbia is significant. There exist no studies on the extent of the problem other than from an economic perspective, which points to the problems with inefficiencies and mismanagement of such firms, as well as the larger economic implication of their protected monopoly positions in the market.

#### **Box 7:**

A study by the Belgrade Centre for Liberal-Democratic Studies/CLDS (*Centar za liberalno-demokratske studije/CLDS*) suggests a strong nexus between political parties and large state-owned enterprises, resulting in a reluctance to privatise these companies under the pretext of their being of ‘strategic’ importance to the state: “Privatisation of public enterprises is indispensable, because there is a whole range of privileged large state owned companies in Serbia which call themselves ‘strategic’ and to which, as long as they are owned by the state, the strict climate of bankruptcy and liquidation will not apply, and the culture of non-payment and clientelism will not be eradicated. [...] Experiences show that after privatisation, the services of these companies, as a rule, become much better, costs lower and the political influence of new owners, in a good regulatory framework, is much weaker than the influence of political parties [...]”<sup>30</sup>

#### *National Investment Plan (NIP)*

In 2006, a National Investment Plan (*Nacionalni investicioni plan/NIP*) was adopted by the government upon the proposal by the then Minister of Finance, Mladjan Dinkić, with the aim of financing public investments until 2011. The NIP is being financed with the proceeds from the privatisation process; for 2006 and 2007, the NIP was forecast to spend 1.7 billion Euro.<sup>31</sup> Projects to be financed from the NIP are from the sectors of education, health, environment, traffic

<sup>29</sup> For a definition of this type of corruption, see, for example, the International Chamber of Commerce’s ‘*Memorandum to the OECD Working Group on Bribery in International Business Transaction – Recommendations by the ICC on further provisions to be adopted to prevent and prohibit PRIVATE-TO-PRIVATE CORRUPTION*’, 2006, at <http://www.iccwbo.org/uploadedFiles/ICC/policy/anticorruption/Statements/Memorandum%20to%20OECD%20working%20group.pdf>, p. 2.

<sup>30</sup> See *Four Years of Transition in Serbia*, Center for Liberal Democratic Studies, 2005, at [http://www.clds.org.yu/pdf-e/4\\_years\\_of\\_transition\\_in\\_Serbia/pdf](http://www.clds.org.yu/pdf-e/4_years_of_transition_in_Serbia/pdf), pp. 68.

<sup>31</sup> Serious problems resulting from the lack of capacity of the institutions in charge of the NIP let the disbursement rate be at around a third of the projected amount in 2006. See in Serbian *Izrada Drugog izveštaja o implementaciji Strategije smanjenja siromaštva u Srbiji/Nacrt ‘Tranzicija ka tržišnoj privredi’ (Elaboration of the Second PRSP Progress Report/Draft Report on ‘Transition to a Market Economy’)*, 5 April 2007, at <http://www.prsp.sr.gov.yu/vest.jsp;jsessionid=7371A1C88CDF9F5C02231AD8D4AE4666?id=265>, p. 5.

infrastructure, economic development, energy, housing, and public administration. Interested companies/parties can apply for funds under the NIP to implement projects falling into the sectors above; applications are managed by the Project Centre (*Projektni centar*) at the Ministry of Finance<sup>32</sup>, which also issued guidelines for the application procedure; implementation of the funds is dealt with by a multitude of other bodies, such as the NIP Implementation Coordinating Body, the Project Management Council, the Project Team, the Tender Procedure Team, the Ministry of Finance and line ministries.

The NIP has been strongly criticised, including by the International Monetary Fund (IMF), *inter alia*, for the lack of transparency and accountability that characterises the selection of the projects to be financed by the NIP in 2006 and 2007, and for not channelling the funds to the general budget, thereby making it difficult to trace the way in which the money is being used. The lack of transparency is, according to the IMF, further exacerbated by the plethora of bodies created to be in charge of different aspects of the NIPs implementation.<sup>33</sup> The IMF concerns echo those of other institutions, such as the National Anti-Corruption Council.<sup>34</sup> At the time of writing of this report, discussions were underway to audit the implementation to date of the NIP, fed by suspicions that it was at least in part operated as a slush fund, and allegations by contractors implementing NIP projects that they had not been paid substantial amounts of money for works carried out. It remains to be seen whether or not such an audit will take place, and what its findings will eventually reveal.

### *Procurement*

Public procurement – the purchase of goods and services using public money – is one of the key areas in which corruption occurs. Public procurement represents a substantial proportion of GDP in most countries.<sup>35</sup> Corruption in procurement may take a number of forms, all of which have in common the allocation of public contracts to private entities in return for the provision of illicit benefits to officials or entities (for example political parties). Such corruption leads in various ways to inefficient spending of public money, is likely to lower the quality of goods or services provided, and may have other very important knock-on effects such as the financing of incumbent political parties through procurement bribes. An important part of the accession process for EU candidate countries has been to adopt and implement the EU Public Procurement Directives, which impose duties on member states concerning the organisation and conduct of procurement.<sup>36</sup>

Figures for spending on public procurement do not exist for Serbia prior to the introduction of public procurement rules in 2002. The Public Procurement Office reported a figure of 124.75 billion Dinars (nearly 1.46 billion Euro<sup>37</sup>) in all types of public procurement for 2005.<sup>38</sup>

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<sup>33</sup> See Op-Ed by the International Monetary Fund's Resident Representative in Serbia, Harald Hirschhofer, *Can the National Investment Plan Succeed?*, published in several Serbian Newspapers in March 2007, at <http://www.imf.org/external/country/SRB/tr/030107.pdf>.

<sup>34</sup> See *National Investments Improvisation is scheduled to start* by Prof. Milić Milovanović, 4 October 2006, at [www.antikorupcija-savet.sr.gov.yu/eng/view.jsp?articleId=455](http://www.antikorupcija-savet.sr.gov.yu/eng/view.jsp?articleId=455).

<sup>35</sup> For example, the EU-average share of public procurement is 16% of the GDP. See *A report on the functioning of public procurement markets in the EU*, 3 February 2004, at [http://ec.europa.eu/internal\\_market/publicprocurement/docs/public-proc-market-final-report\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/public-proc-market-final-report_en.pdf), p. 2.

<sup>36</sup> A useful global introduction to corruption in public procurement is provided by Transparency International, *Handbook for Curbing Corruption in Public Procurement*, 2006, downloadable at <http://www.u4.no/themes/procurement/main.cfm>.

<sup>37</sup> Calculated using the published inter-bank conversion rate for 31 December 2005.

<sup>38</sup> See Public Procurement Office, *Report on Awarded Public Procurements in Republic of Serbia for 2006, (Izveštaj o Dodeljenim Ugovorima o Javnim Nabavkama u Republici Srbiji za 2005. Godinu)*, available in Serbian at <http://www.ujn.sr.gov.yu/Attachments/izvestaj2005.pdf>, p. 2.

As will be discussed in more detail in section 4.2.5, the current rules are reducing some of the main opportunities for corruption in public procurement, but significant challenges still exist. Scandals involving a blatant disregard for the rules still occasionally appear in the media.

**Box 8:**

*In summer 2005, the Serbian national railroad company *Železnice Srbije* issued a request for approval to the Public Procurement Office/PPO (*Uprava za javne nabavke*) for a non-competitive (negotiated) tender for the purchase of a number of locomotives. The PPO, responsible for issuing opinions for all non-competitive procurements, found the justification for such a procedure unsubstantiated and did not issue approval. Invoking a provision of the Public Procurement Law (*Zakon o javnim nabavkama*) that allows for non-competitive tenders in urgent situations, the sale went ahead, but the “urgently needed” locomotives did not arrive for months. Further, *Glas Javnosti*, a Belgrade daily, reported that the report addressed to the PPO estimated that the total value of the procurement was 2.85 million Euro, while the contract for financing the transaction, signed on the same date, cites the figure at 3.5 million Euro, without VAT and other possible fees.<sup>39</sup> Although the scandal was discussed in the media for months, no one was sanctioned for the breach of the rules.<sup>40</sup>*

#### *Corruption in the Healthcare System*

Corruption in healthcare systems is regarded as one of the most serious forms of corruption for citizens. The size of health budgets, combined with a number of peculiar characteristics of health care provision – for example the fact that doctors are often essentially private actors, that patients/clients by definition lack full information on their own needs, or the need for a government regulator to register and approve the prices of drugs – create a sector highly vulnerable to corruption. Moreover, corruption in healthcare provision tends to hit the poor hardest, whether it is through bribery of doctors in return for treatment, or bribery of doctors, medical institutions or regulators by pharmaceutical companies.<sup>41</sup>

The line between corruption and mismanagement is often difficult to draw in health care systems of transition economies, where services continue to be provided through mechanisms and structures established during communist times – yet with dramatically depleted resources to sustain these costly structures. The 2004–2010 Serbia Poverty Reduction Strategy Paper (PRSP; see section 4.1.2 for more information) states that “[a]t present, the health sector is characterised by an oversupply of staff with low salaries, significant deterioration of buildings and equipment, a dramatic fall in the quality of medical services, a decrease in their utilisation, lack of medicines and supplies, a culture of corruption, transfer of patients and equipment to the private health sector. [...] There is a growing disparity between health care entitlements and related resources. Public health care expenditure [...]

<sup>39</sup> See *Glas Javnosti Lokomotive Stigle u Sud*, 22 November 2005, available in Serbian at <http://82.117.206.28/Develop/PNAdemo.nsf/536427c45b580809c125708f004483ab/d1050303d4ad7397c1257106003651b4?OpenDocument>.

<sup>40</sup> See, for example, B92 News, *Ma koji zakon o javnim nabavkama?* (What Public Procurement Law?) 3 November 2005, available in Serbian at [http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=11&dd=03&nav\\_id=179721](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=11&dd=03&nav_id=179721).

<sup>41</sup> Transparency International’s *Global Corruption 2006: Corruption in Health* provides much useful further reading on corruption in healthcare, [http://www.transparency.org/publications/gcr/download\\_gcr#download](http://www.transparency.org/publications/gcr/download_gcr#download).

has fallen [...]. The gap has been taken up by increased direct expenditure by patients/families, which has adversely affected the accessibility of health care to the poor.”<sup>42</sup>

**Box 9:**

*The amount of formal and informal payments demanded by service users has significantly risen throughout the region. Both types of payment have a dramatic impact on the equity of health care access, and affect the poor hardest. Specific data for Serbia is hard to come by. Estimates by the World Bank (WB) and the World Health Organisation (WHO) suggest that these payments make up between 30% (WHO) and 40% (WB) of the total health expenditure.<sup>43</sup> Patterns in other transition countries that could be extrapolated for Serbia indicate that informal payments are highest in the secondary health care services, and can make up a substantial part of service users' monthly income. Informal payments are being demanded both to be provided with a service, but also to cover the costs of items such as bandages and catheters.*

*Corruption in the Education System*

Corruption in the education system is a serious form of corruption, for a number of reasons. In many countries, education is the first or second largest item of public spending, and corruption involving the misuse of funds allocated to education may therefore result in large losses to the taxpayer. Equally seriously, corruption in the provision of education services – for example the extortion of bribes or other benefits by teachers in return for the provision of educational services – often constitutes a violation of the fundamental right of access to quality education as defined by the United Nations. Last but not least, corruption in education conflicts with one of the main functions of education systems - to create and underpin ethics and values.<sup>44</sup>

The 2004–2010 Serbia Poverty Reduction Strategy Paper (PRSP) acknowledged that corruption was adversely affecting the poor, including by denying them access to education, and by putting a strain on the poor's resources by requesting additional payments. The PRSP attributed this situation partly to the low spending (3.14% of the GDP in 2002<sup>45</sup>) in the education sector.

Despite the absence of systematic data/surveys on corruption in the primary and secondary education sector in Serbia, the patterns (areas, opportunities and impact) are likely to echo those throughout the region. Corruption can occur in the teaching process itself (including through requesting parents to make informal payments to teachers and school staff), as well as in the maintenance of education premises/infrastructure and delivery of teaching material.

<sup>42</sup> See *Poverty Reduction Strategy Paper for Serbia – Executive Summary and Activity Matrices*, Belgrade, 2003, at [http://www.seerecon.org/serbiamontenegro/documents/reforms\\_statement\\_serbia/annex2-prsp\\_executive\\_summary\\_and\\_matrices.pdf](http://www.seerecon.org/serbiamontenegro/documents/reforms_statement_serbia/annex2-prsp_executive_summary_and_matrices.pdf), p. 63.

<sup>43</sup> See WHO/CEB Report on *Health and Economic Development in South-Eastern Europe* at <http://www.stabilitypact.org/soc-cohesion/Rapport%20Sante.pdf>, p. 62. The data quoted reflects estimates for the year 2002, and has been compiled for Serbia and Montenegro.

<sup>44</sup> A useful introduction to corruption in education can be found in Bettina Meier, *Corruption in the Education Sector: An Introduction*, 2004, at [http://admin.corisweb.org/files/MeierB2004Corruption\\_Education\\_Intro1096553141.doc](http://admin.corisweb.org/files/MeierB2004Corruption_Education_Intro1096553141.doc).

<sup>45</sup> See *Serbia Poverty Reduction Strategy Paper 2004–2010 - Executive Summary and Activity Matrices*, Belgrade, 2003, at [http://www.seerecon.org/serbiamontenegro/documents/reforms\\_statement\\_serbia/annex2-prsp\\_executive\\_summary\\_and\\_matrices.pdf](http://www.seerecon.org/serbiamontenegro/documents/reforms_statement_serbia/annex2-prsp_executive_summary_and_matrices.pdf), p. 13 and 26.

**Box 10:**

A 2005 survey carried out by the Student Union of Serbia<sup>46</sup> in Belgrade, Novi Sad, Niš and Kragujevac found that 72% of students believed that the enrolment process was tainted by corruption; 68% of the respondents had heard of a bribe being paid for the passing of exams or receiving a good mark; 29% of the respondents were convinced that corruption existed in the faculty administration. 53% of respondents reported having found themselves in a situation where the precondition for passing an exam had been to purchase a textbook recommended by the professor, and 25% of respondents had purchased the textbook directly from the professor 60% of the respondents stated that the examination process was not objective; 31% would offer a bribe in return for passing an exam if there was no possibility of passing it otherwise; 57% of respondents would not report corruption that occurred during the passing of exams, and 90% of students are unaware of the sanctions foreseen for both faculty staff and students for bribery.<sup>47</sup>

**Box 11:**

In spring 2007, more than 10 professors and assistant professors of the Law Faculty in the city of Kragujevac were arrested for demanding bribes of students in order to pass exams. Among the arrested were the dean, the deputy dean of the Faculty, a former Assistant Minister of Education and Sports, and a former judge at the Constitutional Court of Serbia. There was widespread consensus that this was not an isolated, but rather typical case. In return for bribes paid, the staff would give marks to students and make up protocols of exams which had not actually taken place.<sup>48</sup>

The police action was carried out in co-operation with the Special Prosecutor for Organised Crime (*Specijalni tužilac za organizovani kriminal*). The arrests were made due to undercover agent work, an instrument that was enacted in Serbian legislation only in February 2002.<sup>49</sup> The case demonstrates the importance of appropriate investigative means in order to uncover and investigate corruption cases

### 3.3.2 Corruption in the Justice System

Corruption in the justice system – i.e. the police, prosecution services and courts – distorts the enforcement of the law and by implication undermines trust in the law and justice system itself.<sup>50</sup> For citizens, the police are often the most visible representatives of authority and the one with which they are most likely to come into contact. Police officers are subject to systematic incentives to engage in corrupt behaviour in activities ranging from the issue of fines for traffic offences to

<sup>46</sup> The survey was funded by the Open Society Institute's Higher Education Support Program (HESP), see [www.soros.org/initiatives/hesp](http://www.soros.org/initiatives/hesp) for more detail.

<sup>47</sup> Survey results received directly from the Student Union of Serbia.

<sup>48</sup> See, for example, B92 News *Hapšenje zbog mita na fakultetu* (Arrests for bribery at the faculty), 20 February 2007, at [http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=02&dd=20&nav\\_category=120&nav\\_id=233336](http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=02&dd=20&nav_category=120&nav_id=233336).

<sup>49</sup> See amendments to the Criminal Procedure Code (*Zakon o izmenama i dopunama krivičnog zakona Republike Srbije*), available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=26&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=26&t=Z#).

<sup>50</sup> A good overview of the issues involved in police corruption can be found in Hubert Williams, *Core factors of police corruption across the world*, at [http://www.u4.no/document/literature/core\\_factors.pdf](http://www.u4.no/document/literature/core_factors.pdf). The *Transparency International Sourcebook* contains a useful chapter on how to prevent corruption in the judiciary, and touches also on problems of corruption of investigators and prosecutors; available at <http://www.u4.no/document/literature/pope2000independent-judicial-system.pdf>.

investigation of suspected criminal activity. Such incentives are also strengthened by the fact that police officers are often poorly remunerated, their actions are difficult to monitor, and police organisational culture often tends to protect corrupt officers. Likewise, prosecution services are also vulnerable to corruption, as prosecutors deal with cases that radically affect the lives of those prosecuted. Court judges, as the final arbiters of criminal, civil and administrative law cases, are also a natural target for corruption. Corruption in all of these areas has been a serious problem in almost all post-communist countries, and recent surveys for example indicate that bribery in the courts in Serbia and Montenegro increased between 2002 and 2005.<sup>51</sup>

It may be useful, at this point, to distinguish between two forms of corruption within law enforcement institutions: on the one hand, “petty” corruption or the acceptance (or extortion) of bribes for personal material gain in order to carry out law enforcement duties selectively; on the other hand, political influence that results in the same selective application of the law to individuals that are under the protection, or alternatively in the disfavour, of a powerful political figure who could jeopardise or improve the law enforcement official’s status or livelihood. The second form is particularly damaging to the law enforcement bodies’ ability to investigate, prosecute, and convict high-level officials. Both forms of corruption exist in Serbia, and both are harmful, but the reason for the distinction is to consider appropriate measures and policies required to combat them, as these can differ.

Most perception surveys do not distinguish between these two forms of corruption, however, and in Serbia, one has difficulty arriving at quantitative indicators of which form of corruption is more prevalent. The distinction between the two may in part account for the discrepancy between perceptions (high) and experiences of corruption (lower): media reports about the misdeeds of high-level officials, coupled with the lack of response by law enforcement, would create a high perception of corruption, even if one has never paid a bribe to a judge or a prosecutor oneself.

With the courts in particular, another factor likely to contribute to the perceptions of corruption is the continued inefficiency, exacerbated by the inadequacy of financial resources. Legal disputes dragging on for a number of years arouse suspicions that a judge may have been bribed to deliberately delay the procedure.

With regard to the prosecution, there is a widely shared perception of corruption in the form of political influence, noted in the reports of international organisations,<sup>52</sup> and confirmed through numerous media reports. The prosecution is regularly accused by the media of a reluctance to initiate investigations of high-level officials in circumstances that appear to have sufficient elements to warrant doing so.<sup>53</sup> Yet the merits of some of these cases are debatable, as corruption crimes in particular are very difficult to investigate and prove in a court of law, even in high-capacity law enforcement systems. In Serbia, the challenge is compounded by inadequate legislative frameworks (until recently, many of the criminal acts relating to corruption were not defined in law), and the prosecutors’ lack of experience in building such cases. Nevertheless, evidence of political pressure on the prosecution is extensive.

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<sup>51</sup> See *Anticorruption in Transition 3: Who Is Succeeding... and Why?*, The International Bank for Reconstruction and Development/The World Bank, 2006, at [http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/0\\_contentMDK:20989777~pagePK:146736~piPK:146830~theSitePK:258599.00.html](http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/0_contentMDK:20989777~pagePK:146736~piPK:146830~theSitePK:258599.00.html), p. 54.

<sup>52</sup> See, for example, Council of Europe *GRECO Evaluation Report on the Republic of Serbia*, 2006, at [http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-1\(2005\)1rev\\_Serbia\\_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-1(2005)1rev_Serbia_EN.pdf), p. 13, and *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), p. 6.

<sup>53</sup> See, for example, a compilation of case studies on corruption scandals undertaken by the Center for Peace and Democracy Development, in Serbian only, at <http://www.caa.org.yu/files/File/tuz%20data%20case.doc>.

**Box 12:**

*Gordana Čolić, a Belgrade municipal prosecutor, was suspended in June and again in July 2006 by the Republican Public Prosecutor (*Republički javni tužilac*), the country's most senior prosecutor, on the grounds of alleged incompetence. The second suspension followed a ruling by the High Judicial Council (*Visoki savet pravosudja*) overturning the initial suspension. Čolić was ultimately restored to her function.*

*Human rights activists maintain that her suspension is in retaliation for publicly criticising the Minister of Justice and the Republican Public Prosecutor for selecting prosecutors without following the proper criteria and filling vacancies in prosecutors' offices with unskilled and unqualified personnel. Her suspension was further ascribed to the refusal to prosecute upon the order of the Minister of Justice his predecessor and political opponent Vladan Batić.*

*Similarly, Mioljub Vitorović, an assistant prosecutor in the office of the Special Prosecutor for Organised Crime who led the investigation into the 2000 assassination of former Serbian President Ivan Stambolić, was forced to leave his post in July 2006 following unsubstantiated allegations that he had leaked information to the media.<sup>54</sup>*

The perceptions of corruption in the police are particularly problematic due to the collective memory of their role during the Milošević era, when they were used to brutally contain mass protests and facilitate smuggling operations that fed and heated Serbia under UN sanctions in the 1990s. Despite some early improvements (discussed in section 4.2.3), the perception of police as corrupt remains high. There are no reliable data to determine whether there has been a change in the levels of petty corruption (especially with the traffic police). Among the reasons to suspect that the problem continues to exist is the continued low level of officers' salaries and other compensation, such as housing benefits. Continued vulnerability to political influence can be inferred through personnel changes that coincide with the change of governments, or in response to work on particular politically sensitive cases.

**Box 13:**

*The arrest of one of the key witnesses in the Djindjić assassination took place amid well-founded speculations that a number of individuals in the police and the Serbian government had been helping him evade capture. The successful action of the Special Unit for Combating Organised Crime (*Uprava za borbu protiv organizovanog kriminala/UBPOK*) was "rewarded" by reassignment to less prestigious posts of the unit's best policemen: General Boro Banjac, the Head of UBPOK, was moved to head a police department in the municipality of Čukarica; his predecessor, Vladan Anojčić, was assigned to an operative (rather than leadership) position in the municipality of Zvezdara; Colonel Mile Novaković, an operative from UBPOK, was moved to the police department dealing with foreign citizens; and deputy Head of the Belgrade municipal police was reassigned to the firefighter brigade.<sup>55</sup>*

<sup>54</sup> Belgrade Centre for Human Rights, *Human Rights in Serbia 2006*, available at <http://www.bgcentar.org.yu/documents/Human%20Rights%20in%20Serbia%202006.pdf>, pp. 210, 221-222.

<sup>55</sup> See report *Dogovori gradjanina Bagzija* (The Agreements of Citizen Bugsy) by Miloš Vasić, one of Serbia's most respected and knowledgeable journalists on the questions of organised crime in *Vreme* no 719, 14 October 2004, available in Serbian at <http://www.vreme.com/cms/view.php?id=393543>.

### *Links between Organised Crime and Corruption*

As noted in the introduction, a legacy of the Milošević era is the close links between state institutions, and particularly law enforcement bodies and the customs, and organised crime groups. During the 1990s, organised crime groups co-operated very closely with state structures, being allowed to operate freely in exchange for a percentage of the profits and favours such as assassinations of political opponents. Related was also the smuggling of goods restricted by UN sanctions, as well as excise goods that would ordinarily require higher tax payments, by regime-authorised “businessmen”. This legacy impacts not only on the perception of these state institutions, but far more seriously, the nature of organised crime in Serbia today.

In most countries, the link between organised crime and corruption consists in organised crime groups’ efforts to maintain their position and a degree of stability in their activities by taking steps to avoid prosecution. While this may be done simply by concealing their activities sufficiently from the police and other investigatory institutions, often organised crime groups will attempt through bribery to ‘co-opt’ key officials in the police or other relevant institutions (for example the Ministry of Interior or the prosecution) in order to provide an ‘umbrella’ for their activities. For example, a share of organised crime profits may be provided to senior police officers in return for security from investigation. Given the typically high profits associated with organised crime, such practices will often widen as senior state officials or even politicians also demand a share in profits. Such co-option can therefore lead to the symbiosis of organised crime, law enforcement authorities, state administration and politics, in which the line between organised crime and the institutions or officials it co-opts become blurred. Such corruption is extremely dangerous, as it involves large economic benefits and compromises the ability of state authorities to maintain law and order.<sup>56</sup>

#### **Box 14:**

*The bulk of organised crime in the Balkans (and in Europe) involves the trade in narcotics (primarily heroin), and trafficking in human beings and weapons. These are the most serious forms of crime that also threaten EU countries. The nature of organised crime is trans-national, requiring extensive regional and international cooperation.*

*Numerous reports on the threats of organised crime exist from organisations such as EUROPOL (see, for example, the 2006 *European Organised Crime Threat Assessment*, which discusses the links to the Balkans, including Serbia.)<sup>57</sup> For a recent overview, see Dejan Anastasijević’s brief and informative working paper in English “*Organised Crime in the Western Balkans*.”<sup>58</sup>*

In addition to the above, in Serbia a related problem is connected with the legacy of the past and challenges and opportunities of economic transition. Many “controversial businessmen” who had

<sup>56</sup> A useful discussion on the connections between organised crime and corruption can be found in Bill Lahneman and Matt Lewis, *Summary of Proceedings: Organised Crime and the Corruption of State Institutions*, 18 November 2002, <http://www.cissm.umd.edu/papers/files/organizedcrime.pdf>. A good description of how organised crime can compromise the state entirely is found in Louise I. Shelley, *Can Russia fight organised crime and corruption?*, *Tocqueville Review*, Vol. XXIII, No. 2, 2002, <http://www.american.edu/traccc/resources/publications/shelle01.pdf>, pp. 37-55.

<sup>57</sup> The report is available at <http://www.europol.europa.eu/publications/OCTA/OCTA2006.pdf>.

<sup>58</sup> Dejan Anastasijević, *Organised Crime in the Western Balkans*, HUMSEC Working Paper Series, available at [http://www.etc-graz.at/cms/fileadmin/user\\_upload/humsec/Workin\\_Paper\\_Series/Working\\_Paper\\_Anastasijevic.pdf](http://www.etc-graz.at/cms/fileadmin/user_upload/humsec/Workin_Paper_Series/Working_Paper_Anastasijevic.pdf).

made their fortunes during the 1990s either from illicit trade or regime-endorsed monopoly positions in the market (with appropriate payments to political patrons) stored their profits in off-shore banks. Some of them are returning to Serbia to invest those profits in the Serbian industry through the privatisation process. These transactions can sometimes transpire in collusion with corrupt officials who deliberately undervalue the state enterprise in question in exchange for a reward from the investor. While it may not strictly fall under the definition of a criminal enterprise (lacking, for example, an element of clear internal hierarchy), the result can be a complex network of individuals engaged in corrupt activities, operating within and outside state institutions, making for extremely complex investigation and prosecution of cases.

It is for these reasons that the capacity of the repressive apparatus, particularly the police and the prosecutors, and their ability to deal with financial investigations and money laundering issues, require continued support.

**Box 15:**

*In April 2006, police arrested the first 9 of 34 persons charged with operating a lucrative scam that had become known as the "bankruptcy mafia." In simplest terms, the operation functioned on the basis of the commercial court deciding on the sale of insolvent enterprises below market value to associates in exchange for payment, with the (partially state-owned) Postal Savings Bank then providing favourable loans to the same individuals to conclude the transaction. Several public officials were among those arrested, most notably Goran Kljajević, President of the Commercial Court in Belgrade; the directors of two banks, including the Postal Savings Bank, and an official from the Inspector General's office of the Ministry of Interior (police). The 200+ page indictment publicly presented in October 2006 was the largest in Serbian judicial history to date. In an interview with one of the authors, the Head of the Special Police Unit for Combating Organised Crime/SBPOK (*Služba za borbu protiv organizovanog kriminala*) explained that he believes that this case is an important achievement that speaks both of the improved capacity to fight complex cases, as well as of the complexity of new forms of organised crime in Serbia today.<sup>59</sup>*

### 3.3.3 Corruption in the Process of Doing Business

Corruption in the process of conducting business in Serbia can be divided into two main forms. First, the private sector faces its own specific challenges and forms of corruption. Second, there are opportunities for corruption caused by the fact that significant parts of companies in Serbia are socially or state-owned and have yet to be restructured and privatised. Both types of corruption stem from the (still) enormous influence of the state on the economy.

Corruption relating to socially-owned and state-owned enterprises has been discussed in previous sections. The *private sector*, however, faces a number of specific problems which carry substantial potential for corruption. These relate to the burden of regulations businesses have to comply with and the number of certificates and licenses they have to produce. Reliable data are hard to come by, however. The EBRD-World Bank BEEPS (quoted above) found that in 2005, compared to 2002, companies in Serbia (and Montenegro) reported an *increase* in corruption as an impediment for doing business. While in 2002, around 32% of respondents felt that corruption was an obstacle to business, in 2005, this percentage rose to 50%. While the frequency of bribes had significantly risen

<sup>59</sup> See details of the case in Serbian at [http://www.politika.co.yu/detaljno\\_arhiva.php?nid=9275&y=2006&m=10&d=13](http://www.politika.co.yu/detaljno_arhiva.php?nid=9275&y=2006&m=10&d=13) or briefly in English <http://belgrade.usembassy.gov/policy/reports/070306.html>.

– from appr. 15% in 2002 to appr. 32% in 2005 – the overall ‘bribe tax’, i.e. the percentage that bribes made up as a share of annual sales had gone down from on average 1.5% in 2002 to appr. 0.65% in 2005.<sup>60</sup>

However, a 2005 survey carried out by the Serbian Agency for Small and Medium-Size Enterprises and Entrepreneurship (*Republička agencija za razvoj malih i srednjih preduzeća i preduzetništva*)<sup>61</sup> provides a different picture (possibly because it surveyed a specific segment of the economy, as opposed to the BEEPS, which covered SME’s and big enterprises). Corruption was explicitly listed as a problem by only 9% of the respondents.

The EBRD–World Bank BEEPS survey, and the analysis and interpretation of its data in ‘Anti-corruption in Transition 3: Who is succeeding...and Why?’ suggests that throughout the countries surveyed, private business seems to be more affected by corruption than state-owned, and local companies more than international ones.<sup>62</sup> Although corruption is not considered to be the main obstacle to doing business by the Serbian SME Agency, the fact that SMEs are making up some 99% of the Serbian economy, employing around 53% of the working population<sup>63</sup>, the effect state regulations – and the opportunities for corruption they create – have on this type of enterprises is certainly significant. This assessment is echoed by other stakeholders, who confirm that despite improvements, SME’s are still having a hard time doing business, in particular as they often operate in local municipalities where the public administration’s capacities are even lower, and a service culture *vis-à-vis* entrepreneurs is even less developed than in the big cities.

One of the main problems, however, appears to relate to the corrupt and/or inefficient judiciary: 27% of the respondents of the SME survey said that this was the biggest problem faced by businesses.<sup>64</sup> The findings of the EBRD-World Bank BEEPS found the problem to be significantly bigger – appr. 52% in 2005 compared with appr. 35% in 2002. This concern about the impact of the corrupt, or perceived corrupt judiciary on the development of the private sector is echoed in numerous qualitative analyses, in particular with respect to the weak legal protection of property rights.<sup>65</sup>

Another problem captured by the BEEPS is the frequency of bribes businesses have to pay for different types of inspections. Compared with 2002, slightly more respondents stated in 2005 that bribes were frequent in the occupational health and safety inspections (18% in 2002 vs. 24% in 2005), fire and building inspections (14% in 2002 vs. 18% in 2005), and environmental inspections (11% in 2002 vs. 13% in 2005).<sup>66</sup>

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<sup>60</sup> See 2005 EBRD–WB Business and Enterprise Environment Performance Survey (BEEPS), at <http://siteresources.worldbank.org/INTECAREGTOPANTCOR/Resources/BAAGREV20060208SAM.pdf>, p.4.

<sup>61</sup> The Agency’s website can be found at [www.sme.sr.gov.yu](http://www.sme.sr.gov.yu).

<sup>62</sup> See *Anti-corruption in Transition 3: Who is succeeding ... and Why?*, at [www.worldbank.org/eca/act3](http://www.worldbank.org/eca/act3), p. 6.

<sup>63</sup> In 2004, 68691 companies out of 69360 active companies were SMEs. Figure from Enterprise Policy Development in the Western Balkans – Report on the Implementation of the European Charter for Small Enterprises in the Western Balkans 2007 at [www.investmentcompact.org/dataoecd/31/41/38310075.pdf](http://www.investmentcompact.org/dataoecd/31/41/38310075.pdf), p. 38.

<sup>64</sup> Figures obtained from the Serbian Agency for the Development of Small and Medium-sized Enterprises and Entrepreneurship during a meeting with one of the authors.

<sup>65</sup> See, for example, *Competitiveness of the Serbian Economy 2006*, Jefferson Institute, Belgrade, at [http://www.jeffersoninst.org/Documents/competitiveness%202006\(2\).pdf](http://www.jeffersoninst.org/Documents/competitiveness%202006(2).pdf), and Foreign Investors’ Council (FIC) *White Book 2006* at <http://www.fic.org.yu/>.

<sup>66</sup> See 2005 EBRD–WB Business and Enterprise Environment Performance Survey (BEEPS), at <http://siteresources.worldbank.org/INTECAREGTOPANTCOR/Resources/BAAGREV20060208SAM.pdf>, p.4.

The EBRD–World Bank BEEPS found also that compared to 7% of firms having stated in the 2002 survey that bribery was frequent ‘to influence the content of new legislation, rules, decrees etc.’, this figure had risen to 10% in 2005.<sup>67</sup>

A number of regulations related to businesses seem to provide scope for extortion. The 2004 Law on the Protection of the Environment (*Zakon o zaštiti životne sredine*)<sup>68</sup> vests substantial competencies for measures relating to environmental protection, including the possibility to lever a specific tax on businesses, with the municipalities. The law does not, however, specify the mechanisms to be applied to identify the tax rate, nor the frequency with which it can be increased and to what percentage at each time.

### *Corruption in the Customs and Tax Systems*

Customs systems – i.e. the regulation of goods crossing state borders and of the payment of customs or other tax owed on such goods – are a classic area of vulnerability to corruption. They combine face-to-face encounters between those transporting goods across borders and officials responsible for inspecting goods and imposing charges or other duties. This creates strong incentives for corruption both for importers/exporters and officials: the economic benefits from bribing officials to ignore goods that would normally be subject to additional duties or taxation may be huge, as are the potential benefits to the officials concerned.<sup>69</sup> Corruption in customs has been a problem in almost all post-communist transition countries, and in Serbia patterns of corruption were exacerbated by special circumstances, in particular the UN trade embargo during the 1990s Yugoslav conflicts. During the Milošević era, the customs administration managed by Mihalj Kertes was one of the main financial pillars of the regime, estimated to have transferred to off-shore accounts one billion German marks, 80 million US dollars, 63 million French francs, and 390 million Austrian schillings to Cyprus toward Milošević private funds and military projects.<sup>70</sup>

Although a number of reforms have been undertaken in the customs and tax administrations since 2000, aiming to bring the Serbian border management, including the customs administration, closer to EU and WTO standards, it is also clear that significant problems still exist.

The 2005 EBRD–World Bank BEEPS found that compared to 2002, more companies in Serbia stated that bribery was frequent in the dealings with customs authorities and the tax administration. While in 2002, 17% of firms had made that statement with regards to the customs authorities, in 2005, this figure had gone up to 22%. The statement with regard to taxes and tax collection was made, in 2002, by 14% of companies, as compared to 21% in 2005.<sup>71</sup>

With respect to corruption in the customs, opportunities have still not been sufficiently cut to curb corruption. For example, the salaries of customs officials are still very low on the one hand, whereas the burden of regulations and certificates to be provided to obtain customs clearance is still very

<sup>67</sup> See 2005 EBRD–WB Business and Enterprise Environment Performance Survey (BEEPS), at <http://siteresources.worldbank.org/INTECAREGTOPANTCOR/Resources/BAAGREV20060208SAM.pdf>, p. 4.

<sup>68</sup> See for the Serbian text of the law [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=181&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=181&t=Z#).

<sup>69</sup> For further information on corruption in customs administration, see, for example, Irène Hors, *Fighting corruption in customs administration: what can we learn from recent experiences?*, OECD, 2001, <http://www.oecd.org/dataoecd/60/28/1899689.pdf>.

<sup>70</sup> See John Simpson and Zelimir Bojović, *Investigation: Serbia Losing Customs Corruption Battle, Balkan Crisis Report*, Institute for War & Peace Reporting, February 2005. Available at [http://iwpr.net/?p=bcr&s=f&o=242419&apc\\_state=henibcr2005](http://iwpr.net/?p=bcr&s=f&o=242419&apc_state=henibcr2005)

<sup>71</sup> See 2005 EBRD–WB Business and Enterprise Environment Performance Survey (BEEPS), at <http://siteresources.worldbank.org/INTECAREGTOPANTCOR/Resources/BAAGREV20060208SAM.pdf>, p. 4.

heavy for potential importers, creating a situation where corruption appears to be beneficial for both sides.

**Box 16:**

*B92 reported that on 29 May 2007 during a police action, ordered by the Special Prosecutor for Organised Crime, 15 people had been arrested on the suspicions of having been involved in smuggling crude oil derivatives into Serbia. The derivatives were – falsely – declared to be diluents destined for the further use in production, as this type of product is not subject to excise duty. The derivatives were then actually sold on the black market to petrol stations. The damage to the state budget through this scheme is estimated to be approximately 10 million Euro. Among the arrested were a member of the internal control department of the tax administration, four inspectors of the Republic Market Inspectorate (*Republička tržišna inspekcija* – the service in charge for, *inter alia*, verifying the quality of industrial products), and a retired head of the inspectorate, now member of the executive board of one of the private companies involved in the scam.<sup>72</sup>*

Significant problems in the area of the enforcement of the tax regime also remain. One concern particularly pertinent to businesses is the disproportionality of sanctions imposed on businesses committing even relatively minor offences. For example, if a business is unable to provide, on the spot, certain certificates, this can be punished with immediate closure of the business in question, and there are substantial difficulties associated with re-opening it. Faced with the prospect of closure and loss of business for several weeks, the alternative of bribing the tax inspector – who, in turn, receives a very low salary – seems to be a tempting solution for the businessman and the tax inspector alike.

### 3.3.4 Corruption and the Media

One of the most important components of a system for preventing and fighting corruption is the existence of media that provide citizens with timely, objective and balanced coverage of public affairs, including the exposure and coverage of corruption and corruption-related issues through investigative journalism. Corruption (for example bribery of journalists or media outlets in return for a media outlet refraining from covering a certain issue) directly undermines such provisions, depriving the public of the information that it needs to be able to assess those in power and their actions. An issue of particular importance in transition countries has been the independence of broadcast media, especially television, as it is often the single most important provider of information and influence on public opinion. State or public television channels have been singled out most often due to frequent interference by governments to influence their coverage, not to speak of direct misuse of them to promote incumbent political forces during election campaigns.

There are no reliable analyses on corruption within the media in Serbia, although there is widespread consensus that the key problem rests not with the bribery of individual journalists, but rather in the direct or indirect influence of media outlets by political parties and associated business

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<sup>72</sup> See B92 Vesti, *Privodjenja zbog poslova naftom* (Arrests because of business with crude oil), 29 May 2007 in Serbian at [http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=05&dd=29&nav\\_category=120&nav\\_id=24882](http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=05&dd=29&nav_category=120&nav_id=24882)

interests that finance them.<sup>73</sup> Transparency in media ownership structures is low, particularly in the tabloid print media, which are the principal sources of most political speculation and rumours.<sup>74</sup>

**Box 17:**

*An instructive case study could be made, for example, of media coverage before and following the assassination of Prime Minister Zoran Djindjić, and during subsequent criminal trials. A number of dailies that are believed to be strongly influenced by groups close to the Milošević regime and the Radical Party not only predicted the assassination of the Prime Minister, but later launched into a wholesale assault on the evidence against the assassins, alleging implausible versions of the event, including the complicity of Djindjić's own colleagues.<sup>75</sup> The same media outlets continue to engage in slander and egregious forms of hate speech, an issue that has likewise been inadequately regulated.*

More serious is the continued lack of independence of the public broadcaster, the Serbian Broadcasting Corporation (Radio-Televizija Srbije/RTS),<sup>76</sup> which was notorious during the Milošević era for emitting government-controlled propaganda. Its transformation into a public broadcaster has been difficult and political influence on the station has remained strong. While the 2002 Law on Broadcasting (*Zakon o radiodifuziji*)<sup>77</sup> formally transformed RTS into an independent public service, the director Aleksandar Tijanić is a close associate of prime minister Koštunica and RTS is widely recognized to continue representing the views of the government.

**Box 18:**

*The scandal surrounding the allocation of broadcasting licenses and national frequencies by the nominally independent broadcast regulator, the Republican Broadcasting Agency (*Republička radiodifuzna agencija*)<sup>78</sup> further attests to political interference. In a Legal Opinion<sup>79</sup> on the matter in May 2006, the OSCE issued harsh criticisms about the lack of transparency and arbitrary decisions made during the process, judging them "legally questionable".*

An additional problem is the lack of capacity of the more reputable and independent media to cover corruption. The bulk of media reports concerns scandals and arrests for corruption, with very little understanding and coverage of systemic issues that are key to preventing and successfully prosecuting corruption.<sup>80</sup> The challenge to informed quality reporting is one common throughout the world: scandals sell newspapers, and the resources required to conduct longer-term serious

<sup>73</sup> See, for example, 2006 *Global Integrity Report Serbia*, <http://www.globalintegrity.org/reports/2006/SERBIA/notebook.cfm>.

<sup>74</sup> See, for example, report on Serbia as part of project *Media Ownership and Its Impact on Media Independence and Pluralism*, 2004, available at [http://www.mirovni-institut.si/media\\_ownership/pdf/serbia.pdf](http://www.mirovni-institut.si/media_ownership/pdf/serbia.pdf).

<sup>75</sup> One such study entitled "Zoran Djindjić in Print Media: January 2001–12 March 2003" ("*Zoran Djindjić u štampanim medijima: januar 2001.–12. mart 2003.*") has been produced by the Ebart/Media Documentation (*Ebart/Medijska dokumentacija*). Available in Serbian at <http://www.arhiv.co.yu/zoran1.htm>

<sup>76</sup> See <http://www.rts.co.yu>

<sup>77</sup> Available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=45&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=45&t=Z#)

<sup>78</sup> The Agency's website is at <http://www.rra.org.yu>.

<sup>79</sup> The Opinion can be found at <http://www.osce.org/item/20006.html>.

<sup>80</sup> A view held by individuals interviewed and confirmed in a media content analysis conducted over a 9 week period in the spring of 2006 by Transparency Serbia, supported by the Westminster Foundation for Democracy. The report is available upon request from Transparency Serbia.

investigative reporting are often beyond the financial means of most media houses, particularly as they do not result in higher circulation figures. Where a more consistent and informed approach has been noted, is in instances where a particular institution or organisation had made a concerted long-term effort to bring the issues to the media, as has been the case with the Commissioner for Information of Public Importance (*Poverenik za informacije od javnog značaja*) and Transparency International.<sup>81</sup> There is reason, therefore, for modest optimism that such results can be replicated on other issues provided a considered media education/outreach strategy is employed.

Finally, the continued intimidation of journalist must not be overlooked. In Serbia, there exists a somewhat paradoxical situation where on the one hand, scandals are so numerous that there are nearly daily allegations in the press against politicians for corruption and other wrongdoings. A few of the unsubstantiated claims have been retaliated against through defamation suits, but these appear to be a minority compared to the enormous volume of specious allegations circulating in the press, and there have been no reports of these having a particular chilling effect on the freedom of the press in Serbia. On the other hand, the recent (April 2007) bomb attack on the home of one of Serbia most serious journalists who regularly reports on war crimes and organised crime, Dejan Anastasijević,<sup>82</sup> serves as a reminder of the potential punishment for journalists and others who may dig too deep or examine too closely the “wrong people.”

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<sup>81</sup> Ibid.

<sup>82</sup> See B92 News, *Grenade explodes near journalist's home*, 14 April 2007, available in English at [http://www.b92.net/eng/news/society-article.php?yyyy=2007&mm=04&dd=14&nav\\_category=108](http://www.b92.net/eng/news/society-article.php?yyyy=2007&mm=04&dd=14&nav_category=108).

## 4. Responses

The following sections deal with measures taken in recent years that can be seen to have the potential to impact on corruption levels in Serbia. Such responses are sector-specific and/or horizontal, i.e. cutting across the whole of the public administration. They are partly indigenous, and/or result from outside pressure by the international community. A substantial amount of external programmes and projects is still ongoing, and to evaluate their impact to date would be subject of in-depth evaluations at project-level; we have chosen to highlight a few of these ongoing efforts to signal the direction in which reforms are going.

### 4.1 General Context

Responses to deal with corruption may be divided into two types: explicit and implicit.

Explicit responses are policies whose *sole or primary objective* is to tackle corruption. Implicit responses are policies whose primary objective is other than fighting corruption, but which can be expected to have the effect of limiting or reducing corruption.

In general, examples of *explicit* responses include stricter bribery laws, tougher penalties for bribery, the establishment of special investigation techniques for police, and the establishment of specialised institutions to fight corruption or co-ordinate anti-corruption policy.

*Implicit* responses include a wide range of good governance policies, such as judicial reform to improve the independence and effectiveness of courts, the passage of a freedom of information act in order to improve public access to information on the activities of state institutions, cutting unnecessary regulations of business activity, and so on.

Explicit and implicit responses may often overlap: for example, the elaboration of a national anti-corruption strategy is an explicit response, while many of the individual policies and measures contained in the strategy may be implicit ones. Last but not least, it should not be assumed that explicit measures are more important than implicit ones; indeed, it can plausibly be argued that implicit measures are more likely to be the ones that tackle the institutional roots of corruption, rather than trying to fight it *post factum*.

In addition to sector-specific responses designed by the national authorities, there are a number of international regimes that can be brought to bear on shaping reform. These strategic frameworks and international obligations will be described in the following sections.

#### 4.1.1 Strategic Framework 1: Long-term Perspective of European Union Membership

In the framework of the Stabilisation and Association process (SAP), Serbia is, since October 2005, negotiating a Stability and Association Agreement (SAA) with the EU.<sup>83</sup> One of the key instruments supporting the SAP and leading up to the SAA is the European Partnership, which contains short- and medium term priorities for Serbia's integration into the EU.<sup>84</sup> Achievement of the objectives set

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<sup>83</sup> However, as a result of Serbia's failure to co-operate with the International War Crimes Tribunal for the Former Yugoslavia (ICTY), negotiations have been on hold since May 2006, despite the country's ambition to sign the SAA by the end of 2006.

<sup>84</sup> More details can be found on the website of the Serbian EU Integration Office at <http://www.seio.sr.gov.yu/code/navigate.asp?Id=67>.

out in the European Partnership will determine the flow of financial assistance (from 2007 onwards provided through the Pre-Accession Assistance Instrument) to Serbia. In 2005, the government and the Serbian Parliamentary Committee for European Integration adopted the Serbian National Strategy for EU Accession<sup>85</sup>, which spells out policies and measures, as well as legal requirements that need to be undertaken in order to achieve EU accession. In April 2006, an Action Plan for the Implementation of Priorities of the European Partnership was adopted by the Government (the plan was revised in February 2007).<sup>86</sup>

The European Partnership/SAP monitors, on an annual basis, Serbia's (and other prospective candidates') progress against political and economic criteria (the 'Copenhagen Criteria'), and against European standards.<sup>87</sup> At least four of the six 'Copenhagen Criteria' are directly relevant to corruption: that of stability of institutions guaranteeing democracy, the rule of law, a functioning market economy, and the ability to assume the obligations of membership.

#### 4.1.2 Strategic Framework 2: Poverty Reduction Strategy Paper (PRSP)

In addition to the National Strategy for EU Accession, a second relevant medium-term strategic document is the Poverty Reduction Strategy Paper (PRSP), which was developed with the support of a number of donors. The PRSP was adopted in October 2003, and covers the period from 2004 until 2010.

A Living Standards Measurement Survey (LSMS), carried out in 2002 and 2003, provided the data for the PRSP, and formed the basis for analysis of the causes and demographic patterns of poverty in Serbia. Corruption was acknowledged to be one of the *reasons* for poverty, denying citizens access to services such as health care, education and justice. The PRSP also stresses that the high levels of corruption have a deterring effect on foreign investors which, in turn, has an impact on economic growth and subsequently, levels of poverty.

The PRSP follows three main strategic directions: 1) it pursues economic growth and development, through, *inter alia*, 'strong efforts to combat corruption'; 2) it aims at preventing new poverty; and 3) focuses on the efficient implementation of already existing programs targeting the poor, and the development of new programs directly targeting the poor and vulnerable.<sup>88</sup> The fight against corruption and the establishment of the rule of law in pursuance of European integration are seen as one of the pre-requisites for a successful implementation of the PRSP.<sup>89</sup>

A PRSP Progress Report was published in October 2005; however, with regards to the fight against corruption, the report does not provide any quantitative or qualitative analysis on successes, but is

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<sup>85</sup> The Strategy can be found on the website of the Serbian EU Integration Office at <http://www.seio.sr.gov.yu/code/navigate.asp?Id=73%C2%A0>.

<sup>86</sup> The text of the Action Plan can be found on the website of the Serbian EU Integration Office at <http://www.seio.sr.gov.yu/code/navigate.asp?Id=230>.

<sup>87</sup> A glossary of the Copenhagen Criteria can be found at [http://europa.eu/scadplus/glossary/accession\\_criteria\\_copenhagen\\_en.htm](http://europa.eu/scadplus/glossary/accession_criteria_copenhagen_en.htm).

<sup>88</sup> See *Poverty Reduction Strategy Paper – Executive Summary and Matrices of Activities*, at [http://www.seecon.org/serbiamontenegro/documents/reforms\\_statement\\_serbia/annex2-prsp\\_executive\\_summary\\_and\\_matrices.pdf](http://www.seecon.org/serbiamontenegro/documents/reforms_statement_serbia/annex2-prsp_executive_summary_and_matrices.pdf), p. 8.

<sup>89</sup> The PRSP incorporated a range of the UN's Millennium Development Goals (MDG). In April 2007, the Government presented its 'MDG Monitoring Framework', which has been drafted by a multi-disciplinary Task Force, including representatives from government, line ministries, local authorities, from the Poverty Reduction Strategy Implementation Team, the EU Integration Office, and a number of UN agencies in Serbia. The aim of the framework is to allow for the setting and monitoring of Serbia-specific development goals and the identification of measure for their achievement. Corruption or the fight against corruption does not, however, feature in the analysis, neither is it recognized as an impediment to achieving the MDGs. Instead, the report states that recent reforms have contributed to a fall in corruption levels, without, however, going into any details. The report can be found at [http://www.undp.org.yu/newsroom/news/full\\_info.cfm?ID=48](http://www.undp.org.yu/newsroom/news/full_info.cfm?ID=48).

limited to listing a number of legal acts that have either been passed since 2003, or that were in preparation<sup>90</sup> at the time of writing.

The second Progress Report on the implementation of the PRSP is currently being prepared. A draft report has been put on the website of the government<sup>91</sup>, and the public is invited to submit comments in writing to the report. A date for the publication of the Progress Report has not been set, yet. The Living Standards Measurement Survey, the first round of which – conducted in 2002 and 2003 – provided the demographic data for the development of the PRSP, is currently being repeated by the Statistical Office.

#### 4.1.3. Membership in International Organisations and International Obligations

##### *The Council of Europe*

Serbia is the legal successor of the State Union of Serbia and Montenegro. Its membership in international organisations (Council of Europe, United Nations), as well obligations derived from international treaties, stem from this succession. In the below description, reference will be made to Serbia, even though it is implied that initially, membership was that of the State Union of Serbia and Montenegro.

The Council of Europe (CoE) sets a number of key international standards in the fight against organised crime and corruption, through legal instruments and peer review mechanisms, but also through soft-law instruments such as recommendations. Participation and compliance with these standards are important with view to the European membership perspective of Serbia: the European Union's standards in this field are primarily those of the Council of Europe, and accession candidates are judged, *inter alia*, against their compliance with the CoE's standards. The key Conventions of the CoE are:

- The *Civil Law Convention on Corruption*<sup>92</sup> (signed in 2005, but not yet ratified);
- The *Criminal Law Convention on Corruption* (ratified in late 2002, it entered into force in April 2003) and its *Additional Protocol*<sup>93</sup> (Serbia has not yet signed the Protocol);
- The *Convention on Laundering, Search, Seizure and Confiscation from the Proceeds of Crime and on the Financing of Terrorism*<sup>94</sup> (signed in 2005).
- The *Convention on Mutual Legal Assistance in Criminal Matters*<sup>95</sup> (ratified in 2002, and entered into force in the same year) and its *Additional Protocols*<sup>96</sup> (the first Protocol was signed, ratified and entered into force in 2003; the second Protocol was signed in 2005, ratified it in April 2007, and it will enter into force in August 2007).
- The *Convention on Cybercrime*<sup>97</sup> (signed in 2005, but has not yet been ratified).

<sup>90</sup> See *Government of Serbia First Progress Report on the Implementation of the Poverty Reduction Strategy in Serbia 2003–2004*, 2005, at [http://siteresources.worldbank.org/INTPRS1/Resources/SerbiaandMontenegro\\_APR2\(April2006\).pdf](http://siteresources.worldbank.org/INTPRS1/Resources/SerbiaandMontenegro_APR2(April2006).pdf).

<sup>91</sup> The draft report can be found, in Serbian only, at the website of the government at [www.prsp.sr.gov.yu](http://www.prsp.sr.gov.yu).

<sup>92</sup> The text of the Convention can be found at <http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm>.

<sup>93</sup> The text of the Convention and the Additional Protocol can be found at <http://conventions.coe.int/Treaty/EN/Treaties/Html/173.htm> and <http://conventions.coe.int/treaty/en/Treaties/Html/191.htm>.

<sup>94</sup> The text of the Convention can be found at <http://conventions.coe.int/treaty/en/Treaties/Html/141.htm>.

<sup>95</sup> The text of the Convention can be found at <http://conventions.coe.int/Treaty/en/Treaties/Html/030.htm>.

<sup>96</sup> The text of the Additional Protocols can be found at <http://conventions.coe.int/Treaty/en/Treaties/Html/099.htm> and <http://conventions.coe.int/Treaty/en/Treaties/Html/182.htm>.

<sup>97</sup> The text of the Convention can be found at <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>

Further standard-setting policy recommendations by the Council of Europe are:

- *The Recommendation on Common Rules against Corruption in the Funding of Political Parties* (2003); and
- *The Model Code of Conduct for Public Officials* (2000).<sup>98</sup>

Adherence to the CoE instruments obliges countries to harmonise their domestic/national legislation with the standards set out by the Conventions. The CoE has also put in place two important mechanisms which monitor countries' compliance with fulfilling the provisions of the instruments. First, the Group of States against Corruption (GRECO)<sup>99</sup> is a peer review mechanism that assesses countries' performance in implementing the two conventions related to corruption against the so-called Twenty Guiding Principles against Corruption.<sup>100</sup> Second, MONEYVAL<sup>101</sup> is based on a similar mechanism focusing on countries' compliance with anti-money laundering provisions.

Serbia has been reviewed under MONEYVAL in 2004<sup>102</sup>, and has undergone evaluation under GRECO in 2005<sup>103</sup>; Serbia is scheduled to report back to GRECO on the fulfilment of the 25 recommendations for improvement by December 2007.<sup>104</sup>

#### *United Nations Convention against Corruption (UNCAC)*

Serbia ratified the *United Nations Convention against Corruption (UNCAC)*<sup>105</sup> in December 2005, and is, since 2001, party to the *UN Convention against Transnational Organised Crime*<sup>106</sup> and two of its *Additional Protocols*. The UNCAC is a relatively new international instrument which combines and unifies in one standards that have emerged through previous Conventions, such as those by the Council of Europe. It can be said that a country that is adhering to all Council of Europe instruments will also fulfil all requirements set by UNCAC.

#### *Stability Pact for South-Eastern Europe*

In the framework of the Stability Pact for South-Eastern Europe<sup>107</sup>, Serbia has participated in the Anti-corruption Initiative (SPAI), the Investment Compact<sup>108</sup> and the Initiative against Organised Crime (SPOC)<sup>109</sup>. The Stability Pact has been key in facilitating the re-establishment of contacts between professionals and government officials from all levels after the collapse of Yugoslavia. While SPAI has made a contribution to putting the issue of corruption on the political agenda in the

<sup>98</sup> The Recommendations are at [http://www.coe.int/t/dg1/greco/documents/Rec\(2000\)10\\_EN.pdf](http://www.coe.int/t/dg1/greco/documents/Rec(2000)10_EN.pdf) and [http://www.coe.int/t/dg1/greco/documents/Rec\(2000\)10\\_EN.pdf](http://www.coe.int/t/dg1/greco/documents/Rec(2000)10_EN.pdf), respectively.

<sup>99</sup> For background and detail on GRECO, see [http://www.coe.int/t/dg1/greco/general/about\\_en.asp](http://www.coe.int/t/dg1/greco/general/about_en.asp).

<sup>100</sup> The 20 Guiding Principles can be found at [http://www.coe.int/t/dg1/greco/documents/Resolution\(97\)24\\_EN.pdf](http://www.coe.int/t/dg1/greco/documents/Resolution(97)24_EN.pdf)

<sup>101</sup> For background on MONEYVAL, see [http://www.coe.int/T/E/Legal\\_affairs/Legal\\_co-operation/Combating\\_economic\\_crime/5\\_Money\\_laundering/Default\\_moneyval.asp](http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Combating_economic_crime/5_Money_laundering/Default_moneyval.asp)

<sup>102</sup> The MONEYVAL report can be found at [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/combating\\_economic\\_crime/5\\_money\\_laundering/evaluations/MONEYVAL\(2005\)2E-Serbia%20and%20Montenegro1ROSC.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/5_money_laundering/evaluations/MONEYVAL(2005)2E-Serbia%20and%20Montenegro1ROSC.pdf).

<sup>103</sup> The full report of the GRECO evaluation on Serbia, including recommendations, can be found at [http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-1\(2005\)1rev\\_Serbia\\_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-1(2005)1rev_Serbia_EN.pdf)

<sup>104</sup> Many of the recommendations are being mentioned in the respective chapters throughout this report.

<sup>105</sup> [http://www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf).

<sup>106</sup> [http://www.unodc.org/pdf/crime/a\\_res\\_55/res5525e.pdf](http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf).

<sup>107</sup> For background about the Stability Pact, see <http://www.stabilitypact.org>.

<sup>108</sup> For information on the Investment Compact <http://www.stabilitypact.org/investment/default.asp>.

<sup>109</sup> For information on the Stability Pact Initiative against Organised Crime (SPOC) see, for example, <http://new.stabilitypact.org/wt3/040607-spoc.pdf>.

participating countries, criticism as to the value-added of the Stability Pact has been voiced for many years, both from international observers<sup>110</sup> as well as from national counterparts.

## 4.2 Implicit Responses

As noted above, the bulk of reforms that improve governance, create more transparent, efficient, and accountable institutions will have the added value of reducing opportunities for corruption. Particular sectors such as the judiciary and healthcare, where inefficiency and mismanagement are often conflated with corruption, are instances where explicit anti-corruption responses will have very limited impact unless undertaken as part of more comprehensive systemic change. On the other hand, reform of institutions such as the police and the judiciary will be not only about rooting out corruption within those institutions themselves, but is also key because of their crucial repressive role in fighting against corruption.

### 4.2.1 Parliamentary Oversight

There appears to be no internal driving force to improve parliamentary oversight. This can be attributable, in part, to the increasing dominance of political parties' leaderships, discussed in section 3.3.1. It is unrealistic to expect that party leaders of governing parties, who hold the executive positions in government, can be subject to effective supervision of lower-rank party colleagues sitting in parliament, particularly when the latter's mandates are under the control of the leaders.

Another part of the difficulty is the lack of parliamentary tradition in Serbia, and a lack of understanding of the oversight functions of the parliament. Efforts to raise the standards have come primarily from the OSCE in the form of trainings and study tours for MPs and parliamentary staff on activities of other parliaments, and efforts to encourage instruments such as public hearings, as well as greater transparency in the work of parliament. Initiatives also include capacity building of basic skills in the parliamentary service, which largely lacks analytic competencies that would be of assistance to MPs to evaluate the numerous laws being passed, to assess the performance reports of ministries and other state bodies, and perhaps most importantly of all, to control the budget.

While these capacity building initiatives are indeed small steps towards building the National Assembly of Serbia into a vibrant parliament as a third branch of power, it is unlikely that the situation will significantly improve until the Serbian Constitution and its electoral legislation are fundamentally revised.

### 4.2.2. Local Government/Decentralisation

Decentralisation is viewed as one of the key mechanisms to improve the services and accountability at the local government level. Numerous donors have engaged in local government reform that strengthens decentralised administration, although the preponderance of efforts has framed reform through economic development policies, particularly in the less developed regions in eastern and southern Serbia. The few that have had a particular impact on corruption relate, most generally, to improving transparency and efficiency of the local administration and strengthening citizen participation in decision-making processes.<sup>111</sup>

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<sup>110</sup> See, for example, Mark Thompson, *South Eastern Europe: New Means for Regional Analysis*, Policy Brief No. 2/May 2002, Institute for Democracy and Electoral Assistance (IDEA) at [http://archive.idea.int/balkans/policy\\_brief\\_balkans\\_2.pdf](http://archive.idea.int/balkans/policy_brief_balkans_2.pdf), p. 10.

<sup>111</sup> See, for example, USAID Serbia Local Self Government Reform Program at [http://www.slgrp.usaid.org.yu/eng/ab\\_slgrp/index.html](http://www.slgrp.usaid.org.yu/eng/ab_slgrp/index.html).

The impact of these interventions has varied greatly from community to community, in particular as not all of Serbia's 165 municipalities (excluding Kosovo) can be covered by such projects. Advances made at a national level are reflected in the passage of the new Law on Local Self-Government (*Zakon o lokalnoj samoupravi*)<sup>112</sup> and the Law on Financing of Local Self-Government (*Zakon o finansiranju lokalne samouprave*),<sup>113</sup> as well as the establishment of a Parliamentary Committee for Local Government, which has been recognised by the European Commission in its 2006 Progress Report on Serbia.<sup>114</sup> Nevertheless many deficiencies still remain, including questions of local government property.<sup>115</sup> The main challenge, however, is the very low administrative capacities of local governments and institutions.

Capacities to advocate on behalf of local government interests, as well as to implement local government reform projects, has been built up with the Standing Conference of Towns and Municipalities (*Stalna konferencija gradova i opština/SKGO*), who are partners in most major donor projects. One project implemented by SKGO particularly relevant to this analysis is the promotion of a code of conduct for local government officials, a measure missing at other levels of government. By March 2007, a year after the launch of the effort, 148 of Serbia's 165 municipalities had adopted the code of conduct. Of course, implementation and monitoring of the adherence to the code of conduct are fraught with difficulties, including a lack of capacity to do so. A pilot project (supported by the Westminster Foundation for Democracy) had established Monitoring Councils in 7 municipalities, but there is no overall assessment of the effectiveness of the councils or the code. However, anecdotes suggest there has been select improvement in standards of conduct, as noted, for example, by the president of one such council in Vranje. While there has been a lot of resistance to both the idea and the obligations arising from the code of conduct (and from the Law on Conflict of Interest), there has been an opinion that such initiatives do contribute to a gradual change in social norms.<sup>116</sup>

The picture across the different municipalities in Serbia varies enormously, and a mapping of the actual situation and needs across the country would be the topic of a very broad study. In general, however – as evidenced in problems with the implementation of key anti-corruption regulations such as on public procurement or conflict of interest, or in the investigation and prosecution of corruption-related crimes – the needs at the local level are significant and capacities extremely low. Considerable time and investment will be required to improve the situation across the country.

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<sup>112</sup> Adopted in 2002, and amended in 2004. Available in English at [http://www.osce.org/documents/fry/2002/03/125\\_en.pdf](http://www.osce.org/documents/fry/2002/03/125_en.pdf) and in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=23&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=23&t=Z#), [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=125&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=125&t=Z#), and [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=195&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=195&t=Z#).

<sup>113</sup> Adopted in 2006, available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=376&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=376&t=Z#).

<sup>114</sup> See *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), p. 8.

<sup>115</sup> See for example the Analysis of the Application to Date of the Law on Local Self-Government and Related Regulation, available upon request from the Standing Conference of Towns and Municipalities in Serbian (SKGO, *Analiza Dosadašnje Primene Zakona o Lokalnoj Samoupravi i Srodnih Propisa*, 2006.

<sup>116</sup> See reports of conference marking one year of project implementation at [http://www.skgo.org/upload/SITE/Publikacije/Casopisi/LS\\_19-2007.pdf](http://www.skgo.org/upload/SITE/Publikacije/Casopisi/LS_19-2007.pdf).

### 4.2.3 Reform of the Law Enforcement System

#### *Legislative Reform*

In order to prosecute corruption-related crimes effectively, these first need to be recognised as crimes in legislation. Serbia, as all countries in the broader region, has undertaken a number of key legislative changes to begin effectively fighting against corruption. This process was facilitated by the existence of international standards, particularly the Council of Europe Conventions. Monitoring mechanisms such as GRECO and MONEYVAL, as well as those in the framework of the EU association process, provide regular assessments on the level of compliance with international standards. Changes to the Criminal Code and the Criminal Procedure Code providing a more adequate framework for financial investigations and confiscation of proceeds of crime, once fully implemented, promise to round out the necessary legal basis for a more effective fight against corruption and organised crime.<sup>117</sup> In its 2006 Progress Report on Serbia, the European Commission acknowledged progress made on the adoption of the legislative framework for the fight against corruption.<sup>118</sup> The main challenge now lies in the effective and efficient enforcement of the new legislation. One of the more pressing needs, for example, is the introduction of a fully-functioning witness protection programme.

#### *Judiciary*

Judicial reform activities have been underway since 2001, with early efforts focusing on building capacity to investigate and prosecute war crimes and organised crime. Broader efforts have been implemented in a somewhat *ad hoc* fashion in absence of a strategic vision for systemic reform. Too extensive to examine in detail in this analysis, these projects have ranged from training on the judicial institutions' obligations under the Freedom of Information law (see below section 4.2.5 for more detail), capacity building of the Judicial Training Center,<sup>119</sup> or improving the administration and case management in the commercial courts.<sup>120</sup> Each of these efforts that improves the capacity of individual judges, promotes the transparency or advances the effectiveness of courts can be expected to carry an added value of reducing the opportunities for corruption, as corruption often coexists with, but is also often mistaken for, bureaucratic inefficiency or incompetence.

To successfully tackle the roots of corruption, and its many manifestations, a comprehensive overhaul of the system is required. Serbia finally adopted a Judicial Reform Strategy (*Nacionalna strategija reforme pravosudja*)<sup>121</sup> and an Implementation Plan (*Akcioni Plan za sprovedjene strategije*)<sup>122</sup> in May 2006. A Commission for Strategy Implementation (*Komisija za sprovedjenje nacionalne strategije reforme pravosudja*) was established in June 2006<sup>123</sup> along with, sometime

<sup>117</sup> The full implementation of the new Criminal Procedure Code has been postponed until 31 December 2008.

<sup>118</sup> See *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), p. 11.

<sup>119</sup> See ABA-CEELI programme activities at <http://www.abanet.org/ceeli/countries/serbia/program.html>.

<sup>120</sup> See USAID program Commercial Court Administration Strengthening Activity (CCASA) at <http://serbia-montenegro.usaid.gov/code/navigate.php?id=68>.

<sup>121</sup> Available in Serbian at [http://mpravde.mvcore.net/active/sr-cyrillic/home/\\_params/\\_download\\_command/attachment/file\\_command/download/file\\_id/22040/file\\_type/oFile/modul/Core::FileManagement::cFileModul.html](http://mpravde.mvcore.net/active/sr-cyrillic/home/_params/_download_command/attachment/file_command/download/file_id/22040/file_type/oFile/modul/Core::FileManagement::cFileModul.html); in English [http://www.sisecretariat.org/component/option.com\\_docman/task.doc\\_download/gid.9/Itemid.34/](http://www.sisecretariat.org/component/option.com_docman/task.doc_download/gid.9/Itemid.34/).

<sup>122</sup> Available in English at [http://www.sisecretariat.org/component/option.com\\_docman/task.doc\\_download/gid.16/Itemid.34/](http://www.sisecretariat.org/component/option.com_docman/task.doc_download/gid.16/Itemid.34/).

<sup>123</sup> Rules of Procedure available in Serbian at [http://www.sisecretariat.org/component/option.com\\_docman/task.doc\\_download/gid.35/Itemid.34/](http://www.sisecretariat.org/component/option.com_docman/task.doc_download/gid.35/Itemid.34/).

later, a Strategy Implementation Secretariat (*Sekretarijat za sprovođenje strategije*)<sup>124</sup> whose task is to provide administrative and technical support to the Commission.

The Strategy's key objectives are to ensure the full independence of the judiciary, its accountability, transparency, and efficiency. It explicitly acknowledges the question of corruption in the judiciary, as well as the public perceptions not only of corruption, but ineffectiveness and inefficiency. The strategy foresees a comprehensive restructuring of the judicial system over a 6 year period (2006–2011), with short-, medium-, and long-term objectives. Provisions relating to judicial accountability, such as clear and unambiguous criteria for evaluating the performance of judges, and collection and analysis of complaints, promise to have a positive effect on reducing “petty” corruption within the system. Questions of corruption in the form of political influence are addressed by measures promoting judicial independence, including an independent court budget.

The objectives and specific activities outlined in the Judicial Reform Strategy are largely consistent, but not entirely identical to those contained in the Anti-Corruption Strategy (discussed in section 4.3.3). For example, measures such as the adoption of a code of conduct for judges and prosecutors, or the development of Integrity Plans within the judiciary are missing from the Judicial Reform strategy. The incorporation of the details will therefore need to be reviewed in later phases of its implementation. The timelines set out in the Anti-Corruption Action Plan, however, are largely inconsistent (more ambitious) than the judicial reform timelines set out in that strategy. Overall, the Judicial Reform strategy, while ambitious, appears more realistic and should be seen as the guiding document, provided, again, that the specific anti-corruption measures are incorporated as the process unfolds.

Despite the many proposed improvements, serious problems remain. The most critical (including for anti-corruption purposes) is the insufficient protection of judges and prosecutors from political influence.<sup>125</sup> For one, judges are subject to a 3-year probationary period before permanent appointment, during which they would be particularly vulnerable to such influence. The problem is compounded, according to the Venice Commission,<sup>126</sup> by the excessive role of the parliament in the selection/approval process of judges.

Concerns also stand with regard to the selection of members of the High Judicial Council, an independent body which is foreseen to assume a leading role in the management of the judiciary. While the composition of the High Judicial Council may appear pluralistic at a first glance, its members are in fact elected, directly or indirectly, by the National Assembly. Judicial appointments, therefore, are doubly under the control of the National Assembly. The concern, of course, relates to the dominance of political parties in the National Assembly as reinforced by the new constitution (see section 3.3.1).

The appointment of the next High Judicial Council, along with the reappointment of judges foreseen by the new constitution, are two high risk prospects for the Serbian judiciary and should be closely monitored, and efforts should be supported to amend some of the troubling provisions.

A number of laws to support the new vision of the judiciary are currently being prepared, with some new laws already adopted, such as the Law on Education of Judicial Professionals (*Zakon o obuci*

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<sup>124</sup> See <http://www.sisecretariat.org>.

<sup>125</sup> See *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), p. 9.

<sup>126</sup> European Commission For Democracy Through Law (Venice Commission), *Opinion on the Constitution Of Serbia*, adopted by the Commission at its 70th Plenary Session, Venice, 17-18 March 2007, CDL-AD(2007)004, available at [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)004-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)004-e.asp).

*sudija, javnih tužilaca, zamenika javnih tužilaca i sudijskih i tužilačkih pomoćnika*)<sup>127</sup> that strengthens the role of the Judicial Training Center (*Pravosudni centar za obuku i stručno usavršavanje*).<sup>128</sup> However, the reform process overall is at a very early stage, with enormous challenges ahead: judiciaries in much of the world are notoriously closed and conservative institutions. Much support for the process will be required, both political and financial. The reform of the judiciary is a key priority of the European Partnership, and as such, will be closely monitored by the European Commission.<sup>129</sup> A number of donors are supporting the process with a wide range of projects coordinated by the Commission for Strategy Implementation, which reports on progress through newsletters and on their web site.<sup>130</sup>

### *Prosecution*

As with the courts and the police, much of the emphasis of reform activities to date has been to improve the capacity to investigate and prosecute war crimes and organised crime. Since 2001, there have been considerable changes in the Criminal Code and Criminal Procedure Code, with more expected to come, in order to make use of new legal instruments. Trainings on the proper application of these tools have been extremely important in improving the capacity of law enforcement agencies, including the prosecutors. More such training continues to be needed.

In addition to having limited legal instruments, or a limited understanding of new instruments, prosecutors have been hampered by unclear and sometimes conflicting responsibilities with the institution of Investigative Judge. The new Criminal Procedure Code foresees a radical restructuring of the investigative process, making the prosecution the key institution in the process in the future. This change will increase and focus the responsibility of the prosecution in the investigative process, and bring more clarity about which of the links in the enforcement chain is the weakest one and how much capacity there really exists within the prosecution service to assume this responsibility. Initially set for entry into force in June 2007, concerns about the prosecution's capacity to undertake this challenge have resulted in the extension of the implementation deadline to 31 December 2008.

The greatest challenges confronting the prosecution remains the political influence on their work. The early reflex to establish special prosecutors offices (similarly to the establishment of special courts and special police units), in which to concentrate new knowledge and skills, attests to this concern of protecting them from political influence.

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<sup>127</sup> Available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=357&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=357&t=Z#)

<sup>128</sup> <http://www.pcsrbija.org.yu>

<sup>129</sup> In its 2006 Progress Report on Serbia, the EC was concerned over slow progress in implementing the 2006 Judicial Reform Strategy and the according Action Plan. The report states that '[t]he judicial reform needs to be stepped up to ensure independence, efficiency and professionalism. See *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), p. 9.

<sup>130</sup> See *Current Activities of the Strategy Implementation Secretariat*, updated 23 March 2007, available in English at <http://www.sisecretariat.org/content/blogcategory/11/32/>.

**Box 19:**

*A Special Prosecutor for Organised Crime was appointed in March 2003, only days before the assassination of the Prime Minister by members of a special police unit working closely with organised crime gangs. Ironically, this prosecutor would bring to trial highly politically-charged cases against Djindjić's assassins, as well as other sensitive cases of political assassinations and organised crime operations.*

*The Special Prosecutor's record to date is mixed: a number of cases have been successfully investigated and/or convicted, most notably the case against the assassins of Prime Minister Djindjić, or the current trial against the "bankruptcy mafia" (box 15) On the other hand, a number of indictments following the large police action "Sabre" in 2003 failed due to procedural errors and allegations of torture in the investigation process (attributable mostly to the police, in fact).*

*The outcomes of these and other politically-sensitive cases provide valuable indications not only of the operational capacity, but also of the independence of the Special Prosecutor and corresponding courts.*

The achievements of the Special Prosecutor throw into relief the problems with the larger Prosecutorial Service. No detailed studies exist of the actual problems such as the lack of knowledge and experience, versus political interference. Prosecutors themselves will also point to the services' lack of competence in presenting their own story before the media in order to improve their image. Without data, it is difficult to locate and rank the problems precisely. Nevertheless, political interference is rather widely accepted as the key cause in reports of international organisations,<sup>131</sup> as well as by local interlocutors and the media, most of all due to the vulnerability (lack of independence) of the prosecutors *vis-à-vis* the executive.

The Judicial Reform Strategy acknowledges the problem very explicitly, emphasising that public prosecutors must be able to "...prosecute without hindrance all perpetrators of criminal acts, including government officials for the acts committing while in office, and especially the acts of corruption and abuse of power" and are therefore foreseen "...for the most part [to] be free from political influence"<sup>132</sup>. Yet the structures foreseen to guarantee the independence of this enhanced role of the prosecution are flawed, in a way similar to that of the judges. The Republican Public Prosecutor as well as special prosecutors for organised crime and war crimes and other "higher" prosecutors are to be appointed by the National Parliament. The State Prosecutors Council follows the model of appointment the High Judicial Council, with similar problems. The new Constitution also explicitly calls for a parallel accountability of prosecutors to their hierarchic superior *and* the National Assembly, that suggests, according to the Venice Commission "...political interference in prosecutions [that] is disturbing [emphasis added]".<sup>133</sup>

Further, the strategy also stipulates that "[c]riminal prosecution of the crimes stipulated in ratified international conventions and other cases specifically prescribed by the law *may be subject to subsequent instructions issued by the Ministry of Justice*, on behalf of the Government of the

<sup>131</sup> See, for example, GRECO *First and Second Evaluation Round Evaluation Report on the Republic of Serbia*, available at [http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-1\(2005\)1rev\\_Serbia\\_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-1(2005)1rev_Serbia_EN.pdf), p. 13.

<sup>132</sup> See Judicial Reform Strategy at [http://www.sisecretariat.org/component/option,com\\_docman/task,doc\\_download/gid,9/Itemid,34/](http://www.sisecretariat.org/component/option,com_docman/task,doc_download/gid,9/Itemid,34/), p. 21.

<sup>133</sup> European Commission For Democracy Through Law (Venice Commission), *Opinion on the Constitution Of Serbia*, adopted by the Commission at its 70th Plenary Session, Venice, 17-18 March 2007, CDL-AD(2007)004, available at [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)004-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)004-e.asp), paragraph 78 of the online version, or p. 17 of the print version, respectively.

Republic of Serbia [emphasis added]” the details of which are to be precisely regulated by law. There is likewise cause for concern with regard to the possibility of such instructions, and an analysis of the potential risks ought to be done as soon as the new law on the prosecution is drafted.

There appears to be no comprehensive publicly available situation/needs analysis of the prosecution.<sup>134</sup> A more detailed study would be useful in determining future efforts, particularly with a more detailed analysis of the implications of the transformation of the role of the prosecution and the training needs that it raises, as well as the questions of space, as there currently exist complaints about insufficient facilities to store the anticipated mounds of evidence that accompany the investigative process.

Such a study should also try to assess the effectiveness of some measures being implemented that are not otherwise captured in the Anti-Corruption Strategy or the Judicial Reform Strategy. One such new practice, instituted since the beginning of 2007, is that of an internal assessment by an informal collegium of 3 prosecutors whether criminal complaints warrant formal investigation, in an effort to counteract perceptions of corruption. Such an assessment should also carefully track the to-be-implemented (in the new Criminal Procedure Code) institution of plea bargaining (a process by which a prosecutor has the discretion to levy a lesser charge against the accused in return for testimony against other accomplices) and the corruption potential such a measure might open.

### *Police*

Police reform, aiming to instil the range of principles appropriate to policing in a democracy, began in 2001 with a promising start. The OSCE assumed an early leading and coordinating role in the process.<sup>135</sup> Notable in terms of fighting corruption within the police itself was the introduction of the institution of Inspector General in 2003, in charge of controlling the compliance with legal standards of the police officers’ work and with the powers to conduct investigations into alleged corruption and other misconduct of staff.

#### **Box 20:**

*On 30 June 2006, on the occasion of the three year anniversary, the Inspectorate General presented the following results:*

*Of 6,791 cases/complaints received, 6,181 (91%) had been reviewed, 610 (9%) were being processed, and 5,371(81%) had been completed. Of the completed cases, 765 (14%) had sufficient basis for further investigation, while 4,606 (86%) did not.*

*As a result, 111 criminal charges had been brought against 157 persons for reasonable suspicion of having committed 207 criminal acts.<sup>136</sup>*

International observers have difficulty in determining the effectiveness of the unit, as it has been in operation for a relatively brief period before a public clash between the Minister of Interior and

<sup>134</sup> One such analysis was being undertaken by UNDP but it had not been approved for external circulation by the Public Prosecutor at the time of the writing of this report.

<sup>135</sup> There has been a significant investment from a number of donors on police reform, particularly on capacity building to fight organised crime, including from Sida. The OSCE Law Enforcement Department continues to play a coordinating role and maintains an updated list of relevant projects from all donors in Serbia.

<sup>136</sup> For the full announcement in Serbian see <http://www.mup.sr.gov.yu/domino/arhiva06.nsf/30jun06kzn>.

Inspector General began to fill the pages of Serbian media.<sup>137</sup> However, internal control units of this type are the key tool in combating corruption within the police, and must enjoy a high level of operational capacity, as well as functional independence, in order to successfully carry out their work. Recent personnel changes raise questions as to continued progress on building the effectiveness of this unit.<sup>138</sup>

Police capacity to combat organised crime began to be improved with formation of a special unit in 2001 (*Uprava za borbu protiv korupcije/UBPOK*). At the time of the GRECO mission to Serbia in 2005, the unit was reported to have some 300 officers, with 25 dedicated to corruption cases, and an unspecified number specialised in financial crime.<sup>139</sup> With the new Law on Police (*Zakon o policiji*),<sup>140</sup> effective as of November 2005, UBPOK was reintegrated it into the police hierarchy and renamed SBPOK (*Služba za borbu protiv organizovanog kriminala*). An argument for this restructuring is to help extend the capacities built up within this unit across the police service. An argument against is that a greater number of persons within the hierarchy will be informed of the investigations, opening more possibilities for leaks. The optimistic scenario is that the former outcome will come to pass, for even the excellent capacities of UBPOK could not possibly cope with all the crimes being committed. While significant international technical assistance has been provided, more capacity building is still required, particularly within the criminal investigation units outside of Belgrade, but not only that. As with the remainder of the law enforcement institutions, ever more specialised knowledge will be required for ever more sophisticated crimes, including, for example, cyber crime. Further, staff attrition remains a problem: the material conditions and remuneration would need to be further improved in order to attract and retain qualified (and newly trained) investigators in these demanding and potentially dangerous positions.

The most significant improvement in recent years has been precisely with the special units capable of investigating and prosecuting organised crime and corruption, including some very complex and high level cases (see box 15 on the “bankruptcy mafia”, above). These investigators were initially hampered both by gaps in the laws, as well as a lack of training and experience in the use of special investigative means, forensics labs, and other fundamental tools for the fight against organised crime and corruption, all of which have been strengthened through the support of numerous donors, including Sida. The consolidation of these instruments and first gains in the fight against organised crime triggered the assassination in March 2003 of Serbia’s first democratic Prime Minister, Zoran Djindjić, who strongly supported these reforms. Since then, additional improvements have been made, including the ability to independently administer special investigative measures. Previously, the police had relied on the equipment held by the Security Information Agency (*Bezbednosno-informativna Agencija/BIA*)<sup>141</sup> – the secret police – which is still widely considered unreformed and a stronghold of Milošević-era cadres.

The reform process overall has slowed down considerably since 2004. A drop in transparency is apparent just in comparison of the information available on the Ministry of Interior web site in 2003 compared to 2007. Analyses of police reform in Serbia describe the process as being reduced to

<sup>137</sup> Indicative is a press clipping from daily *Borba*, *Božović optužuje Jočića* (Božović accuses Jočić), of 27 October 2006, in which the Inspector General accuses the Minister of obstruction, posted on the Ministry of Interior web site (!) at <http://prezentacije.mup.sr.gov.yu/cgi/images/images/07.11.2006/Mediji%20o%20KZN%2026.10.06.pdf>.

<sup>138</sup> The new Inspector General, Ljubinko Nikolić, appointed in January 2007, has been accused in the press of having been a member of one of the parties in Slobodan Milošević’s ruling coalition (JUL, the party of Milošević’s wife, Mira Marković), a charge which he vigorously denies. See article in Serbian *Ljubinko Nikolić negira članstvo u JUL*, (“Ljubinko Nikolić denies membership in JUL”), *Danas*, 27-28 January 2007, available at <http://www.danas.co.yu/20070127/hronika3.html>

<sup>139</sup> See *GRECO First and Second Evaluation Round Evaluation Report on the Republic of Serbia*, available at [http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-1\(2005\)1rev\\_Serbia\\_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoEval1-1(2005)1rev_Serbia_EN.pdf), p. 8.

<sup>140</sup> Available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=296&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=296&t=Z#)

<sup>141</sup> The Agency’s website is at <http://www.bia.sr.gov.yu/>.

operational matters – trainings and other capacity building – with little progress at the strategic and institutional level. The 2006 Progress Report of the European Commission on Serbia correspondingly takes note of the slow pace of police reform, as well as the fight against organised crime.<sup>142</sup> Reform of the border police is likewise seen as one of the least advanced areas. Future progress will greatly depend on renewed political will, on the improved performance of the other institutions in the criminal justice system – the prosecutors and the courts, as well as the capacity of intelligence units dedicated to the prevention of money laundering.

### *Financial Intelligence*

In the context of fighting against corruption and organised crime, financial intelligence capacity to identify money laundering activities is considered one of the key instruments. The Administration for the Prevention of Money Laundering/APML (*Uprava za sprečavanje pranja novca*)<sup>143</sup> under the Ministry of Finance is the national Financial Intelligence Unit (FIU). Established in 2002, the APML compiles, analyses and stores the data and information received from institutions required to report a certain defined number of transactions prescribed by the Money Laundering Act.<sup>144</sup> A new draft law, conceived according to the objectives under discussion for a strategy for the fight against organised crime, has been prepared for submission for approval to the new Serbian government.

As noted elsewhere (see section 3.3.2 and 4.1.3), money laundering is an attempt to legitimize illicit financial gains, and is often related to the proceeds of organised crime activities and corruption. As a result, the effectiveness of FIUs is an important link in the system of institutions responsible for identifying and prosecuting organised crime and corruption.

At the present, the APML has approximately 35 staff, among which legal advisors and analysts being key functions. An IT system is being developed to help process an enormous amount of transactions (160,000 in 2006, 800 of which were identified as suspicious and referred to the competent state authorities – police, judicial and inspectional authorities). The cooperation between the APML and the police has improved in recent years as the capacities of both have increased. There are plans for even closer cooperation between relevant institutions, including direct integration of IT systems. There are also ongoing efforts to streamline data collection from banks and other institutions obligated to report to the APML, and a new effort to undertake risk assessments in line with international recommendations.

Progress was acknowledged by the European Commission in its 2006 Progress Report on Serbia on the fight against money laundering, in particular with regards to the introduction of relevant changes to the Criminal Code and for increasing the sanction for this offence. But the insufficient co-ordination of the relevant agencies was judged to be an obstacle to efficiently fight and prevent money laundering.<sup>145</sup>

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<sup>142</sup> *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf). P. 37.

<sup>143</sup> For more information, see the APML's website at <http://www.fcplm.org.yu>.

<sup>144</sup> The first Money Laundering Act was passed in 2003; a new law that has to a great extent improved on the shortcomings of the original legislation was adopted in November 2005. It is available in English at [http://www.nbs.yu/export/internet/english/20/laws/money\\_laundering\\_act\\_200153.pdf](http://www.nbs.yu/export/internet/english/20/laws/money_laundering_act_200153.pdf), in Serbian at <http://www.fcplm.org.yu/Documents/zakon-2005.pdf>.

<sup>145</sup> See *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), p. 36

#### 4.2.4 Public Administration Reform

Public Administration Reform in Serbia is one of the key objectives under the European Partnership.<sup>146</sup> In its 2006 Progress Report on Serbia, the EC acknowledged progress on implementing the 2005 Public Administration Reform, while noting that concerns persisted over the speed of reform of the remuneration system and its impact on the attractiveness and incentives to join and remain in the civil service.<sup>147</sup>

The Public Administration Reform Strategy of 2005 was drafted, *inter alia*, with support from the United Nations Development Program (UNDP), and broadly consists of two main components: decentralisation, particularly fiscal decentralisation, and professionalisation of the civil service.

*Fiscal decentralisation* is moving forward together with comprehensive budgetary reform, which is discussed in section 4.2.5.

##### *Civil service reform*

Civil service reform has been addressed by two key laws: the Law on Civil Service (*Zakon o državnoj upravi*),<sup>148</sup> the Law on Civil Servants (*Zakon o državnim službenicima*).<sup>149</sup> The objective of both laws, and of different secondary legislation, is to advance de-politisation of the civil service, as well as to introduce merit-based recruitment and promotion. In July 2006, a Law on Salaries of Civil Servants (*Zakon o platama državnih službenika*)<sup>150</sup> was introduced, which aims to restructure the remuneration system. A Human Resources Management Service was set up in December 2005; the Ministry of Public Administration has started to transfer human resources management tasks to this service. There is a training strategy of 2005, and civil servants are receiving training under this scheme. For the time being, staff retention remains a problem, as low salaries and poor material equipment continue to make the civil service an unattractive employer.<sup>151</sup>

First indications are that the reform is fraught with difficulties in implementation, as well as unintended negative consequences, particularly with regard to laws on civil service (see box 21). The new regulation creates an incentive structure that rewards formal qualifications (e.g. education) and years in service rather than performance, and exceptional performance is not sufficiently recognized. The salaries are still too low compared to the public sector, particularly for positions that require specialised skills (such as public procurement or accounting), or positions that can be subject to political pressure and harassment. There is likewise a requirement of excessive years of “relevant” experience for higher level positions (9 years), ignoring Serbia’s reality that work in a reform-oriented environment began only after 2000. The rule ensures that most of the key positions will be filled by cadres that have gained their experience either during Milošević or earlier.

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<sup>146</sup> In a key paper, the OECD’s SIGMA program extrapolated the ‘European Principles for Public Administration’, standards that have emerged over time throughout the different EU Member States and taking into account different legal traditions and systems of governance. These common principles are ‘the rule of law principles of reliability, predictability, accountability and transparency, but also technical and managerial competence, organisational capacity and citizens’ participation. It is these principles that have to be the benchmark for the reform of the Serbian public administration if it is to be able to fully assume the responsibilities of EU. See *European Principles for Public Administration*, SIGMA Papers: No. 27, 1998, at <http://www.oecd.org/dataoecd/26/30/36972467.pdf>.

<sup>147</sup> See *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), p. 8.

<sup>148</sup> Available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=275&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=275&t=Z#).

<sup>149</sup> Available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=276&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=276&t=Z#).

<sup>150</sup> Available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=370&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=370&t=Z#).

<sup>151</sup> See *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), p 10.

**Box 21:**

*The 9-year relevant experience requirement set down by the new Law on Civil Servants creates an absurd situation where the Director of the Public Procurement Office, who had founded the office and created Serbia's public procurement system in 2002, formally does not have the qualification to do his job under the new rules. He has only 5 years of experience in public procurement. Of course, no one in Serbia has the formally-required experience, as the system simply did not exist prior to 2002. The same situation is applies in a number of institutions in the country.*

It is the hope that with the development of capacity within the Human Resources Management Service, the system will become less vulnerable to appointments made on the basis of nepotism or cronyism. However, even if recruitment becomes merit-based, the current (low) levels of remuneration are not sufficient to serve as a preventive measure against petty corruption, and perhaps more seriously, do not provide against attrition of qualified staff in institutions that prevent corruption, as noted in the example above.

One of the most striking features in public administration reform to date (as well as some aspects of local self-government reform, as both processes are led by the Ministry of Public Administration and Local Self-Government) is the enormous extent to which reform processes depend on the leadership at the top. This indicates the extent to which ministers still have the ability to micro-manage the work of ministry employees, and obstruct previously agreed reforms, if they so wish. Future efforts – across the entire public sector – should be mindful of this problem which is to an extent the case in most countries, but particularly in Serbia.

On the positive side, there are many useful examples to be gleaned from the implementation of past projects.<sup>152</sup> There are likewise opportunities to add anti-corruption elements in current and future projects that do not have a reduction of corruption as an objective *per se*, as in the current Sida-supported UNDP programme “Support to the Serbian Public Administration Reform Strategy-second phase”. Assuming that political conditions for continuing the project are met, there appear to be opportunities for integrating more explicit anti-corruption measures (corruption safeguards) in the next phases of the project, such as in the elaboration of a new management model based on a functional analysis.

#### 4.2.5 Public Financial Management

The 2002 Budget Law (*Zakon o budžetskom sistemu*<sup>153</sup>) – which has been amended several times since – regulates the establishment, execution and control of the state budget, and of the budget of local municipalities. But according to experts' assessments, the formal role of the parliament in exercising control of and impacting on the government's decisions regarding budget execution and the annual budget proposals are too weak, especially due to the limited capacity of the parliament to scrutinise the proposals (see section on parliamentary oversight 4.2.1). Parliament's weak role is exacerbated by the absence of a Supreme Audit Institution. Moreover, Serbia is only just starting – mainly as a result of outside pressure – to develop a coherent system of public internal financial control and audit. These issues are and will continue to be of key importance in Serbia's

<sup>152</sup> One such is the Sida 2002-2005 project to support the development of modern human resource management in the civil service, which, at a cursory glance, seems to have adopted a model of local ownership where the civil service that has been empowered is continuing to meet and develop beyond the duration of the project.

<sup>153</sup> The Law can be found in Serbian at the Ministry of Finance's website at <http://www.mfin.sr.gov.yu/html/modules.php?op=modload&name=Subjects&file=index&req=viewpage&pageid=131>.

preparations for EU accession, and the European Commission stated clearly in its most recent progress report that “preparations in the area of financial control are still on an early stage.”<sup>154</sup>

### *Internal Audit*

A draft Strategy for Developing Public Internal Financial Control (PIFC) in the Republic of Serbia has been developed in mid-2006, in co-operation with an EAR project<sup>155</sup>. Its adoption would mean meeting one of the demands set out by the 2006 EU’s Council Decision relating to financial control. There are some indications that the adoption and implementation of the Strategy is a priority of the new government’s Minister of Finance.

Currently, some internal audit is conducted by the Ministry of Finance Budget Inspection Department, which checks whether funds are used for the legal purposes to which they were allocated. The current lack of central harmonisation of audit procedures and methodology could change if the government agreed to the establishment of a Central Harmonisation Unit/CHU (one of the pillars of PIFC).

A 2004 decree required the creation of internal audit bodies (IAB’s) in 18 Internal Audit Units. However, according to Sigma, their remit is based heavily on checking legal compliance rather than the effectiveness of internal control systems, and they have not yet developed auditing activities based on international audit standards. While lack of capacities in the audit departments is a problem, the EAR-funded project mentioned above has identified a number of solutions to address it, potentially through training and thereby increasing of the qualifications of existing staff in the line ministries and institutions.

### *Supreme Audit Institution (SAI)*

Supreme Audit Institutions play an essential role in systems of public sector financial control. Ideally, they constitute truly independent institutions that can provide objective scrutiny of the management of public funds, play a key role in auditing the internal audit and control mechanisms within budget organisations, and contribute to the development and coordination of audit methodology. SAIs should provide an independent, qualified and objective report to the public, through the parliament, on the use of public funds.

Efforts to create a Supreme Audit Institution (SAI) started back in 2001, and have been supported by a number of donors and international organisations such as UNDP, and OSCE; the European Agency for Reconstruction (EAR) also had planned to support the establishment of an SAI, but cancelled a project at a tendering stage. To date, no such institution has been established, a fact that has been criticised in the 2006 Progress Report by the European Commission,<sup>156</sup> and by the IMF.

A State Audit Act (*Zakon o državnoj revizorskoj instituciji*<sup>157</sup>) was adopted in November 2005, laying the legal grounds for a State Audit Institution (*Državna revizorska institucija*) as an independent body which reports to parliament.

<sup>154</sup> See *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), p. 34.

<sup>155</sup> The full name of the project is ‘Internal Audit and PIFC Phase 2’.

<sup>156</sup> See *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), p. 34.

<sup>157</sup> See [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=293&t=Z](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=293&t=Z)

Its structure-to-be would comprise a Council consisting of a president, vice-president and three members, appointed by parliament upon proposal by the Parliamentary Finance Committee, for a term of five years, with the possibility of one renewal. The Council would appoint Supreme State Auditors for six years to be in charge of leading the different auditing departments. SIGMA noted in a recent report that this is a very uncommon arrangement; clearly, it raises concerns concerning the career stability of professional state auditors.

The State Audit Act assigns the State Audit Institution a relatively wide remit of tasks. In addition to auditing the lawful execution of the annual budget, the Serbian SAI is also supposed to audit local government institutions, political parties (a mandate that has particularly raised experts' concerns – auditing political parties is classically done by auditors from the private sector; vesting this task with the SAI would sooner or later question the body's independence), but also individuals. In addition to scepticism over the implementability of certain provisions in the law, concerns have been raised as to whether a future SAI would be physically able to cope with such a wide Terms of Reference.<sup>158</sup>

The State Audit Act stipulated that the governing Council would be appointed, and its President and Deputy elected within six months of adoption of the law. That deadline expired in June 2006. By the end of September 2006, only two political parties, G17 Plus and the Socialist Party of Serbia had submitted candidates for the Council.<sup>159</sup> There are a number of plausible speculations as to the causes of the delay. Another version supposes that the SAI might be a powerful institution that will truly be able to reveal corruption, and there is an effort among political parties to delay such curtailments as long as possible. Another interpretation holds that each political party is attempting to propose people that will be sympathetic to them and perhaps willing to overlook certain breaches. Other explanations contend that the few persons in Serbia who qualify for the post are actually being approached by political parties and being asked for loyalty in exchange for being nominated for the post. Another version still proposed that the 2006 budget simply neglected to allocate funds for the SAI and there are no resources to begin work. In a recent media interview, former Minister of Finance Mladjan Dinkić suggested that the salaries offered were simply too low for such a position, particularly compared to earnings available in the private sector.<sup>160</sup> The possibility of any and all of these factors forecasts the type of difficulties that can be anticipated in the formation of the SAI.

As mentioned above, the scope of tasks assigned to the SAI is unusually wide. There appears to be no estimation of the number of professionals required to perform all the projected audits, but it is likely to be quite large. This presents the question of the actual number of qualified auditors available in Serbia altogether, together with the problem of whether they could be recruited into public service, compared to the level of salaries offered by the private sector. A factor compounding the challenge is the possible political pressures and intimidation to which state auditors might be subjected, given the experience of bodies such as the Commission for the Protection of Rights (see section on public procurement below), or other forms of obstruction, such as budgetary constraints. It will be of utmost importance that this institution develops strategically, developing competencies in a systematic and sustainable way, and prioritizing among its numerous tasks in the short term. Sustained technical, financial, and political support will be essential to its success.

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<sup>158</sup> See OECD/SIGMA *External Audit Assessment Serbia 2006*, at <http://www.SIGMAweb.org/dataoecd/18/59/37739925.pdf>.

<sup>159</sup> See B92 News, *Deloijt kandidat za revizora budžeta* (Deloitte is a candidate for State Auditor), 29 September 2006 at [http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=09&dd=29&nav\\_id=213569](http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=09&dd=29&nav_id=213569).

<sup>160</sup> Interview with Mladan Dinkić on B92 program *Poligraf*, 13 March 2007 transcript in Serbian available at [http://www.b92.net/info/emisije/poligraf.php?yyyy=2007&mm=03&nav\\_id=236438](http://www.b92.net/info/emisije/poligraf.php?yyyy=2007&mm=03&nav_id=236438).

### *Reform of the Public Procurement System*

A new Public Procurement Law (*Zakon o javnim nabavkama*<sup>161</sup>) – modelled on the Slovenian law and broadly (although not completely) in line with European Union standards – was adopted and entered into force in 2002 with amendments introduced in late 2003.<sup>162</sup>

In addition to introducing new procedures on public procurement, the Law established the Public Procurement Office/PPO (*Uprava za javne nabavke*)<sup>163</sup> as an independent agency under the government. The PPO started to function in January 2003, and is formally in charge of monitoring and ensuring the effective implementation and application of the PPL; this includes, *inter alia*: the preparation of relevant regulatory acts, the preparation of tender documentation, organisation of training and provision of advisory services to contractors and bidders. The PPO currently fluctuates between 20–25 staff, which represent a minimum given the scope of the Office’s responsibilities (and ongoing staffing challenges), including the capacity building of contracting entities, issuing of written opinions on all negotiated or restricted procedures prior the execution of the procurement, drafted by only 6 legal advisors.

According to Transparency International Serbia, already in 2003 – the year of the PPL’s entering into force – 200 million USD were saved due to the application of the law. This figure is obtained by comparing the projected cost of the procurement by the contracting authorities (estimates based on prices in similar recent contracts or the estimated market value of the goods or services in question) versus the actual cost of the procurement. A more reliable indicator of the PPO’s impact, however, is the percentage of competitive versus negotiated procurements, which has risen from 36% in 2002 to 73% in 2005, according to the figures published in the most recent PPO annual report on public procurement (for 2005).<sup>164</sup> The report points out that the figure of 73% is a mere 2% away from the top score on one of three indicators relating to public procurement in the World Bank’s PEFA Public Financial Management Performance Measurement Framework.<sup>165</sup>

Some changes still have to be introduced into the PPL in order to fully align it with EU standards. The PPO, one of the more proactive Serbian institutions, developed in June 2006 with the support of the OSCE a “Baseline of strategy for upgrading public procurement system in Serbia,”<sup>166</sup> which outlines key measures necessary to improve public procurement, not only within the procurement system itself, but also *vis-à-vis* other related institutions, including law enforcement. These range from shifting the burden of substantiating reasons for restrictive procurement procedures to the contracting entities (as opposed to the current system of PPO issuing of opinions), to training of law enforcement bodies on investigating and prosecuting procurement-related crimes, to better conditions for staff in the Office.

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<sup>161</sup> Available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=44&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=44&t=Z#) and in English at [http://www.ujn.sr.gov.yu/Attachments/Public\\_Procurement\\_Law.pdf](http://www.ujn.sr.gov.yu/Attachments/Public_Procurement_Law.pdf).

<sup>162</sup> Available in Serbian at [http://www.ujn.sr.gov.yu/Attachments/zakon\\_o\\_izmenama.pdf](http://www.ujn.sr.gov.yu/Attachments/zakon_o_izmenama.pdf) [http://www.ujn.sr.gov.yu/Attachments/draft\\_law.pdf](http://www.ujn.sr.gov.yu/Attachments/draft_law.pdf).

<sup>163</sup> <http://www.ujn.sr.gov.yu>

<sup>164</sup> Available at <http://www.ujn.sr.gov.yu/Attachments/izvestaj2005.pdf>; The report for 2006 is expected to become available mid-May 2007.

<sup>165</sup> Public Procurement Office, *2005 Annual Report* (in Serbian), p. 5; the PEFA Public Financial Management Performance Measurement Framework is available at [http://www.pefa.org/about\\_test.htm](http://www.pefa.org/about_test.htm).

<sup>166</sup> Executive Summary available in English at [http://www.ujn.sr.gov.yu/Attachments/Polazne\\_osnove\\_za\\_strategiju\\_JN-en.doc](http://www.ujn.sr.gov.yu/Attachments/Polazne_osnove_za_strategiju_JN-en.doc).

**Box 22:**

*The main challenge of the continued success of the PPO is the retention of qualified staff. Low salaries across the public sector have contributed to continual turnover, with the new Law on Civil Servants having had an explicit “destimulating” effect for prospects of young, ambitious people. In PPO’s experience, qualified young people who join the Office at the start of their careers leave for higher paying jobs in the private sector after a year’s tenure or less. The continual need to train new recruits places an additional burden on staff, reducing the effectiveness of the agency. The Agency’s director, Predrag Jovanović, has expressed extreme concern that the current situation is leading to a diminished performance of the PPO over the medium term.*

The 2002 Law on Public Procurement also foresaw the establishment of the Commission for the Protection of Rights<sup>167</sup> (initially named the Commission for the Protection of Bidders’ Rights: (*Komisija za zaštitu prava [ponudjača]*), but the body was to be regulated by a separate bylaw (rules of procedure) which was adopted in July 2004 (*Poslovnik Komisije za zaštitu prava*<sup>168</sup>). The Commission operates under the administrative framework of the PPO (some 10 staff employed by the PPO are assigned to support the Commission), yet is fully independent of it. It is composed of a President and 4 members selected on the basis of expertise in law, economy and other relevant fields, appointed by the Government for 4-year terms of office. The Commission is subject to oversight by the Government of Serbia and the National Assembly to whom it is bound to submit annual reports, with the obligation to submit monthly reports to the Parliamentary Finance Committee.

While its name suggests that its principle aim is primarily to protect bidders in the procurement process, its aim is defined more broadly in terms of establishing the legality of a particular procurement. Nevertheless, it acts solely on the basis of registered complaints. The rationale for the establishment for such a Commission is the need for a quick mechanism for resolving procurement-related disputes as an antidote to bringing forward court cases or other administrative remedies, which are procedures that can last years and incur significant costs for the parties involved. By contrast, Commission decisions are made within 15 days, with a possible extension of another 10 days in exceptional cases. Decisions consist of two possible options: (a) annulling a procurement procedure in full or in part, or (b) rejecting the request as unfounded. The decisions are not subject to appeal or an administrative dispute, although dissatisfied applicants may file an action before a regular court for damages. By December 2006, the Commission had made decisions on 1.178 complaints, over half of which were confirmed and tenders voided either in whole or in part. It also reported the rate of complaints submitted to the Commission’s attention to be at over 60 per month at that point in time.<sup>169</sup>

There are no studies providing qualitative assessments of the Commission’s decisions, but the abovementioned “Baseline of strategy for upgrading public procurement system in Serbia” provides an overview of the Commission’s principal challenges and recommendation for reform. The most keenly perceived problems include:

<sup>167</sup> See for a Serbian version of the law <http://www.komisija.ujn.sr.gov.yu>.

<sup>168</sup> Available in Serbian at <http://www.komisija.ujn.sr.gov.yu/admin/download/files/cms/attach?id=23>

<sup>169</sup> Commission for the Protection of Rights, *2006 Annual Report*, available in Serbian at <http://www.komisija.ujn.sr.gov.yu/admin/download/files/cms/attach?id=102>.

- Limited autonomy and independence of the Commission for the Protection of Rights;
- Insufficient clarity of certain provisions of the Public Procurement Act which regulate rights of bidders;
- Short deadlines for Commission decision-taking;
- Insufficient staff to perform all required tasks;
- Staff attrition;
- Non-existence of oral hearing before the Commission;
- Inability of the Commission to monitor the enforcement of its decisions;
- Undefined procedure for protection of public interest<sup>170</sup>.

The report omits to mention political pressure on the work of the Commission, but such pressure had been noted in the Serbian media (see box 23). Efforts to bolster the future work of the Commission might also include measures to protect against such influence. Other recommendations elaborated in the Baseline strategy are as follows:

- Establishing the Commission for the Protection of Rights as an autonomous institution whose members and president are elected by the National Assembly;
- Enacting separate statutes to regulate only the issue of protection of rights in the field of public procurement;
- Extending deadlines for decision making by the Commission;
- Further capacity building of the Commission;
- Ensuring a competitive salary level for appointed officers, as well as staff, in comparison with other government organs;
- Providing the possibility for oral hearing before the Commission;
- Introducing concrete measures to follow-up on decisions of the Commission, e.g. recommendation for dismissal of responsible officer, instituting criminal proceedings, etc.;
- Defining in the Public Procurement Act that the motion for protection of public interest is filed with the Commission for the Protection of Rights.

**Box 23:**

*The Commission's first director, Aleksandar Lukić, resigned from the function in June 2004 explicitly due to "direct pressures" from the Minister for Capital Investments, Velimir Ilić. Although even the most objectionable details of the Minister's behaviour were covered in the media, including insults and threats to the Commission President, there had been no sanctions for the behaviour of Mr. Ilić. There is little reason to believe that was an isolated incident of pressure on the Commission.<sup>171</sup>*

It must be borne in mind that the recommended improvements in the functioning of the Public Procurement Office and the Commission for the Protection of Rights are crucial, but not the whole of the elements making up an effective and efficient public procurement system. Capacity needs to be built with all the 12,000 contracting entities in Serbia, particularly at the level of local government. Some support for training has been provided by the OSCE Mission in Serbia<sup>172</sup>, while

<sup>170</sup> Baseline of strategy for upgrading public procurement system in Serbia, at [http://www.ujn.sr.gov.yu/Attachments/Polazne\\_osnove\\_za\\_strategiju\\_JN-en.doc](http://www.ujn.sr.gov.yu/Attachments/Polazne_osnove_za_strategiju_JN-en.doc), p. 10.

<sup>171</sup> For Serbian language reports on the incident see Transparency-Serbia media clippings at [http://www.transparentnost.org.yu/ts\\_mediji/stampa/2004/JUN\\_2004/1606-04.html](http://www.transparentnost.org.yu/ts_mediji/stampa/2004/JUN_2004/1606-04.html).

<sup>172</sup> For example, series of 3 seminars (modules) for contracting officers that took place from December 2006 to March 2007. See <http://www.osce.org/item/23651.html> or <http://www.ujn.sr.gov.yu/Attachments/seminarSr.zip>

the bulk of their assistance has focused on improving the regulatory framework. Complementary trainings for contractors, particularly companies outside of the capital that were competing for local government contracts were provided by Transparency-Serbia from mid-2004 to mid-2005.<sup>173</sup> These efforts only partially address a much greater need. Such trainings need to ultimately become an institutionalized requirement for all civil servants who are assigned procurement roles.

In addition to defending and increasing the capacity of existing institutions, reforms in related sectors will be required to ensure the entire process of public procurements is resistant to corruption. One, a more transparent and participatory budget process would ensure that procurements are planned in advance with sufficient public input as to the necessity of the purchase, limiting the opportunities for redirecting public funds toward unnecessary expenses. Two, internal and external audit functions have to be strengthened in order to ensure a fully transparent and accountable public procurement system, as corruption often takes place in the phase of contracting, through annexes, or fraud in the execution of contracts. Finally, law enforcement agencies and courts also need to improve their capacities to investigate and process more serious breaches of the rules. The latter issues are covered in greater detail in section 4.2.3.

### *Privatisation*

A number of donors, including DfID, GTZ, USAID, EAR and UNDP<sup>174</sup>, have specifically targeted the development of the capacities of the Serbian Privatisation Agency<sup>175</sup>, which was established by the 2001 Law on Privatisation (*Zakon o privatizaciji*)<sup>176</sup> as a Department within the Ministry of Economy. A separate Law on the Privatisation Agency (*Zakon o agenciji za privatizaciju*)<sup>177</sup> regulates its activities.

The Agency's main tasks are the promotion, initiation, conduction, safeguarding and control of the privatisation process. The process itself is, according to the Law on Privatisation, to be guided by the principles of transparency. The Privatisation Agency – with a staff of about 400 having sufficient capacity to carry out its tasks – awards the contracts according to the highest financial bid, the amount of investments proposed by the bidders, and the social programme that is to follow the purchase. The financial criterion is beyond doubt; the other two criteria, however, appear to be more problematic – a fact of which the Privatisation Agency appears to be well aware, particularly since it is both conducting the privatisation process itself *and* deciding about whether or not an investor has fulfilled its contractual obligations. If the Agency decides that there has been a breach of contract, 2005 amendments to the Law on Privatisation provide it with greater possibilities to do so rather quickly, raising some concerns about the rights for redress by the owner.<sup>178</sup>

Media scandals abound over a number of privatisation deals (see, for example, box 6 above), and the Anti-Corruption Council has on several occasions ventured into very public attacks against it. But others think that the work to date of the Privatisation Agency is by and large a success. For

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<sup>173</sup> Activities undertaken were under the framework of the project "Effective Public Procurement" implemented from May 2005-April 2006 funded by Canadian CIDA, the Embassy of Finland in Belgrade, British Embassy Belgrade, and DFID. See [http://www.transparentnost.org.yu/javne\\_nabavke/index\\_e.html](http://www.transparentnost.org.yu/javne_nabavke/index_e.html).

<sup>174</sup> Projects ranged from up-grading the physical conditions of the Agency to standardising and harmonising tender documentation and developing manuals for auctions. For a more detailed overview over assistance provided see [www.undp.org.yu/tareas/factsheets.cfm?project=7](http://www.undp.org.yu/tareas/factsheets.cfm?project=7).

<sup>175</sup> The Agency's website is at <http://www.priv.yu/>.

<sup>176</sup> The Law has been amended several times since; a consolidated version can be found, in Serbian, at [http://www.pa-serbia.co.yu/pravni\\_okvir/zakon-privatizacija.php](http://www.pa-serbia.co.yu/pravni_okvir/zakon-privatizacija.php), and in English at [http://www.pa-serbia.co.yu/pravni\\_okvir/uvod.php?jezik=english](http://www.pa-serbia.co.yu/pravni_okvir/uvod.php?jezik=english).

<sup>177</sup> See for an English version of the Law [http://www.pa-serbia.co.yu/pravni\\_okvir/zakon-agencija.php?jezik=english](http://www.pa-serbia.co.yu/pravni_okvir/zakon-agencija.php?jezik=english), the Serbian version is at [http://www.pa-serbia.co.yu/pravni\\_okvir/zakon-agencija.php](http://www.pa-serbia.co.yu/pravni_okvir/zakon-agencija.php).

<sup>178</sup> This concern is being raised in an up-coming publication of the Centre for Liberal-Democratic Studies/CLDS.

example, the Center for Liberal-Democratic Studies counts the privatisation process so far to be one of the most successfully implemented reforms, admitting that procedural mistakes had taken place, which could be attributed to the amount of enterprises to be privatised in a relatively short period of time.

At the time of the passage of the 2001 Law on Privatisation, the timeframe for the privatisation process to be completed had been estimated with four years. To date, a substantial part of the socially-owned enterprises has not yet been privatised.<sup>179</sup> While this presents an opportunity to make the process-to-come as transparent as possible, taking into account the experience and lessons learned from neighbouring transition countries' privatisation processes, corruption seems not to be a prime concern of the privatisation agency. However, staff appears to be very aware of the criticism raised against it, and the legal and procedural loopholes that could provide opportunities for corruption during all stages of the privatisation process itself, as well as in the post-privatisation process. As in other transition countries that have undergone economic restructuring of a similar type and scale, there are pragmatic points of view on the process: many of the enterprises-to-be-privatised are loss-making, and to get them off the government budget as fast as possible is imperative. However, a privatisation process marred by – in the best case appearances of (as opposed to actual) – corruption has a lasting impact on a sense of social injustice. This should guide, to some extent, measures to make it as transparent and beyond reproach as possible.

#### 4.2.6 Service Delivery

##### *Healthcare*

According to the World Health Organisation (WHO), in 2003, 9.6% of the GDP of Serbia and Montenegro was spent on public healthcare.<sup>180</sup> This is considered to be higher than average for lower-middle income countries<sup>181</sup>, so an increase in spending is not the solution. Rather, the health care system has to undergo fundamental reforms, a need that has been clearly identified, and priorities for action were set out, in the Poverty Reduction Strategy Paper. In the absence of a modern, cost-efficient health care system, the introduction of formal out-of-pocket private payments, while exempting certain categories of users such as the poor and vulnerable – an approach that has been taken in many countries of the region – is one way of making the rules more transparent for all. *Informal payments* do, however, represent a specific challenge beyond the immediate strain on the budget for the poor: the incentive they represent is such that the health care staff becomes an impediment to reform of the entire sector. To tackle corruption in the health care system in absence of or isolation from structural reforms appears to be futile.

Nevertheless, a number of measures have been undertaken in recent years. Already in 2002, a Ministry of Health decree obliged all health care institutions to appoint an Ombudsperson for the Protection of Patients' Rights (*Zaštitnik pacijentovih prava*); this obligation was confirmed in the 2005 Law on Health Care (*Zakon on zdravstvenoj zaštiti*)<sup>182</sup>. The ombudsperson's contact details have to be publicized at a place visible to patients, including his/her name, office, and working

<sup>179</sup> In 2006, only 337 enterprises were privatised, a number even slightly lower than in the previous year. See *Izrada Drugog izveštaja o implementaciji Strategije smanjenja siromaštva u Srbiji/Nacrt: Tranzicija ka tržišnoj privredi* (Elaboration of the Second PRSP Progress Report/Draft Report on 'Transition to a Market Economy'), 5 April 2007, at <http://www.prsp.sr.gov.yu/vest.jsp?jsessionid=7371A1C88CDF9F5C02231AD8D4AE4666?id=265>, p. 7.

<sup>180</sup> See WHO *Statistical Information System* at [http://www3.who.int/whosis/core/core\\_select\\_process.cfm?strISO3\\_select=YUG&strIndicator\\_select=PopTotal.PcGDP.PcTotEOHInIntD.TotEOHPctOfGDP.LEX0Male.LEX0Female.HALE0Male.HALE0Female.MortChildMale.MortChildFemale.MortAdultMale.MortAdultFemale](http://www3.who.int/whosis/core/core_select_process.cfm?strISO3_select=YUG&strIndicator_select=PopTotal.PcGDP.PcTotEOHInIntD.TotEOHPctOfGDP.LEX0Male.LEX0Female.HALE0Male.HALE0Female.MortChildMale.MortChildFemale.MortAdultMale.MortAdultFemale).

<sup>181</sup> See [http://www.euro.who.int/Document/E88202\\_Serbia.pdf](http://www.euro.who.int/Document/E88202_Serbia.pdf).

<sup>182</sup> The Law can be found in Serbian on the Ministry of Health' website at <http://www.zdravlje.sr.gov.yu/default.asp?lang=1&poe=11>.

hours. The ombudsperson is obliged to deal with any complaint within 8 days of it being filed, and to report the findings to the management of the respective health care institution, and the complainant. In case that the complaint is found to be substantiated, the ombudsperson is obliged to follow-up with the management about the necessary steps undertaken against the staff; in case of failure to do so, the ombudsperson has then the right to forward the case to the health inspectorate.<sup>183</sup> However, patients' complaints are also being addressed directly to the health inspection of the Ministry of Health; in 2006, the health inspection followed up on 2,715 such citizens' complaints. Other measures, codified by the 2005 law, have led to the introduction of uniform criteria for the delivery of health care services, such as maximum waiting times for certain types of interventions; non-respect for these criteria can lead to substantial fines both for the individual health care worker, and for the health care institution as such.<sup>184</sup>

A number of donors support reforms in this sector through substantial technical assistance, including the World Bank<sup>185</sup> and the EU. Improving transparency and accountability in the financing of the public health care system is one of a range of priorities addressed by these projects.<sup>186</sup>

### *Education System*

Serbia committed to the values – including the need of students' participation in the governance of higher education institutions, and greater autonomy and greater accountability of higher education institutions – of the Bologna Process in 2003.<sup>187</sup> These values have been incorporated into the 2005 Law on Higher Education (*Zakon o visokom obrazovanju*).<sup>188</sup> A Conference of Students (established by Art. 22) is to be the highest decision-making body of the students, comprising members of the Students' Parliaments (established by Art. 56) of the respective universities of Serbia. Students' Parliaments are to be elected in April of each year, with tenure of one year. At the time of writing of this paper, only a few of the higher education institutions had complied with this requirement. According to stakeholders, there appears to be considerable resistance and interference from faculty staff, for example through setting excessive benchmarks' for students' representatives to be eligible for participation by having to prove above-average academic achievement to stand for election. These problems are exacerbated by a lack of capacity of the students themselves, and their often limited understanding of their own rights, as stipulated by the law.

There are a number of civil society initiatives that are trying to make a difference. The Student Union of Serbia, for example, runs an internet tool encouraging students to report corruption cases in their higher education institution.<sup>189</sup>

<sup>183</sup> For more details on the obligations of the Ombudsperson for the Protection of Patients' Rights, see, in Serbian, [http://www.informator.co.yu/informator/tekstovi/institucija\\_1105.htm](http://www.informator.co.yu/informator/tekstovi/institucija_1105.htm).

<sup>184</sup> See, in Serbian only, *Gradjani pred korupcijom – ko može da pomogne i kako: Ministarstvo Zdravlja* (Citizens vis-à-vis corruption – who can help and how: Ministry of Health), *Transparentnost Srbija 2007*, p. 75.

<sup>185</sup> See, for example, description of an ongoing WB project with the Ministry of Health, at <http://www.zdravlje.sr.gov.yu/default.asp?lang=2&poe=50&trazi=shp>.

<sup>186</sup> See, for example, description of previous and planned EAR activities at [http://www.ear.europa.eu/serbia/main/documents/2006PublicAdministration\\_Health.pdf](http://www.ear.europa.eu/serbia/main/documents/2006PublicAdministration_Health.pdf).

<sup>187</sup> For more information on the Bologna Process, see, for example, *Bologna for Pedestrians* at [http://www.coe.int/t/dg4/highereducation/EHEA2010/BolognaPedestrians\\_en.asp#P117\\_13189](http://www.coe.int/t/dg4/highereducation/EHEA2010/BolognaPedestrians_en.asp#P117_13189).

<sup>188</sup> The Law can be found in Serbian and English at the Ministry of Education's website at <http://www.mps.sr.gov.yu/code/navigate.php?Id=436>.

<sup>189</sup> See *Prijavi korupciju!* ('Report corruption!') at SUS's website at [http://sus.org.yu/index.php?option=com\\_content&task=view&id=49&Itemid=40](http://sus.org.yu/index.php?option=com_content&task=view&id=49&Itemid=40).

**Box 24:**

In early May 2007, the Accreditation and Quality Evaluation Commission (*Komisija za akreditaciju i proveru kvaliteta*)<sup>190</sup> established by the 2005 Law as part of the National Council on Higher Education (*Nacionalni savet za više obrazovanje*), published the results of the screening of 79 post-secondary vocational schools against criteria assessing the quality of their teaching, education and degrees/diplomas received; only 33 received an accreditation to continue their work, while 27 were denied such an accreditation and 18 institutions received a warning obliging them to make improvements in their work within 3 months. The full list of institutions is published on the Ministry's website.<sup>191</sup> Currently, a similar accreditation process is underway focusing on the higher education system, including universities. Institutions will have to demonstrate, *inter alia*, their compliance with the legal requirements for students' participation in their internal governance structures and mechanisms.

The Belgrade Open School (*Beogradska Otvorena Škola/BOŠ*)<sup>192</sup> is currently implementing a number of activities aimed at building and increasing the capacities and awareness of students' representatives themselves to participate in a meaningful in Students' Parliaments. Another project implemented by BOŠ, funded by the Open Society Higher Education Support Programme (HESP), is dedicated to the development of monitoring tools to assess academic institutions' performance against a number of parameters emanating from the Bologna Process, namely the funding and financing of institutions, the functioning of a university ombudsman, the transparency and freedom of access to information, and the efficiency of direct students' participation.

**Box 25:**

In response to the arrest on suspicions of corruption of members of the Kragujevac Law faculty, the Ministry of Education and Sports, together with the Student Union of Serbia and the Union of Students of Belgrade (*Savez Studenata Beograda*)<sup>193</sup> announced in mid-March 2007 the preparation of Rules of Disciplinary Responsibility of Students and Professors (*Pravilnik o disciplinskoj odgovornosti studenata i profesora*) and an Ethics Code to be binding for higher education institutions throughout Serbia. The objective of both documents, according to then Minister Vuksanović, is to minimise opportunities for corruption at higher education faculties; the documents are supposed to be drafted by faculty staff and students themselves, and should be sent for adoption to all public and private universities of Serbia.<sup>194</sup> However, there have also been suggestions that faculty staff was trying to hijack the drafting process.

<sup>190</sup> For the Terms of Reference, see Articles 9 through 17 of the Law, or the website of the Ministry for Education at <http://www.mps.sr.gov.yu/code/navigate.php?Id=460>.

<sup>191</sup> See *Završena akreditacija viših škola* (Accreditation of higher education institutions is completed), 3 May 2007, at the website of the Ministry for Education and Sports, [www.mps.sr.gov.yu/code/navigate.php](http://www.mps.sr.gov.yu/code/navigate.php).

<sup>192</sup> See [www.bos.org.yu](http://www.bos.org.yu) for more information (site in English and Serbian).

<sup>193</sup> See the Union's website at <http://www.mps.sr.gov.yu/code/navigate.php?Id=436>.

<sup>194</sup> See *Uskoro pravilnik o odgovornosti profesora i studenata* (Soon rules of procedures for students and professors), 13 March 2007, at the website of the Ministry for Education and Sports, [www.mps.sr.gov.yu/code/navigate.php](http://www.mps.sr.gov.yu/code/navigate.php).

**Box 26:**

*The Ministry of Education and Sports, upon request of students' organisations, on 28 February 2007 opened a telephone hotline to report cases of corruption at universities. Reports are said to be forwarded to the Ministry of Interior, and to the administrations of the higher education institutions in question.<sup>195</sup>*

#### 4.2.4 Business Environment

Deregulation of business activities – reducing the administrative burden of licenses, permits, procedures and other requirements that people and firms must fulfil to do business – is widely regarded as an important policy measure to stimulate economic growth. It is also seen as an important way to reduce corruption. For example, the larger the number of business activities that require a license, the more scope there is for administrative corruption; by implication, reducing the number activities requiring a license should reduce levels of corruption. Likewise, in areas where licensing is justifiable (for example the sale of certain potentially dangerous goods), reducing the complexity of licensing procedures may also be expected to reduce the space for corruption. The same approach may be applied in a number of different areas: for example, unnecessarily strict standards for hygiene in restaurants or safety at work may increase the corruption occurring to pay off inspectors rather than improving standards in practice.

Economic development is one of the strategic objectives set out in the 2004–2010 Poverty Reduction Strategy Paper (PRSP), and in the 2005 National Strategy for EU accession. Progress, although uneven, has been acknowledged by the European Commission (which, in its 2006 Progress Report, commended the measures undertaken to reform the private sector<sup>196</sup>), as well as by the OECD, and business sector stakeholders interviewed for this paper.

Despite quantitative data on the impact of some recent policies not yet being available, a number of policies and government measures seem to have contributed to these overall positive assessments.

A Strategy for the Development of Small and Medium-sized Enterprises and Entrepreneurship (*Strategija razvoja malih i srednjih preduzeća i preduzetništva*)<sup>197</sup> was adopted in 2003, spanning the period 2003–2008. A recent comparative assessment<sup>198</sup> finds that Serbia has made considerable progress since 2004 on business registration – a direct result of the successful implementation of the Business Registration Law (*Zakon o registraciji privrednih subjekata*)<sup>199</sup> and the establishment of the Agency for Business Registers (*Agencija za privredne registre*)<sup>200</sup>. These are substantial innovations in the Serbian legal system, as setting up a business has now become primarily an administrative function, one of the side effects of which is the de-burdening of commercial courts. more importantly, though, setting up of businesses has been made easier, and faster, by cutting the

<sup>195</sup> See *Otvorena telefonska linija za prijavu korupcije* (Hotline for reporting corruption opened), 28 February 2007 at the website of the Ministry for Education and Sports, [www.mps.sr.gov.yu/code/navigate.php](http://www.mps.sr.gov.yu/code/navigate.php)

<sup>196</sup> *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf)

<sup>197</sup> The Strategy can be found in Serbian at [www.kombeg.org.yu/komora/centri/c\\_msp/pdf/s\\_strategy.pdf](http://www.kombeg.org.yu/komora/centri/c_msp/pdf/s_strategy.pdf)

<sup>198</sup> The report presents the results of an assessment carried out by the Stability Pact for South Eastern Europe, the OECD-based Investment Compact and the European Commission, using an 'SME Policy Index', a framework measuring countries' performance against qualitative and quantitative indicators, including such on the speed and cost of starting a business, quality and efficiency of legislation and regulation, and taxation and financial parameters. For the full report, see [www.investmentcompact.org/dataoecd/31/41/38310075.pdf](http://www.investmentcompact.org/dataoecd/31/41/38310075.pdf)

<sup>199</sup> The Law can be found in Serbian at [http://www.sme.sr.gov.yu/PravnaPomoc\\_ZakonORegistracijiPrivrednihSubjekata.htm](http://www.sme.sr.gov.yu/PravnaPomoc_ZakonORegistracijiPrivrednihSubjekata.htm)

<sup>200</sup> The Agency's website is at [www.apr.sr.gov.yu](http://www.apr.sr.gov.yu), the Serbian text of the Law establishing the Agency is at <http://www1.apr.sr.gov.yu/apr.public/Administration/Images/Zakoni/84sr-SP-Cyrl.pdf>.

number of certificates and documents that need to be provided (and indirectly, cutting the potential for corruption to occur at all of these stages). Equally, the allocation to new business of a tax number by the tax authorities has been cut from 7 to 3 days, and it is currently being discussed to further streamline this process by having the Agency for Business Registers in charge of allocating this number.

The adoption of both laws had been preceded by assessing, in a pilot, their regulatory impact, analysing their costs and benefits, and, more crucially, conducting a broad stakeholder consultation. Such Regulatory Impact Assessment (RIA) has been made mandatory for all new legislation in 2004.<sup>201</sup> Regulatory reform needs to be pursued vigorously in the years to come. A Regulatory Reform project, to last until December 2010, funded by the Swedish government through Sida and implemented by the World Bank, is supporting the Serbian government in the development of a Regulatory Reform Strategy. The Strategy's objectives would be to substantially de-clutter the existing regulatory framework, thus easing the regulatory burden for business. The project additionally builds capacities of the Council for Regulatory Reform (*Savet za regulatornu reformu*, operating since 2003 and headed by the Minister of Economy) and its secretariat (which is currently severely understaffed) to implement the Strategy.<sup>202</sup>

The project will also contribute to the development of capacities and in particular attitudes inside the administration to conduct consistent and meaningful consultation mechanisms with the private sector, and to incorporate stakeholders concerns. It will further address another urgent need: that of developing the private sector's capacities to advocate and lobby for improvements in the legislative environment. While there is a number of associations that successfully represent and lobby for business interests, such as the above mentioned Foreign Investors Council/FIC, or the Serbian branch of the American Chamber of Commerce/AmCham<sup>203</sup> – the latter was, for example, actively involved in influencing amendments to the VAT law – SME's are, on the whole, less well organised and represented. This could partly be due to the inefficiency of the largely unreformed Serbian Chamber of Commerce (*Privredna komora Srbije/PKS*, membership in which is compulsory for all businesses)<sup>204</sup> to efficiently represent local business interests, resulting in enterprises' low expectations of what such organisations can achieve at all and consequently, in a general lack of enthusiasm for pro-actively organising to find solutions in permanent dialogue across businesses, and with the government.

In 2006, the government adopted the 2006–2012 Strategy for the Stimulation and Development of Foreign Investments (*Strategija podsticanja i razvoja stranih ulaganja*<sup>205</sup>). However, the Strategy is deemed to be inadequate in particular because it is said to “not take sufficient account of the problems foreign investors are faced with (corruption, bad and slow legislation [...])”<sup>206</sup>. This probably highlights the need to continue reforms that affect private sector development across a range of policy areas, including de-regulation, legislative change – such as on the new Constitutions' provision on ownership of municipal building land, which has the potential to remove one of the biggest obstacles for foreign businesses to invest in Serbia – accompanied by

<sup>201</sup> See Amendment to Article 34 of the Rules of Procedure of the Government of Serbia, published, in Serbian in the Official Gazette (*Službeni Glasnik Republike Srbije*) 113/2004.

<sup>202</sup> WB/Sida project 'Regulatory Reform in Serbia: Regulatory Impact Analysis – Improvement of efficiency and transparency in the legislative process' <http://www.worldbank.org.yu/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/SERBIAEXTN>

/0,,contentMDK:21095549~menuPK:50003484~pagePK:2865066~piPK:2865079~theSitePK:300904,00.html.

<sup>203</sup> The American Chamber of Commerce Serbia's website is at <http://www.amcham.yu>.

<sup>204</sup> The Chambers site in Serbian and English is at <http://pks.komora.net/>.

<sup>205</sup> *Strategija podsticanja i razvoja stranih ulaganja Srbije*, Službeni glasnik RS br. 22/2006, 16 March 2006.

<sup>206</sup> See *Izrada Drugog izveštaja o implementaciji Strategije smanjenja siromaštva u Srbiji/Nacrt 'Tranzicija ka tržišnoj privredi'* (Elaboration of the Second PRSP Progress Report/Draft Report on 'Transition to a Market Economy'), 5 April 2007, at <http://www.prsp.sr.gov.yu/vest.jsp;jsessionid=7371A1C88CDF9F5C02231AD8D4AE4666?id=265>, p. 3.

enforcement of the new legislation, rigorous restructuring of the economy including through completing the privatisation process, and introducing overall more transparency in the way the government and the administration operate.<sup>207</sup>

Although difficult to measure, stakeholders and experts agree that the presence of foreign companies has had an impact on raising the overall standards of business conduct in Serbia. For the immediate topic at hand, the fact that most major foreign investors are bound by the legal provisions of the OECD Anti-bribery Convention<sup>208</sup> is probably the most crucial. The Convention makes it a criminal offence to bribe foreign public officials, i.e., in this case a Serbian official, as this would result in prosecution under the company's domestic legislation. The importance of corporate responsibility – including general principles such as ethical standards, accountability to shareholders and the public, transparency – is slowly becoming recognised in Serbian business circles. There are a number of civil society initiatives, such as SmartKolektiv's Responsible Business Initiative<sup>209</sup>, that have dedicated corporate responsibility projects. In 2006, the Serbian branch of the International Institute for Standardisation<sup>210</sup> took the lead of a Working Group that is specifically dedicated to introducing corporate responsibility to the wider Serbian business community, in compliance with the UN Global Compact (one of the ten principles' of which is companies' committing to take anti-corruption measures when conducting business).<sup>211</sup>

### *Customs and Taxes*

Progress has been acknowledged, *inter alia*, by the European Commission, in the overall area of customs, partly as a result of Serbia adopting relevant legislation in line with EU standards. Serbia's efforts to reform the customs regime have been acknowledged also by the World Bank's 2007 *Doing Business* Report, which states that 'Serbia streamlined its customs operations through electronic data interchange and targeted inspections. Traders can now lodge their declarations electronically. For example, as a result of recent measures, import time dropped from 44 to 12 days, and export time from 32 to 11 days'.<sup>212</sup>

In January 2006, the Government adopted an Integrated Border Management Strategy/IBM (*Strategija integrisanog upravljanjem granicom u Srbiji*)<sup>213</sup> which specifies measures to comply with a future Stabilisation and Association Agreement and EU membership, as well as membership in the World Trade Organisation/WTO (for membership in which Serbia applied in 2004) requiring the free movement of goods and persons while, at the same time, controlling crime. The objectives of the Strategy are to be achieved through a multi-pronged approach of sectoral and horizontal

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<sup>207</sup> For an overview over the outstanding issues from the perspective of foreign investors, the 2007 edition of the White Book by the Foreign Investors Council/FIC is particularly useful. It can be downloaded from FIC's website at <http://www.fic.org.yu/>.

<sup>208</sup> For the full text of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and extensive commentaries, see [http://www.oecd.org/document/21/0,2340,en\\_2649\\_34859\\_2017813\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/21/0,2340,en_2649_34859_2017813_1_1_1_1,00.html). The Convention has, to date, been ratified by 36 countries, representing most of the major global economic players.

<sup>209</sup> See SmartKolektiv's website at <http://www.smartkolektiv.org/rbi.html>, which also contains a report on the status of corporate social responsibility in Serbia.

<sup>210</sup> See the website of the Institute for Standardization of Serbia/ISS at <http://www.iso.org/iso/en/aboutiso/isomembers/MemberDetailPage.MemberDetail?MEMBER=ISS> for more detail.

<sup>211</sup> For more detail on the UN Global Compact and a list of its ten principles, see <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>.

<sup>212</sup> See *Doing Business 2007: Eastern European countries lead worldwide momentum for regulatory reform*, WB/IFC at [http://siteresources.worldbank.org/INTCROATIA/Resources/301144-1157631699840/DB07\\_EE\\_press\\_release\\_eng.pdf](http://siteresources.worldbank.org/INTCROATIA/Resources/301144-1157631699840/DB07_EE_press_release_eng.pdf), p. 2.

<sup>213</sup> The Strategy can be found in English at <http://www.seio.sr.gov.yu/code/navigate.asp?Id=208>, in Serbian at <http://www.seio.sr.gov.yu/code/navigate.asp?Id=209>.

measures, including through upgrading and modernising the infrastructure, but also through the improvement of capacities of the different stakeholders (Ministry of Interior/Border Police, Ministry of Finance/Customs Administration, Ministry of Health etc.)

Considerable assistance is being provided by a number of donors. The European Union's Customs and Fiscal Assistance Office/CAFAO<sup>214</sup> focuses on the improvement of administrative capacity and control procedures; it has also significantly contributed to the drafting of the 2003 Customs Law, and continues to provide assistance to the drafting of secondary legislation. The Trade and Transport Facilitation in Southeast Europe Programme/TTSFE<sup>215</sup> – a joint effort by the 9 participating countries of the region and the World Bank, the US and the EU – aims, *inter alia*, to reduce corruption through modernising and strengthening the capacities of customs administrations and border control agencies. An important feature of TTSFE is the substantial involvement in the programme of stakeholders from the private sector through so-called public-private committees on trade and transport facilitation; these committees are in charge of a website (at [www.ttfse.org](http://www.ttfse.org)) which aims to provide transporters with up-to-date information on regulations, fees, procedures and documents required at the borders. Additional partners in the project are the Chambers of Commerce, which provide training to private sector stakeholders about trade and transport-related issues, and business ethics.

The impact of these assistance programmes are reported to be tangible in that the capacity of the Serbian Customs Administration to seize smuggled goods (such as drugs) has substantially increased, as has the revenue from customs duties. A study assessing the impact of CAFAO programmes, and of TTFSE finds that the revenue to the Serbian budget from customs duties was increased 10 times during the period from 2001 and 2005.<sup>216</sup>

Technical assistance projects support and complement national efforts. In 2004, the Customs Administration under the Ministry of Finances adopted a Strategy of the Fight against Corruption in the Customs Administration (*Strategija borbe protiv korupcije u carinskoj službi*), which is published on the administration's website.<sup>217</sup> The Strategy lists causes of corruption in the customs, and elaborates measures encompassing legislation, material and technical equipment, organisational reforms, human resources policy, as well as steps to increase international cooperation and relations with the public (of which the provision of extensive data on the website is one). The Customs' Administration also runs a free-of-charge and anonymous telephone hotline collecting information on corruption, smuggling and other breaches of law; currently, the hotline receives around 3,000 calls monthly, 7% of which contain sufficient information to be followed up efficiently; around 10% of those are complaints about customs officers.<sup>218</sup>

Despite the input provided by technical assistance programmes to the improvement of the customs system in Serbia, and the Strategy of the Fight against Corruption, the issue remains a concern that is highlighted in all available studies and evaluations.

Progress has also been made on reforming the tax system in Serbia. For example, a Value-Added-Tax system has been introduced in 2005 (with EU technical assistance and implemented by GTZ),

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<sup>214</sup> For an overview over CAFAO, see, for example, [http://ec.europa.eu/enlargement/pdf/financial\\_assistance/cards/general/cafao\\_en.pdf](http://ec.europa.eu/enlargement/pdf/financial_assistance/cards/general/cafao_en.pdf).

<sup>215</sup> For more detailed information on the program see [www.seecon.org/ttfse](http://www.seecon.org/ttfse).

<sup>216</sup> See comparative study by the GTZ-run Policy and Legal Advice Centre (PLAC) at <http://www.plac-yu.org/pdf/BorderCrossing.pdf> (no year).

<sup>217</sup> See the Customs Administration's website at [www.fcs.yu/srpski/right/borba\\_protiv\\_korupcije.htm](http://www.fcs.yu/srpski/right/borba_protiv_korupcije.htm).

<sup>218</sup> See, in Serbian only, *Gradjani pred korupcijom – ko može da pomogne i kako: Postupak za podnošenje predstavi i pritužbi u upravi carina Republike Srbije* (Citizens vis-à-vis corruption – who can help and how: The procedure for reporting suspicions and complaints in the customs administration of Serbia), *Transparentnost Srbija 2007*, p. 79.

which replaced the sales tax that had been levered until then. The Corporate Income Tax (CIT) is at a (very low) flat-rate of 10%, and a draft Law on Amendments to the CIT system, addressing stakeholders' concerns is pending adoption in parliament.

According to information made public by the Ministry of Finances of Serbia at the end of 2006, since 2004, tax revenues had risen by around 30%; the increase in tax revenues in 2006 alone were around 16%.<sup>219</sup>

Yet, these developments are offset by the need for further streamlining of the tax legislation, so as to eliminate legal uncertainty. More fundamentally, there is a need to profoundly restructure and increase the capacity of the tax administration and the tax police. The current number of tax inspectors appears to be too high, while at the same time, their overall capacity is too low. Support to the tax administration should also make a contribution to shifting the attitude of the inspectors towards becoming facilitators for businesses rather than enforcers of a system that is still difficult to understand for entrepreneurs. The need to reform the often excessive and disproportionate sanctions for tax offences has been mentioned above. The level of salaries of staff will have to reflect their responsibility, and should become a motivation for working honestly, which should be ensured by well functioning internal control systems. One signal for a shift in attitude could be the establishment of genuinely open complaints mechanisms for citizens and entrepreneurs, encouraging the reporting of abuse or attempted extortion.

There is also a wider concern that needs to be addressed to decrease widespread tax evasion<sup>220</sup> and to increase fiscal discipline of entrepreneurs (and citizens in general). In particular, citizens have to be convinced that their taxes are being put to good use, and that in exchange, the state offers something to them in return. One could, of course, argue that the state will only be able to provide efficient services if it has more revenues at its disposal. Nevertheless, education of employers and employees on the need to pay taxes are being seen as one necessary measure to break this circle.

#### 4.2.5 Transparency and Access to Information

Access to information is a vital component of a functioning democracy, and an essential safeguard against corruption. Access to information may be seen under two main perspectives. First, citizens should have access to or be provided with the information that they need to fulfil their rights: Second, citizens should enjoy a general right of access to information on the activities of public institutions. In the context of corruption, this is of particular importance for the media. For example, where information on subsidies and their recipients is publicly available this is a powerful disincentive to officials or politicians to provide subsidies other than on grounds that can be justified publicly.

In Serbia, there is a general obligation of administrative structures to publicise their work, established by the Law on State Administration (*Zakon o državnoj upravi*),<sup>221</sup> and different levels of information on the work of all line ministries can now be found on their respective websites. A Law on Free Access to Information of Public Importance (*Zakon o slobodnom pristupu informacijama*

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<sup>219</sup> See B92 News *Utajeni porez 'težak' kao NIP* (Tax evasion as 'heavy' as the NIP), 5 January 2007, in Serbian at <http://www.b92.net/biz/vesti/aktuelno.php?id=142>.

<sup>220</sup> Annual losses to the state budget to tax evasion were estimated at around 1 billion Euro, almost half the size of foreign direct investment in Serbia in 2006. See article in Serbian *Utajeni porez "težak" kao NIP* (Tax Evasion as „heavy“ as NIP), 5 January 2007 <http://www.b92.net/biz/vesti/aktuelno.php?id=142>.

<sup>221</sup> Available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=275&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=275&t=Z#)

*od javnog značaja*)<sup>222</sup> was adopted in 2004, which extends to a wide range of government bodies on the central and local government levels.

Also in 2004, a Commissioner for Information of Public Importance (*Poverenik za informacije od javnog značaja*)<sup>223</sup> was appointed by parliament, whose main task is to oversee the implementation of the Law and to follow-up on complaints against the decision of public authorities to not provide information as requested. To this end, a staff of 21 is foreseen to work with him; however, to date, only 6 staff have been recruited. The Commissioner reports to parliament and provides practical guidance on how to request information under the Law. His most recent report was issued in mid-March 2007, covering his work in 2006. The Commissioner pointed out that in 2006, 1,850 complaints by NGO's were received, amounting to approximately 4 times the amount of complaints in 2005. While there was an improvement compared to 2005 of the line ministries' reporting to the Commissioner on their fulfilment of the legal obligations to provide information, the main problem was the non-compliance by ministries/institutions on the decisions made by the Commissioner as a result of complaints received.<sup>224</sup>

With regards to access to information, the European Commission's 2006 Progress Report on Serbia commended progress made by the Serbian Parliament, the Government, and the public administration with respect to the Law on Freedom of Access to Information. However, while the Commissioner for Public Information had been very active, the European Commission had concerns over the lack of enforcement of his decisions<sup>225</sup>.

A civil society 'Coalition for Free Access to Information'<sup>226</sup> has been active in lobbying for the Law, and is monitoring its implementation. In 2005, the Coalition has – with support by the Fund for an Open Society-Serbia and the OSCE – published a Guide through the Law on Free Access to Information (*Vodič kroz zakon o slobodnom pristupu informacijama*).<sup>227</sup>

While both the amount and quality of information available from government agencies and ministries has increased in recent years particularly in response to the Law on Free Access to Information, there has not been a corresponding burst of watchdog activity and quality research that would attest to its being put to use. Journalists and civil society organisations have yet to learn about all the potential uses for public information, particularly their anti-corruption applications.

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<sup>222</sup> The Serbian language version of the law can be found at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=171&t=Z#http://www.transparentnost.org.yu/dokumenti/0811zspi-d04.html](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=171&t=Z#http://www.transparentnost.org.yu/dokumenti/0811zspi-d04.html).

<sup>223</sup> The Commissioners' site is <http://www.poverenik.org.yu>.

<sup>224</sup> The full report in Serbian language can be found at <http://www.poverenik.org.yu/dokumentacija.asp?ID=6>.

<sup>225</sup> See *Commission Staff Working Document/Serbia 2006 Progress Report* at [http://www.delscg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_Annual\\_Progress\\_Report\\_\(sr\\_sec\\_1389\\_en\).pdf](http://www.delscg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_Annual_Progress_Report_(sr_sec_1389_en).pdf), pp. 6 at

<sup>226</sup> Members of the Coalition are Transparency International – Serbia, the Belgrade Centre for Human Rights, the Centre for Anti-war Action, the Open Society Institute, the Centre for the Advancement of Legal Studies, the Committee of Lawyers for Human Rights.

<sup>227</sup> The Guide can be found in Serbian language at [http://www.transparentnost.org.yu/dokumenti/Vodic\\_final.pdf](http://www.transparentnost.org.yu/dokumenti/Vodic_final.pdf).

## 4.3 Explicit Responses

### 4.3.1 Politicians/Political Parties

#### *Regulating and Managing Conflict of Interest/Asset Declarations of Public Officials*

The Law on the Prevention of Conflicts of Interest in the Discharge of Public Office (*Zakon o Sprečavanju sukoba interesa pri vršenju javnih funkcija*) was adopted in April 2004,<sup>228</sup> and introduced several important components:

- Concept of conflict of interest, and rules on incompatibility of functions
- Obligation for public officials to disclose assets
- Rules on receiving gifts
- Establishment of a register of public officials, their functions, assets, and gifts

The law was an important first step for Serbia, but it inevitably left a number of gaps and contained inadequate enforcement provisions. Criticisms of the law include gaps in the scope of officials that were subject to it (e.g. judges, prosecutors were to be regulated through a separate law, as were “officials appointed to organs of institutions and other organisations whose founder is the Republic of Serbia, autonomous province, municipality, town and the City of Belgrade,” Article 2), a too-high value threshold for receiving gifts, and the failure to introduce post-employment restrictions.<sup>229</sup> There has also been criticism voiced about the confidentiality of declarations: in light of the limited capacities of the enforcement body (below), public scrutiny of the reports would greatly enhance the probability that false information would be detected.

The law provided for the establishment of a Republic Board<sup>230</sup> to resolve conflict of interest as an “independent and autonomous body” that has the sole authority internally to dismiss its members. Beginning its operation only in early 2005 due to difficulties in securing nominations, the Board is composed of nine members, three of which are elected by the Supreme Court, one by the Bar Association, and the remaining five members by the parliament on the recommendation of the Serbian Academy of Science and Arts. The Board elects its own president for the period of one year. Board members are relatively well paid for Serbian standards, with salary levels equal to members of parliament.

The mandate of the Board is to “issue instructions, forms and...opinions necessary for implementing [the] Law, maintain the Register of Property of the officials, decide whether and action or failure to act by an official constitutes a violation of this Law and, if so... pronounce measures” (Article 18). The law further requires “all competent bodies” to “immediately deliver to the Republic Board, at its request, required facts and evidence” (Article 18). However, the measures that the Board is authorized to impose consisted of (a) confidential warning, not disclosed to the public, and, in the case of non compliance, (b) public notice of violation of the law in the case of directly elected officials, or (c) public recommendation for dismissal for appointed officials.

<sup>228</sup> Available in English at [http://www.osce.org/documents/fr/y/2004/05/3091\\_en.pdf](http://www.osce.org/documents/fr/y/2004/05/3091_en.pdf). In Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=129&t=Z#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=129&t=Z#)

<sup>229</sup> See GRECO report available at [www.coe.int/t/dgl/greco/evaluations/round2/GrecoEval1-1\(2005\)1rev\\_Serbia\\_EN.pdf](http://www.coe.int/t/dgl/greco/evaluations/round2/GrecoEval1-1(2005)1rev_Serbia_EN.pdf), paragraphs 94-96.

<sup>230</sup> See the Board’s website at <http://www.sukobinteresa.sr.gov.yu>.

In addition to lacking the authority to enforce its recommendation, the Board lacks the authority and the capacity to check the accuracy of the officials' declarations. Even within its limited competencies, the work of the Board is fraught with many practical difficulties. With a staff of only 11<sup>231</sup>, the Board is unable to proactively collect and process the asset declaration of an estimated 10,000 public officials who are covered by this law. In the first year of operation, it was a challenge even to compile a comprehensive list of public officials. Officials' declarations are submitted in hard copy, with the Board staff obligated to enter them into the electronic register. The mere logistics of the operation are quite overwhelming, with an anticipated increase in the workload after the 2007 parliamentary election and the anticipated changes in appointments following the formation of a new government.

Despite the difficulties, some indicators of progress exist. By the end of 2005, there were over 6,000 declarations (60%) collected from public officials, with non-compliance primarily at the level of local governments. Confidential warnings have generally had the effect of producing compliance, albeit with a delay vis-à-vis the prescribed deadline. Further, the Board has been actively identifying functionaries that hold incompatible functions (108 reported in 2005 Annual Report), with a great majority of persons in question following the recommendations and resigning from additional function(s). The Board's advocacy on the issue, together with organisations such as Transparency Serbia have resulted in increased awareness of conflict of interest issues and a setting of standards for the execution of public office, including an improvement of standards on the accumulation of public functions reflected in the 2006 Serbian constitution.

Nevertheless, without the means to verify the accuracy of the declarations, and a lack of public access to the information, many observers express scepticism as to any positive impact of the rules in place. Many rightly fear that the result is actually an increase in the contempt for the law if there are no checks on the fulfilment of obligations, or sanctions.

The main recommendation for improving the regulation of conflict of interest in Serbia therefore centre precisely on questions of more effective enforcement, including an adequate number of staff to process the considerable workload and the possibility of making officials' declaration publicly accessible. Efforts need also be made to make asset declarations more frequently accessed by law enforcement bodies investigating public officials. A proposal to transfer the responsibilities to a specialised anti-corruption agency has been foreseen by the National Strategy for the Fight Against Corruption (see section 4.3.3). Care should be exercised in contemplating such a policy option. The problems in the effectiveness of the existing arrangements should be carefully located (To what extent is the problem the law? The structure of the existing Board? Its competencies? The number of staff?) to ensure that unresolved problems are not simply carried over into a new structure. Most importantly, in the case the competencies are transferred to a new institution, a transitional solution must be found so that there is no gap in functioning while the new institution becomes operational.

#### *Political Party and Election Campaign Financing*

A Law on the Financing of Political Parties (*Zakon o finansiranju političkih stranaka*<sup>232</sup>) was adopted in 2003 and entered into force in January 2004. It aimed to regulate the financing of both regular financing of political parties as well as campaign finance. Modelled on laws elsewhere in the region, it aimed to regulate for the first time an entirely obscured landscape, with the explicit aim of preventing and controlling corruption. With this goal in mind, the law also provided for

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<sup>231</sup> Reported at the end of 2005 in the annual report, available in Serbian at <http://www.sukobinteresa.sr.gov.yu/index.php?id=9&L=2>.

<sup>232</sup> Available in English at [http://www.osce.org/documents/fry/2003/07/535\\_en.pdf](http://www.osce.org/documents/fry/2003/07/535_en.pdf) and in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?t=Z&Id=109#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?t=Z&Id=109#)

public/state financing<sup>233</sup> of political parties (that would win seats in parliament) and transparency (public access) of political parties financial statements. Unfortunately, the law is seriously flawed in a number of significant ways, as is its implementation.

A number of monitoring reports by non-governmental organisations in Serbia provide for a comprehensive analysis of the problems with the current rules and their implementation.<sup>234</sup> The most serious one consists of completely inadequate oversight and enforcement provisions: neither the Republican Electoral Commission nor the parliamentary Finance Committee, which are charged with this role, have the capacity to conduct any analysis of financial declarations submitted by parties, and are not under obligation to initiate proceedings against parties that are in breach of regulations. The list of problems, too numerous to be treated in detail, extends to include a number of unclear, illogical, and/or unenforceable provisions (e.g. obligation to publish financial declarations but no deadlines to do so), gaps in transparency obligations (e.g. parties are obligated to disclose donors to “regular” party operations, but not to campaign funds), overly restrictive provisions (e.g. limits on campaign spending that are simply too low for conducting a national media campaigns), or provisions that cannot be applied equally to all contenders in an electoral contest (e.g. requirement to conduct all financial transactions relating to campaigns through a specially designated bank account, while entities like “citizen groups,” which have a right to participate in elections, are not recognized legal persons and not able to open bank accounts). In short, many provisions are unimplementable. More seriously, again, there is no proper oversight, which is extremely problematic considering that parties are receiving public funds.<sup>235</sup>

Non-governmental organisations like Transparency-Serbia have made a significant contribution to maintaining the topic on the public agenda since the law’s adoption, focusing on systemic solutions, and urging reforms to the existing regulations. Their advocacy has met with some limited success, such as the adoption of the Ministry of Finance (which is charged with providing guidelines for financial reporting) of a new template for campaign finance declarations, requiring more details including a list of donors for the 2007 parliamentary elections.<sup>236</sup> There is a recognition that more fundamental regulatory changes are needed, and this recognition has been reflected in this task being incorporated in the National Strategy for the Fight Against Corruption. However, the responsibility for undertaking it appears to be left to the future anti-corruption agency, although the Ministry of Finance, the government, and the parliament are also designated as implementing institutions in the Action Plan. No concrete activity (e.g. Working Group responsible for drafting a new law) has taken place to date.

Future oversight of party finance regulation has been proposed within the competencies of a future anti-corruption agency, but unlike with issues relating to conflict of interest, provisions governing the financing of political parties are not contained within the draft law on establishing the body<sup>237</sup>. There has also been discussing of entrusting the task to the yet-unformed Supreme Audit Institution.

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<sup>233</sup> Public funding is widely viewed as one of the key mechanisms to reduce the pressure on parties to accept funding from donors who would later expect contracts or policy decisions that benefit them at the expense of public interest.

<sup>234</sup> Transparency Serbia, *Financing Presidential Electoral Campaign in Serbia 2004* (2004); available in English at [http://www.transparentnost.org.yu/english/PUBLICATIONS/presidential\\_electoral\\_2004.pdf](http://www.transparentnost.org.yu/english/PUBLICATIONS/presidential_electoral_2004.pdf) and Center for Free Elections and Democracy (CeSID), *Monitoring of Financing of Pre-Elections Campaigns*, (2005) available in English at <http://www.cesid.org/pdf/izvestaj%20eng.pdf>

<sup>235</sup> The European Commission noted the failure to revise the legislation and in particular the lack of enforcement of sanctions in its 2006 Progress Report. See *Commission Staff Working Document/Serbia 2006 Progress Report*, at <http://www.delscg.cec.eu.int/en>, p. 11.

<sup>236</sup> The most recent set of activities was funded by the UK Foreign and Commonwealth Office; for details see <http://www.transparentnost.org.yu/aktivnosti/kampanja07/index.html>.

<sup>237</sup> Draft Law on the Agency for the Fight Against Corruption, in Serbian only, is available on [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=454&t=P#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=454&t=P#)

A process of complete regulatory overhaul urgently needs to be initiated, including the elaboration of provisions on oversight and control mechanisms.

#### 4.3.2 Council for the Fight against Corruption

In addition to a number of laws regulating processes that are widely accepted as being particularly vulnerable to corruption, or key instruments for combating it (e.g. public procurement, conflict of interest, freedom of information, political party finance), one of the first explicit anti-corruption measures adopted by the Serbian government was the establishment in October 2001 of the Council for the Fight Against Corruption (*Savet za borbu protiv korupcije*)<sup>238</sup>.

The Council was defined as an expert advisory body whose task is to advise the government on preventive and repressive measures in the fight against corruption and to oversee the implementation of these measures. However, the work of the Council was fraught with difficulties from the start. Months passed before the Council was assigned office space and a budget to carry out its core activities. The current Council president, Verica Barać, describes the life of the institution as unfolding in two phases: during the “first phase”, until the assassination of Zoran Djindjić, the Council had commented on relevant draft legislation and systemic changes needed to advance the fight against corruption.<sup>239</sup> Even during this initial period, the Council was dissatisfied with the response of the government, primarily in the delay with which relevant laws were adopted, and non-adoption of other numerous recommendations.

A number of the most prominent Council members resigned in 2002 and 2003, and in the “second phase” of its functioning, the Council turned toward investigating and issuing reports on various topics, including early privatisations of state enterprises and other corruption allegations aired in the media involving the highest government officials. Since then, the relationship between the Anti-Corruption Council and the government has further deteriorated.

Simply dismissing the failure of the Serbian Anti-Corruption Council as a result of a lack of political will would be to miss an important lesson for anti-corruption programming in any country in transition. On the contrary, it is essential to understand the full range of reasons for this outcome. Lack of government responsiveness to the Council’s recommendations is an undisputed fact. However, other factors also need to be considered. Despite the good intentions and high personal integrity of individual members, there are concerns about the Council’s approach to the problem of corruption.

One, from the beginning there was confusion about the Council’s advisory role and the extent to which their recommendations are binding; versus its mandate to ‘oversee’ the implementation of anti-corruption measures. A frequent criticism, particularly in the later years as the Council increasingly attempted to “investigate” corruption scandals, would be that the Council has repeatedly exceeded its authority, a claim that has some merit, particularly from the perspective of the principle of rule of law.

Two, the capacity of the Council was extremely modest in several ways. The expertise of individual members was largely in fields other than corruption, with a few exceptions. Most of these individuals were for the first time engaging with an extremely complex range of topics, and an even more complex range of approaches and instruments available to combat it. At the same time, Council members were professionals engaged elsewhere, with limited time available for the work on the Council. For such a structure to be effective, excellent expert teams and staff would have to

<sup>238</sup> <http://www.antikorupcija-savet.sr.gov.yu>

<sup>239</sup> See transcript of lecture held at the Center for Peace and Democracy Development (CPDD) at [http://www.caa.org.yu/index.php?page\\_id=74](http://www.caa.org.yu/index.php?page_id=74)

have been available to support the Council on each of the topics that were addressed. Funding from the state was insufficient to engage such expertise and external support was likewise limited.

Three, the Council likewise lacked the skills and experience to approach the problem strategically, with sufficient understanding of the inherited obstacles that may limit the maneuvering space of even the most reformist governments under the given conditions. This weakness manifested itself in a number of ways, ranging from personalizing systemic problems by focusing on individuals rather than the system, or, in the end, resorting to engaging only on specific cases through statements in the mass media, further contributing to a growing cynicism among the public.

Four, and perhaps most damaging, the Council released reports and analyses were fraught with errors and inconsistencies, undermining their credibility even in the eyes of neutral international actors.

At the time of the writing of this report, the Anti-Corruption Council remains at an impasse, and there is a pressing need to consider a more constructive role of the Council in the anti-corruption effort. An alternative mandate should be considered, and caution must be exercised so that similar errors are not repeated in the future.

#### 4.3.3 Anti-Corruption Strategy, Action Plan, and the yet-to-be established Anti-Corruption Body

##### *Anti-Corruption Strategy and Action Plan*

A National Strategy for Combating Corruption (*Nacionalna strategija borbe protiv korupcije*) was adopted in December 2005. The Strategy drafting process, undertaken within the framework of the Sida-funded PACO Impact project implemented by the Council of Europe, was one of the rare instances of an inter-agency policy development process. The Strategy covers pre-conditions for a successful fight against corruption, analyses the (then) current situation, and stipulates broad objectives for a number of 'Systems and Fields', including the 'Political system', the 'Judiciary and Police system', the 'System of Public Administration, Territorial Autonomy, Self-government and Public Services', the 'Public Finance System', the 'Economic System', and 'Participation of Civil Society and the Public in Combating Corruption'.<sup>240</sup>

At the time of its passage by a Decision on Determining the National Strategy for Combating Corruption (*Odluka o utvrđivanju Nacionalne strategije za borbu protiv korupcije*), the government also obliged itself to draft an Action Plan for its implementation, which was adopted in December 2006<sup>241</sup>.

The Action Plan is a disappointment in several respects despite the expert assistance that was provided in its drafting. It suffers from many of the shortcomings common to such documents throughout the region, among them: a mere translation of the strategy into table form, with insufficient elaboration of the interim activities necessary to reach a particular objective; unrealistic timelines for implementation without prioritising or sequencing of steps into the short-, medium, and long-term; responsibilities assigned too generally to ministries or agencies, without identifying

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<sup>240</sup> For the English language translation, see *Anti-corruption Strategies and Action Plans in South-eastern Europe: Current Status*, Council of Europe, 2006/PC-TC(2006)16 (Publication done in the framework of the Sida-funded PACO Impact project), pp. 43.

<sup>241</sup> Unlike the Anti-Corruption Strategy, it has not been posted on any ministry web sites, however.

specific functions within the institutions that are responsible for the task or objective; inappropriate or immeasurable indicators; no quantitative estimates of the resources needed for implementation.

A number of issues and objectives identified during the strategy-writing process are being implemented by a number of relevant institutions, however. While it is likely that some of these reforms had been initiated prior to the drafting of the strategy, it is nevertheless important that Serbian authorities begin to view them in context of other sectors and other reform initiatives, and as part of a larger strategic framework.

### *Anti-Corruption Agency*

One of the most important tasks set by the strategy was the establishment of an ‘independent and autonomous anti-corruption body’.

A still-unresolved dispute arose over this proposed new agency, the main vectors of which are the Anti-Corruption Council and the Republican Board on Conflict of Interests on the one hand, and the Ministry of Justice on the other hand. The dispute seems to circle, *inter alia*, around the Terms of Reference for the agency to be established, which would lead to the dissolution of one or both institutions, or their incorporation into the new body. A proposed solution was contained in a draft Law on the Agency for the Fight against Corruption<sup>242</sup> (*Zakon o agenciji za borbu protiv korupcije*), which was submitted to the Serbian parliament in the autumn of 2006, but has not yet been adopted. In the interim, an *ad hoc* commission has been put in place composed of the heads or deputies and other relatively high-level representatives of state institutions with a role in the fight against corruption (many of whom participated in the drafting of the anti-corruption strategy), but this commission has no powers or infrastructure, and is therefore able to provide only minimal monitoring of the process, reporting progress only to the government. This weak interim measure is a reflection of a strong government preference that all such responsibilities be remitted to the above-mentioned Agency.

The proposed solution is anticipated to lead the fight against corruption in Serbia, and therefore requires consideration in some detail. The agency is projected to have a number of competencies, including the following:

- overseeing the implementation of the National strategy for the fight against corruption, the anti-corruption Action Plan, and sectoral action plans;
- monitoring and organising the coordination of state bodies in the fight against corruption;
- resolving conflicts of interest;
- maintaining the register of assets of public officials;
- performing functions related to the law of financing political parties;
- providing opinions and instructions for the implementation of the law;
- proposing amendments and new regulations relating to the fight against corruption;
- providing opinions relating to the implementation of the Strategy, Action Plan, and sectoral action plans;
- cooperating with other state institutions in the preparation of regulations relating to the fight against corruption;
- developing integrity plans in the public and private sector;
- introducing and implementing educational programs relating to corruption;
- tracking information relating to the implementation of this law;
- acting on reports of corruption;

<sup>242</sup> Available in Serbian at [http://www.parlament.sr.gov.yu/content/lat/akta/akta\\_detalji.asp?Id=454&t=P#](http://www.parlament.sr.gov.yu/content/lat/akta/akta_detalji.asp?Id=454&t=P#).

- organizing research, collecting and analyzing statistics and other data about the state of corruption;
- undertaking international cooperation in the field of the fight against corruption;
- informing the public about the implementation of the strategy, action plan, and sectoral implementation plans;
- undertaking other activities designated by law.

One of the arguments used to justify the need for such an agency is Article 6 of the United Nations Convention against Corruption (UNCAC), which requires countries to establish “preventive anti-corruption body or bodies.”<sup>243</sup> In conformity with this recommendation, the proposed agency is projected to have a high degree of independence, reporting directly to the National Assembly, with its governing board (steering committee) elected by a number of governmental agencies, the parliament, the Supreme Court, and professional associations, including journalist associations. Some pressure is also being coming from the Council of Europe (which in turn informs some recommendations made by the EC<sup>244</sup>), which is advising countries throughout the region to establish special anti-corruption agencies. However, the UNCAC requirements can be implemented in a number of different institutional models, including the possibility of multiple bodies with different, but coordinated functions. There is a counterproductive and potentially dangerous reflex to envision only a single large agency as the answer to the UN obligations, with some of the negative consequences outlined below.

The proposed scope of competencies of the agency is vast. The execution of the responsibilities would require a large number of highly qualified staff, and a very large budget. The draft law projects the start up costs for the agency at nearly 35.3 million Dinars (approx. 4.4 million Euro), and annual costs for staff salaries at over 89.4 million Dinars (over 11 million Euro) plus 8.3 million Dinars (over 100,000 Euro) in operating and program costs. A draft systematisation of the Agency undertaken by the Ministry of Justice projects for over 150 staff positions.

The prospect of such a large and powerful agency invokes a number of questions. The first is the question of sustainability of such a large budget, considering the fiscal restrictions throughout the public administration. Next is the issue of staffing, not only at the top (the Director of such a body would need to be selected with utmost care in order to preserve political neutrality of the agency), but throughout the rank and file. In Serbia today, there are perhaps no more than a few dozen individuals who have any consequential expertise on questions of corruption. There would be a significant effort needed to build capacity and expertise, a process that requires years of investment. Until a minimum level of expertise is established, the work of the agency would be severely limited, as it is counterproductive and discrediting to produce analyses, recommendations, and other outputs of less than excellent quality in a field as sensitive as corruption.

The proposed solution also creates a disruption in the implementation of existing (if inadequate) rules on conflict of interest and asset declarations of public officials, currently performed by the Republic Committee for Resolving Conflict of Interests. The existing body will cease to function before the Agency becomes operational, as it is regulated by the Law on the Prevention of Conflict of Interests that will become void with the entry into effect of the new law. The time required for the Agency to become operation could last months, if not years, while in the meantime, no one would be responsible for regulating conflicts of interest and monitoring the asset declarations of public officials. Public perceptions would be further negatively affected by replacing burgeoning

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<sup>243</sup> See *United Nations Convention against Corruption (UNCAC)* Chapter II – Preventive Measures, Article 6 at [http://www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf).

<sup>244</sup> For example through GRECO reports.

watchdogs by new, and at least for some significant period, inoperative institutions. A transitional solution that would address this gap has not been addressed.

There are other reasons to find the insistence of the government of the creation of a single agency as the key to resolving the problems of corruption in Serbia disheartening. There is now substantial, well documented evidence about the poor track record of specialised anti-corruption agencies world-wide.<sup>245</sup> The model of a single specialised Agency is often promoted in the anti-corruption community based on the spectacular success of such an institution established in Hong Kong in the 1970s, but to enumerate the important contextual differences between Hong Kong of the 1970s and Serbia of the early 2000s would require a separate study. In addition to the disruptions noted above, it should be noted that there are concerns among activists in Serbia that the work of independent institutions has been difficult, and subject to political pressures, particularly with regard to bodies that in some way protect against corruption. There is a question of the wisdom of centralizing many of the key competencies for fighting corruption under a single agency at this time.

While on the one hand, there exists the argument that a single, powerful, high profile agency might be more difficult to sabotage, concerns about the investment required to make such an agency operational and resistant to political pressure provide the counterargument that perhaps it is better to continue and strengthen institutions already in place until the new agency has proven its capacities and is able to absorb them. There is likewise the question whether it is more effective to have several centres promoting integrity rather than a single institution that would be the sole target of interference and disruption.

Whereas the optimal solution for an agency or agencies to lead the fight against corruption is neither clear nor simple, what is clear is that an effective mechanism for oversight of the implementation of the strategy and action plan is urgently needed. While there had been established a Commission for the Implementation of the National Strategy for Combatting Corruption and GRECO Recommendations (*Komisija za primenu Nacionalne strategije za borbu protiv korupcije i preporuka Grupe država za borbu protiv korupcije Saveta Evrope, GRECO*) in July 2006, it was not provided with any means to conduct activities, and could not be considered anything more than a formality. In sum, except for the own initiative of specific institutions, there has been no meaningful impetus nor leadership from the past Serbian government to implement anti-corruption policies.

#### 4.3.4. Civil Society and Media

Civil society in Serbia enjoys the reputation of being extremely vibrant, a reputation gained during the period of opposition to the Milošević regime. In the early years of the Djindjić government, many civil society activists had moved into the state sector. Others, formed during a period of wars and authoritarian rule, experienced some difficulty in finding a constructive role in the new circumstances.<sup>246</sup>

The NGOs that have most successfully weathered the change are the key human rights organisations such as the Humanitarian Law Center (*Fond za humanitarno pravo*)<sup>247</sup>, the Helsinki Committee for Human Rights (*Helsinški odbor za ljudska prava*)<sup>248</sup>, the Belgrade Centre for Human Rights

<sup>245</sup> See, for example, *Achieving Success and Avoiding Failure in Anti-corruption Commissions* for an outline of the debate at <http://www.u4.no/document/u4-briefs/u4-brief-1-2007-anti-corruption-commissions.pdf>.

<sup>246</sup> For example, origins and mission of the Center for Anti War Action (*Centar za antiratnu akciju*) were reflected in its name; the name has since been changed to Center for Peace and Democracy Development (*Centar za mir i razvoj demokratije*). Most notably, perhaps, the broad civic movement that played a major role in Milošević's ouster, Otpor, fragmented into branches that briefly attempted to play a watchdog role, while one stream formed a spectacularly unsuccessful political party that competed in the 2003 parliamentary elections.

<sup>247</sup> See <http://www.hlc.org.yu>.

<sup>248</sup> See [www.helsinki.org.yu](http://www.helsinki.org.yu)

(*Beogradski centar za ljudska prava*)<sup>249</sup>, and the Lawyers Committee for Human Rights (*Komitet pravnika za ljudska prava, YUCOM*)<sup>250</sup>. These activists have remained at the forefront of advocacy to confront war crimes, extradite indicted war criminals to the Hague tribunal, and improve the protection of human rights in Serbia.

Organisations that have addressed corruption in any systematic way are few, and relatively younger. The Serbian chapter of Transparency International/TI (Transparency Serbia), the most prominent of them, was established in 2001 and has contributed to advocacy for and public awareness on a range of corruption/anti-corruption related issues. The most sustained efforts have been on drafting and implementation of the public procurement legislation, conflict of interest rules, regulation on financing of political parties and electoral campaigns, as well as the Law on Freedom of Access to Information.

Transparency Serbia's work focuses on systemic problems and remedies, and their activities largely consist of surveys, analyses, reports, round tables, and conferences. In 2006, TI for the first time introduced an anti-corruption legal advisory centre for citizens, which counsels citizens on available legal and administrative remedies when confronted with corruption.<sup>251</sup> Their capacities remain modest, and considering the scope of the challenge, they have wisely chosen to concentrate on only a few issues noted above. It should be pointed out, however, that they are the most respected voice in Serbia on anti-corruption issues by consistently demonstrating a respectable level of expertise, avoiding engagement in particular scandals, and maintaining integrity (or at least avoiding being compromised on political or financial grounds). Their public statements are regularly reported on by the Serbian media, and their recommendations on corruption-related issues are broadly perceived as expert, authoritative, and unbiased. TI's campaigns and projects have been funded by a variety of donors, including the UK, the US and Finland, but also donors such as the OSCE.

Other NGOs that have addressed corruption in more than an incidental manner include the Center for Liberal-Democratic Studies (*Centar za liberalno-demokratske studije/CLDS*)<sup>252</sup>, which describes itself as is an independent think tank that conducts research and publishes public policy proposals. Their expertise is primarily economic in nature, and their policy recommendations, particularly with regard to corruption, tend to be framed in a liberal economic perspective.

The Student Union of Serbia – an organisation whose stakeholders are university and higher education institutions' students throughout Serbia – has addressed corruption as a key obstacle in the implementation of European education standards as set out in the 1999 Bologna Declaration,<sup>253</sup> which is their core mission. Their first corruption-related activity was a 2005 survey about corruption in higher education. A permanent team has remained beyond the duration of the project, which continues to work on corruption questions, and has, for example, recently participated in public discussions following the arrest of staff of the Kragujevac law faculty mentioned above.

The Centre for Security Studies/CSS (*Centar za bezbednosne studije/CBS*)<sup>254</sup>, formerly the Management Center<sup>255</sup>, has worked on corruption issues since 2001, though their changing profile (and most recently, name) suggests some difficulty in defining a core mission. Starting out as a capacity-building initiative for NGOs, to then move into corruption, the Center has recently found itself in the process of merging with the Institute for Criminological and Sociological Research

<sup>249</sup> See <http://www.bgcentar.org.yu/>

<sup>250</sup> See [www.yucom.org.yu](http://www.yucom.org.yu)

<sup>251</sup> See <http://www.transparentnost.org.yu/english/ACTIVITIES/ALAC/index.html>.

<sup>252</sup> See <http://www.clds.org.yu/>

<sup>253</sup> See <http://ec.europa.eu/education/policies/educ/bologna/bologna.pdf> for details.

<sup>254</sup> See <http://www.cbs-css.org>, site in Serbian, only.

<sup>255</sup> See <http://www.management.org.yu>.

(*Institut za kriminološka i sociološka istraživanja*)<sup>256</sup> and moving more into security sector reform. Sida had funded their 2 year project to produce a corruption newsletter and offer courses to a cross sector of civil servants, academics, and other interested individuals.

In a similar effort to expand their mandate, the Center for the Development of the Non-Profit Sector (*Centar za razvoj neprofitnog sektora/CRNS*)<sup>257</sup>, has ventured into corruption by launching a project in partnership with 8 local NGOs on citizen monitoring of municipal budgets, the first project of its kind in Serbia.

Along the same lines, the Center for Free Elections and Democracy (*Centar za slobodne izbore i demokratiju/CeSID*)<sup>258</sup> expanded their election monitoring experience to monitor the financing of the campaigns for local elections in 2004. While they produced a quality monitoring report, the effort did not develop into a longer-term programme.

In addition to being a donor to a number of civil society anti-corruption initiatives (several Transparency-Serbia projects, CeSID monitoring of campaign finance, and CRNPS local budget monitoring effort, among others), the Fund for an Open Society-Serbia<sup>259</sup> is in the process of developing internal policy advocacy capacity, including on anti-corruption issues.

There have been other sporadic activities, such as the 2002 publication on the fight against corruption (*Corruption-Instructions For Use*)<sup>260</sup> by the research institute Argument<sup>261</sup>, whose founder was also one of the early members of the Anti-Corruption Council.

Overall, however, civil society capacity to deal with corruption is modest, resting primarily with Transparency Serbia. Exceptions like the SUS notwithstanding, there is a pronounced lack of understanding of civil society organisations as to what their role in fighting corruption might be. One of the authors had heard on numerous occasions the comment “there is Transparency, the field is covered”, clearly missing the wide range of opportunities to deal with corruption. Monitoring particular systems and processes at the micro level is one of the main opportunities for NGOs to participate in the fight against corruption, as part of the broader commitment to change in that particular sector. The example of the Student Union of Serbia is a case in point. Professional associations such as those of judges (*Društvo sudija Srbije*)<sup>262</sup> and prosecutors (*Udruženje tužilaca Srbije*)<sup>263</sup> also deserve continued support in attempting to create a critical mass inside the system that can advocate change from within and protect the colleagues who choose to resist pressures.

Greater civil society activism would also be required in an effort to defend the gains made by institutions such as the Public Procurement Office and individuals in sensitive roles, such as the Commission for the Protection of Rights or the future audit institution. The NGO coalition to promote access to information (mentioned above) is an instructive example of the impact such campaigns can have. However, broader corruption issues have not captured the imagination of the most influential NGOs who are still waging important battles in the field of human rights.

Despite an enormous need to fight against corruption in Serbia, civil society organisations report that funding for anti-corruption activities is obtained with difficulty. It would be interesting to explore further to what extent this is a result of poor quality projects being proposed versus a lack of

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<sup>256</sup> See <http://www.iksi.bg.ac.yu>.

<sup>257</sup> See <http://www.crnps.org.yu/>

<sup>258</sup> See <http://www.cesid.org>

<sup>259</sup> See <http://www.fosserbia.org>.

<sup>260</sup> Available in Serbian at [http://www.argument.co.yu/pdf/uputstvo\\_za\\_upotrebu\\_korupcije.pdf](http://www.argument.co.yu/pdf/uputstvo_za_upotrebu_korupcije.pdf)

<sup>261</sup> <http://www.argument.co.yu>

<sup>262</sup> See <http://www.sudije.org.yu>

<sup>263</sup> See <http://www.uts.org.yu>

understanding among donors about the value of particular anti-corruption projects such as sustained multi-year advocacy on issues that may appear to have been resolved (e.g. public procurement).

Another basic dilemma facing donors in Serbia is how to encourage civil society organisations to engage in the fight against corruption without the process becoming donor-driven, lacking local ownership, and therefore unsustainable. There are no simple solutions, of course, but a beginning might be a dialogue with more established actors about existing cooperation with genuinely motivated organisations (especially at the local level).

The media's contribution to the fight against corruption has been more modest than that of civil society, and in fact largely counterproductive. As noted earlier, reporting has overwhelmingly focused on allegations, and specific cases of corruption, rather than analysis of systemic problems that give rise to corruption, or the available remedies. In an environment saturated with corruption scandals, even quality investigative journalism practiced by a small number of accomplished journalists diminishes in impact.

An exception to this trend has been Beta News Agency's Clean Hands (*Čiste ruke*) web site,<sup>264</sup> launched in 2002 with the assistance of the OSCE and International Research & Exchanges Board/IREX (currently supported by Norwegian People's Aid), which aims to provide a regional forum for exchange of information and experience that can contribute to the struggle against corruption. The site attempts to collect media articles on the fight against corruption throughout South-eastern Europe, as well as a number of other resources such as relevant legislation and links to relevant institutions. Beta also maintains a web site dedicated to the fight against organised crime in the region.

Advancing the media's role in the fight against corruption likewise needs careful consideration. Opinions exist that the previous decade's focus on investigative journalism may have been a miscalculation, ignoring the market conditions that make such reporting difficult even in much wealthier countries. While the education of journalists is essential, in the future, such efforts might be better considered in the context of specific anti-corruption issues and reform efforts pursued by state institutions or the non-profit sector. Lessons should be drawn from examples of consistent quality reporting on the question of Freedom of Information, for example. As noted in section 3.3.4 above, this outcome appears to be the result not only of media interest in the issue as such, but also of the sustained media outreach efforts of the Commissioner for Information of Public Importance. Further consideration of this and other alternative models of media education merit further consideration.

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<sup>264</sup> <http://www.korupcija.org/>

## 5. Looking Ahead

### 5.1 Emerging Lessons

Due to the weaknesses of the parliament and the judiciary, as well as the specifics of the Serbian electoral system and constitutional arrangement, there is excessive power concentrated within the executive branch of government and the leaderships of political parties (which largely coincide, in the case of parties forming government). There is an urgent need to foster and protect independent institutions that can act as watchdogs and so restrain executive powers.

There has been very little political will to fight corruption at the highest level of the state and within the political parties: Serbia is still mired in fundamental state-building processes, as well as the consequences of the past decade of wars. In addition, political instability and the threat of radical nationalists coming to power can impose unethical compromises on even the most reformist parties. This situation can work both to obstruct reforms, but also to move reforms forward, particularly through focused donor advocacy, while attention is focused elsewhere. The easy passage of the Anti-Corruption Strategy suggests such opportunities.

Part of the Serbian political elite appears not to fully recognise the cost of tolerating corruption. This applies not only to the cost for the society at large, but also to their own electoral success. Conversely, they also appear to be unaware of the enormous political benefits to be reaped from decisively sanctioning corruption, starting with the highest public officials.

There is very little understanding about the myriad of instruments to fight corruption, both at the level of government, and civil society. NGOs have been markedly inactive *vis-à-vis* some of the most fundamental approaches, such as sectoral micro-level monitoring of state institutions and processes to correctly diagnose the problems and advocate targeted reforms. There is an overwhelming preference for law enforcement approaches, which, even in the most developed countries, cannot produce impact without corresponding preventive and educational measures. There is a large unmet need to educate at all levels about the mechanisms to fight corruption. There is also an opportunity to push through measures that can have important potential to reduce corruption, of which officials may be unaware.

The lack of familiarity with the “tools of the trade” is also reflected evident in the very modest amount of analysis and research on corruption. Achievements have been made in transparency of state institutions, with extensive information about work results readily available on their web sites. What is missing is the consistent use of this data by civil society, the media, and academia to produce rigorous analysis. With few exceptions, the academic/policy writing is rudimentary, and research largely consists of perception surveys. As noted elsewhere in this paper, a number of the analyses of the Anti-Corruption Council were methodologically unsound, reflecting low standards, and a low capacity for quality policy research on the broader academic/policy community. As a result, there is a great deal that is not known about the mechanisms through which corruption occurs in each of the sectors, and by extension, how to most effectively curb it.

One of the consequences of the lack of rigorous analysis is a great deal of operating on speculation and rumours. This contributes to a growing cynicism about the political elites and state institutions, which, in some cases, might be unjustified. The resulting lack of trust in institutions further contributes to an unwillingness by citizens to report corruption and to otherwise engage in the fight against corruption.

The lack of understanding also expresses itself in not approaching the problem of corruption in a strategic and a sustainable way. The current proposal for the Anti-Corruption Agency is an example par excellence of an expensive idea doomed to failure. A similar fate awaits the Supreme Audit Institution unless its founding is approached in a strategic way.

Related to the above factors we find a reluctance to take responsibility for the hard work of fighting corruption, particularly at high political level. This represents both a challenge and an opportunity to educate the political leadership about the necessary commitments, and provide guidance and support as to the steps that need to be undertaken.

Individual ministers can greatly influence the process, and care should be taken to know with whom one is working before embarking on serious investments.

Institutions sensitive to other power struggles, like the police, army, and the secret police, will continue to resist reform because politicians still wield power and influence through those structures. It is therefore necessary to continue to support and strengthen specialised and (relatively) independent law enforcement bodies to the greatest possible extent.

Law enforcement institutions have made some headway in building up their capacities, but even greatly improved capacities are insufficient to effectively address corruption. Corruption is not fought through law enforcement alone. Other institutions and measures need to be established and strengthened to play a preventive role.

Key institutions such as the Public Procurement Office are in danger both from attrition but also from political pressure (more the case of Commission for Protection of Rights). It is imperative to defend the gains made to date.

Fear of reprisals *is* a factor. A wide cross-section of people, including civil society activists, have acknowledged worrying about the threats of too closely scrutinizing powerful individuals' sources of income. Experiences ranging from verbal threats to the director of the Commission for the Protection of Rights to the assassination of Prime Minister Djindjić serve as a serious warning of what can happen to those who dare disrupt lucrative operations.

Not all reform initiatives are good, and even good ideas can have unintended negative consequences. The Law on Civil Servants and the proposed Anti-Corruption Agency are two examples noted in some detail. All reform policies (as well as civil society project methodologies) should be thoroughly analysed and convincingly justified in terms of applicability in the specific national context.

Care needs to be taken in selecting mechanisms to ensure local ownership. Local ownership does not happen only at the level of the political elite, but also among the lower ranks that can eventually create a critical mass to move reforms forward within the institutions. While the support in the highest level of government is often essential in promoting significant policy reforms – and can effectively obstruct any real reforms – exclusive reliance on their buy-in *de facto* holds the rest of society hostage to the interests of political leadership. Strategies that engender grass roots support for reform, and thereby involve a much broader range of stakeholders in the reform process, can help create pressure on reluctant political elites.

Past projects can give important insights not only as to what could be done better, but also as to what has worked better than anticipated. One such example is the Sida-funded 2002–2005 project to support the development of modern human resource management in the civil service. This project

appears to have utilized a model of local ownership where individuals involved in the project are continuing to meet, develop, and support each other beyond the duration of the project.

There are likewise opportunities to add anti-corruption elements in current and future project that do not have a reduction of corruption as an objective *per se*, as in the current Sida-supported UNDP programme “Support to the Serbian Public Administration Reform Strategy-second phase.” Assuming that political conditions for continuing the project are met, there appear to be opportunities for integrating more explicit anti-corruption measures (corruption safeguards) in the next phases of the project, such as in the elaboration of a new management model based on a functional analysis.

## 5.2. Implications for Advancing Anti-corruption Reforms in Serbia

The perspective – albeit long-term – of European Union membership provides an efficient framework to advocate and pressure for horizontal and sector-specific reforms, including crucial anti-corruption reforms; the financial and technical assistance accompanying the European Partnership instrument is a further incentive.

However, Serbia will have to give convincing proof of its commitment to reform. The experience of the recently concluded accession process of Romania and Bulgaria resulted in the EU resolving to closer scrutinise the progress of potential candidate countries on the issues of organised crime and corruption. The ‘Enlargement Strategy and Main Challenges 2006–2007’ communication of the European Commission to the European Parliament and the Council states that the accession of both countries ‘provide[...] a number of lessons which are now being incorporated into the pre-accession strategy. Thus it is clear that issues such as judicial reform and the fight against corruption and organised crime need to be tackled at an early stage. The Commission, for example, is promoting greater awareness of how best to ensure the independence, impartiality and effectiveness of the judiciary and to prevent corruption. In addition, the Commission underlines the need for sustained reforms in the public administration. An accountable and efficient civil service, based on professional career development criteria, enables a country to prepare efficiently for accession and subsequently to operate as a Member State.’<sup>265</sup> A recent analysis by the OECD’s SIGMA also suggests that while the same conditions will apply for new applicant countries, they would also likely to be scrutinised much closer by the EU in the process leading to accession.<sup>266</sup>

## 5.3 Recommendations

Smaller bilateral donors can make a difference in the fight against corruption if they develop their anti-corruption or good governance strategy in close cooperation with other likeminded donors and in close dialogue with national partners. Doing proper needs assessments and aligning to national plans is important but not sufficient in terms of strategy development. Helping countries reform and modernise in an environment fraught with centrally placed spoilers is a formidable challenge, and it is equally important to identify the incentive structures – as well as the limitations – of spoilers and champions.

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<sup>265</sup> See *Communication from the Commission to the European Parliament and the Council: Enlargement Strategy and Main Challenges 2006 – 2007* at [http://www.delseg.cec.eu.int/en/eu\\_and\\_fry/key\\_documents/documents/2006\\_ELARG\\_Strategy\\_com\\_649\\_strategy\\_paper\\_en.pdf](http://www.delseg.cec.eu.int/en/eu_and_fry/key_documents/documents/2006_ELARG_Strategy_com_649_strategy_paper_en.pdf), pp. 5.

<sup>266</sup> See Alan Mayhew, *Enlargement of the European Union: An analysis of the Negotiations for the Western Balkans*, OECD 2007, at [http://www.oalis.oecd.org/olis/2007doc.nsf/43bb6130e5e86e5fc12569fa005d004c/d5909d285e93ee86c125727b0058e656/\\$FILE/JT03221305.DOC](http://www.oalis.oecd.org/olis/2007doc.nsf/43bb6130e5e86e5fc12569fa005d004c/d5909d285e93ee86c125727b0058e656/$FILE/JT03221305.DOC), p.5.

Unfortunately not even the best strategies and interventions will yield direct measurable results in the short term – at least not with the aggregate macro data commonly used today to measure corruption. The most prominent donor strategy replicated around the world is to improve governance systems. Extensive research has shown that it *does* work, but it takes time. Unfortunately the tendency has been to do “quick and dirty” assessments that look for loopholes in a countries governance framework, and the strategy has been to plug those holes, rather than to factor in the unique factors that are at play in each specific context. In addition we find that donors most often have failed to coordinate. Everyone has sought to address their priority sectors and institutions, often resulting in donor congestion and overload on national systems.

Sida can do better. By recognising that change will take time, often decades, the push for quick fixes should be abandoned. However, there is a great need for visible reforms and intermediate victories that break the negative cycle of thinking on Serbia. In Nigeria of all countries the negative cycle has been broken by one functional institution (Economic and Financial Crimes Commission/EFCC) and its uncompromising leader. Here we see how important leadership and ownership is on the recipient side. Sida should therefore seek and support partners that are strong, independent and result-oriented. Positive outcomes should be publicised, even if they may seem small.

Sida should also be conscious of what it does well. By bringing out its best resources and competence in promising sectors and institutions, Sida can help create success stories on the donor side *and* the recipient side that can sustain the fight against corruption over a time-span long enough to break the cycle of negative thinking. We would like to highlight some options and strategic considerations.

#### **Take advantage of the lever of EU accession**

Although political consensus on joining the EU has not yet been reached, EU accession is potentially the greatest leverage available to push for necessary reforms in Serbia. The EU is much more favourably disposed toward Serbia’s integration than to that of some other aspirants, and surveys in Serbia consistently show that EU integration supported by a majority of citizens. Experience with the previous rounds of EU Enlargement have shown that the outside pressure can be a helpful tool for reform-minded forces inside the accession country to move ahead with unpopular measures.

#### **Instrumentalise other international commitments**

Call upon standards of the Council of Europe, among others, to achieve desired policy changes. For example, emphasise the Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns.<sup>267</sup> Use United Nations Convention against Corruption (UNCAC),<sup>268</sup> that obliges states parties to “enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption”. Conveniently, work is underway to explore how donors can provide technical assistance under UNCAC in a coordinated and efficient way. Likewise one should call upon Serbia’s application for membership in the World Trade Organisation (WTO) to advance more vigorously trade and customs-related reforms. Further, Serbia should be held accountable towards its obligations under the Paris Declaration, which puts the government in the lead for the co-ordination of donor efforts.

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<sup>267</sup> Available at <https://wcd.coe.int/ViewDoc.jsp?id=2183&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogge d=FFAC75>

<sup>268</sup> For pointers on how UNCAC and other conventions can be used see: <http://www.u4.no/themes/uncac/introduction.cfm>

**Beware of misconstrued standards**

Contrary to what might be the staple of the discussion about the proposed new anti-corruption body, there is no international *obligation* of Serbia to set up a new structure as such. The prevention and education function foreseen by UNCAC's Article 6 can be vested with an already existing institution. There are strong financial and human resource arguments against yet another institution. There is also well documented international evidence that proves anti-corruption agencies to be failing in almost all instances. It would seem that Serbia should try to avoid mistakes made elsewhere.

**Protect the gains made**

Support efforts that will continue to strengthen independent bodies particularly relevant for the fight against corruption such as the Public Procurement Office, the Commission for the Protection of Rights, the Commissioner for Information of Public Importance, the Republic Committee for Resolving Conflict of Interests, specialised police and prosecution units that are building up capacity to investigate and prosecute high level crime and corruption, and other bodies that can provide some measure of oversight of the executive. Strengthening these bodies may involve considerable changes to the way they are constituted and operate (for example, in the case of the Committee for Resolving Conflict of Interests), which may meet with some resistance from the officials current occupying those posts. While it will be important to closely consult with the bodies themselves about the problems and priorities they have identified, the most effective remedies may sometimes be unpopular. Brainstorm on measures that could be supported to most effectively defend individuals within these institutions that may come under threat for resisting political influence.

**Monitor closely institutions and processes most vulnerable to political influence and corruption**

The High Judicial Council is one of the institutions that have been identified as potential targets for political interference, particularly in the appointment process. Judicial (re)appointments are vulnerable in general, and it is strongly recommended that Sida, along with the rest of the donor community, closely monitor and advocate that appointments be solely merit-based on the basis of transparent criteria elaborated in consultation with relevant stakeholders, including judges and prosecutors associations, and human rights activists who already monitor these processes.

A more competent monitoring of the remaining privatisations may also be considered, but a warning is due: these are highly complex processes requiring expertise that is beyond the competence of most national NGOs and research institutes. An early example of successful NGO monitoring of privatisation in the region (TI Bulgaria monitoring the privatisation of the Telecom<sup>269</sup>) was successful mostly due to luck. Experts believe that in most cases, based on official documentation, an NGO would not be able to detect many forms of corruption possible in such processes.

Regulation on the financing of political parties and electoral campaigns needs to be urgently amended, and an effective monitoring and enforcement mechanism needs to be established. While the current thinking within the government and the broader anti-corruption community in Serbia has concluded that the enforcement is best left to the future SAI or Anti-Corruption Agency, these institutions will need considerable time to develop their capacities, and will ultimately be unsuccessful unless there is a strict requirement to disclose donors. There needs to be additional advocacy for improving the law, including this requirement that should not wait for the establishment of those institutions. Effective interim monitoring and enforcement mechanisms can

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<sup>269</sup> See *BTC Privatisation Proceedings: Draft Contract Analysis - Transparency and Legal Compliance*, 2000, <http://www.transparency-bg.org/?magic=0.4.0.2>.

be established, and potentially transferred to other bodies, when and if they are prepared to expand their capacities.

### **Support by all available means the sustainable establishment of a Supreme Audit Institution**

The absence of an effective SAI is a massive gap in the financial oversight mechanisms in Serbia. Donors should present a united front in advocating for the establishment, and in the next phase, sustainable development of the institution. Political influence in the initial appointments will need to be carefully monitored here as well. A great deal of resources will be required to build the necessary capacity within this institution. Its growth should be carefully considered, strategically planned, and rigorously defended as it begins to function. There will also be a need to manage expectations about what will be achievable within the short-, medium-, and long-term: assistance with setting meaningful benchmarks and communicating to the public its achievements will be crucial in fostering public confidence. Here, as in other measures to be supported, take a look at successful projects in other countries of the region and think of what lessons learned can be made applicable to Serbia. Sweden supported the secondment of a State Auditor to the newly established State Audit Institution in Bosnia in 2004/2005, which was widely considered as having a great impact on the capacity development of the SAI.

### **Support a more strategic thinking on anti-corruption**

There is an enormous amount of work required to turn the Anti-Corruption Strategy into a viable program. Much more serious thinking needs to be encouraged in terms of the institutions and individuals responsible for implementing anti-corruption measures: it needs to be everyone's responsibility, not only that of a handful of individuals in an Anti-Corruption Agency and in law enforcement. Support more substantive and diverse debate on the specific problems and policy options before deciding that large and expensive institutions will solve all of society's problems.

### **Support targeted capacity building in Anti-Corruption**

There is a great deal of education on corruption and particular policy options and instruments available for the fight against corruption. The three key questions in supporting such capacity building are: "Who should be trained?" "What should be the content of the training?" and "By whom should they be trained?" The answers are not obvious. While there is certainly no harm in educating nearly any segment of the population, limited resources if nothing else dictate that investments be made strategically, targeting priority groups who will be directly involved in anti-corruption efforts. To date, strategic investments have most notably been made in law enforcement officials. Similar investments may have been made with the Anti-Corruption Council, and should be made with the staff of any future anti-corruption body. They will need to learn not only the basic definitions of corruption and key sectors where it occurs, but much more importantly the vast body of knowledge about how to diagnose and design targeted remedies for corruption in each of the sectors which they will be covering. What's more, they will need to learn how to cooperate with civil society and academia to supplement their capacities for monitoring, research, and analysis, as well as strategic communication with the public to foster public trust in their work. Finally, efforts should be made to build the capacity, and ensure the appropriate conditions within public institutions to conduct training themselves, rather than within civil society organisations who are often needlessly and counterproductively assuming the functions that should be performed by the state.

### **Support targeted research on corruption**

Each of the sections of this paper attests to the dearth of reliable data on corruption in Serbia. Macro-level perception surveys have a value in showing general trends, and, if conducted on the basis of a consistent methodology, can paint a picture of change over time. Yet there is very little reliable information on corruption in most sectors. For example, there is no data to allow us to understand to what extent high perceptions of corruption in the judiciary are indeed a question of

bribes and influence, and to what extent rather the result of inefficiency. What is missing are more diagnostic sector-specific studies that can more precisely locate the loopholes and other opportunities for corruption. Methodologies to get more reliable information do exist, as do numerous examples of other types of analyses that provide us with an accurate picture of the problems so that we can dispel speculations and design remedies based on data.

**Integrate anti-corruption measures in all reform initiatives**

In the discussion of “implicit” anti-corruption measures, we noted that a great many sectoral reform initiatives that have an element of increasing transparency, efficiency, and accountability will have the added value of reducing opportunities for corruption. Most reform projects will have some anti-corruption potential and should be analyzed at the design phase for the opportunities to add additional anti-corruption elements, most often at no additional cost to the project. Conversely, all projects and all reform measures should be screened for inadvertent negative consequences, including opportunities for corruption.

## 6 Annexes

### Annex I: Terms of Reference

#### 1 BACKGROUND

The overall objective of Swedish development co-operation is to help create conditions that will enable the poor to improve their living conditions. Furthermore, the focus for development co-operation with the countries of South Eastern Europe is to support equitable and sustainable reforms that help the country develop closer ties with the EU and its integration into European co-operative structures. Swedish development co-operation with Serbia is governed by the Country Strategy for Serbia and Montenegro<sup>270</sup> that was adopted by the Swedish Government in the autumn of 2004. The Strategy was drawn up by the Ministry of Foreign Affairs in consultation with other ministries concerned, based on a draft prepared by Sida (Swedish International Development Co-operation Agency), supplementary information provided by other agencies in Sweden and in close consultations with the representatives of the government and civil society in Serbia and Montenegro. The current Strategy was originally valid until December 2007, but is now extended to June 30, 2008. In order to be prepared for the drafting of the new strategy Sida is now carrying out some studies.

According to Sida-published *Manual for the Preparation, Implementation and Follow up of Co-operation Strategies*, the strategies should be based on partner country's priorities, as expressed in their own strategies for development and poverty reduction (e.g. PRSP and sectoral strategies) and they should epitomise the Swedish approach to the partner countries' strategic framework. The ultimate goal is to make it possible for poor people to improve their living conditions. Sweden is committed to promoting the joint strategy work with the partner countries and other donors. The new country strategy is to be based on a more concentrated approach, with a narrowed focus on two or three different sectors and vertical deepening within the sectors we choose to get involved with, under the general strategic shift from project-based support towards Sector Wide Approach and larger programmes.

Before the first planning document has been drafted, Sida needs to run a preliminary assessment of development problems, based on available analyses, including the country's strategy for poverty reduction. For that reason, we have begun collecting the information about different sectors and we need to come up with our own analyses of the areas that require particular attention in line with our own strategic priorities. One of such areas that need specific studies is the area of anti-corruption.

The need to address corruption as an obstacle to democratic stability, rule of law and social and economic development in South Eastern Europe maintains its high priority status in Swedish development co-operation with this region. Fight against corruption has been identified as one of Sida's strategic priorities and acted upon accordingly. Besides taking measures to mainstream corruption throughout its development co-operation portfolio, as a cross-sectoral issue, Sida also supported two projects specifically targeting corruption<sup>271</sup>. Sida has had both projects evaluated recently by an independent consultancy mission.<sup>272</sup>

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<sup>270</sup> Attached in the annex

<sup>271</sup> "Consolidated Anti-corruption Training and Publication Programme" and "PACO IMPACT: Implementation of Anti-corruption Plans in South Eastern Europe", see Annex 1

<sup>272</sup> "Evaluation of Swedish Support in the Area of Anti-Corruption in South Eastern Europe 2004-2006", see Annex 1

## 2 PURPOSE AND SCOPE OF THE ASSIGNMENT

The main purpose of this assignment is to produce a corruption analysis which will serve as an input in elaborating the main areas of interest under the new Swedish co-operation strategy for Serbia. The study is to be perceived as an instrument in identifying the areas that require our attention and as a starting point for engaging in a dialogue with the national authorities regarding this sensitive issue.

The final outcome of the assignment/consultancy will be a study/report that shall provide Sida with recommendations regarding the possible directions of our future support in the area on anti-corruption in Serbia. The study shall put a particular emphasis on the following topics:

- a detailed assessment of the current anti-corruption legislative and institutional infrastructure in Serbia with identified gaps, measures required, planned and under implementation. This part of the study will draw almost exclusively on existing studies/assessments, and on interviews with stakeholders;
- An in-depth analysis of the level and forms of corruption in Serbia. This analysis will be based on information that is available in current research;
  - A special effort shall be invested in exploring the links between corruption and organised crime and the influence the large international presence has thereon.
  - A second sub focus will be put on mechanisms for the funding of political parties and the effects this has on politics.
- an overview of agencies involved in the sector at various levels of government and their interrelations, with possible bottlenecks and obstacles;
- an overview of civil society organisations, donors, bilateral and international organisations, private sector, media, etc. and their role in the sector. Analyse the past and present work and the challenges encountered by the donor community in Serbia in the area of anti-corruption;
- a review of the progress in implementing the European Partnership so far;
- identification and recommendation of concrete interventions of Sida in the sector, with a basic evaluation of feasibility, relevance, sustainability and national ownership. Recommendations shall be stated briefly, clearly and in an analytical manner, with the expected results listed. The recommendations can be directed only to Sida and the findings of the consultant are only to be discussed with other stakeholders following Sida's approval.

(If Sida so chooses it may enquire about a phase 2 of this assignment where the Team leader assist Sida in facilitating the dialogue with prospective national counterparts in order have an effective needs assessment process.)

## 3 THE ASSIGNMENT

The outcome of the preparatory work and interaction with the stakeholders listed in Annex 2 (not enclosed) shall be a study, providing Sida with a general and comprehensive update on the state of

the anti-corruption scene in Serbia and an overview of policy, regulatory and strategic framework in various stages of development, adoption and implementation. The study shall also contain an assessment of the existing institutional structure for anti-corruption in Serbia. Sida will provide the Consultant with a list of possible organisations and institutions to meet. The Consultant is free to add other meetings.

### 3.1 Activities

#### A. Desk Study and visit

A desk study shall be performed in preparation for the visit to Serbia. The desk study will focus on the appraisal of key strategic documents. Sida HQ and Sida Field Office will provide the consultants with suggestions on relevant documentation. The consultants are free to add other documentation. The consulting team is expected to attend a preliminary briefing in Sida Stockholm prior to their field visit. The briefing will also be attended by DFID representatives from London and Belgrade. The purpose of the briefing will be to present the working plan and discuss the remaining outstanding issues. A follow-up meeting will be held in Sida Stockholm after the field visit, to present the draft report and discuss the findings.

The study will commence approximately 19 March 2007 and the field visit is expected to be completed no later than 6 April 2007. The expected results from the desk study and subsequent visits are summarised below:

1. When assessing the available documentation on corruption and interviewing relevant people, the consultants shall among other things look at the following issues:
  - The forms, levels<sup>273</sup> and different aspects of corruption in Serbia;
  - Causes of corruption, the identification of key factors and the nature of links between them;
  - The degree of corruption in Serbia;
  - Sectors that are most infected by corruption in Serbia;
  - Geographic differences within Serbia;
  - The relationship between organised crime and corruption;
  - Discuss the relationship between international presence and corruption;
  - Serbian government and Serbian authorities' anti-corruption work (including the work on the implementation of the Poverty Reduction Strategy Paper and the National Anti-Corruption Strategy).
  
2. When assessing the work of the international community against corruption, the consultant should look at the following issues:
  - What is being done in the area of anti-corruption and by whom;
  - Identify the results of the interventions and possible impact;
  - Success stories *and* gaps and flaws in the present direction of anti-corruption programmes;
  - Identify the window of opportunity for Sida to support anti-corruption.

The assessment shall be done as objectively as possible and seek information from as many independent sources as possible.

Sida Belgrade/Stockholm shall provide the Consultant with the background information that is considered necessary to carry out the assignment. The Consultant is expected to meet the Embassy

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<sup>273</sup> Some interesting levels are politics, civil service and private sector

of Sweden/Sida Belgrade in the beginning of the field visit, for introduction and initial briefing. The Embassy of Sweden/Sida Belgrade cannot provide the Consultant with full logistical support during the visit. Assistance can be provided to the Consultant in arranging the transportation from/to the airport and in booking a hotel reservation in Belgrade, Serbia, during the visit. However, the Embassy of Sweden/Sida Belgrade might accompany the Consultant during parts of the visit.

**B. The research, reporting and visit to Stockholm**

The total duration of the assignment shall be approximately 10 weeks running from 19 March 2007. The estimated completion date is 31 May:

- Week 1, planning and briefing in Stockholm
- Week 2&3, fieldwork
- Week 4&5&6, writing the draft report
- Week 7, presenting a draft report in Stockholm
- Week 7&8, Sida and partners provide feedback
- Week 9&10, writing the final report

The Consultant shall provide Sida with a written report, see below more specific detail about the reporting requirements. A draft report shall be presented and discussed during a meeting at Sida HQ in Stockholm in May 2007.

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## SUMMARY

Corruption is one of the most important problems facing Serbia. While there are some indications that corruption may have become less rampant in recent years, available evidence suggests that corruption levels are still high, while trust in key institutions is low. The impact on citizens is significant: day-to-day corruption can put a substantial strain on the poorest and most marginalized groups, while frequent scandals involving corruption among highest public officials undermines people's, particularly young citizens', confidence in the future.

Serbia is a country in transition. It is important to tackle corruption systematically to avoid its becoming institutionalised. However, while good news and perceptions are thin on the ground, we find that the country is on a positive track in several areas: there are signs of greater control of public procurement, conflict of interest has begun to be regulated, access to information and transparency of the government institutions have improved significantly, and the capacity of enforcement agencies to investigate and prosecute organised crime and corruption is increasing. The burden of rules and procedures has eased for private business, cutting opportunities for corruption.

However, the political nature of the problem is constant, and more ambitious reforms are often effectively blocked by entrenched elites. A lasting impact on corruption levels cannot be achieved without sustained political will at the highest levels of government.

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