3 INSTITUTIONAL PRACTICE AND ENFORCEMENT OF THE LAW

In the SELDI countries, the 1990s and early 2000s were the period when significant parts of their regulatory landscape had been fundamentally reshaped, especially the regulations on the integrity of public governance. It was only when the bulk of the best international standards had been adopted in the national legislation, that it was realised that to achieve their intended effect, laws and regulations need a delivery mechanism that does not distort their initial intention. The widely shared conclusion now is that the **legislation is adequate but its effective enforcement remains an issue of concern.** Thus, during the past decade it had become increasingly obvious to governments and other stakeholders that to assess any policy or regulation irrespective of the experience of its implementation and its effect is meaningless, and could even be counterproductive.

The range of government institutions that are relevant to the maintenance of integrity standards in public governance is quite broad; in fact, all public sector bodies one way or another need to uphold these standards. In the SELDI countries – with high corruption prevalence – this presents a double challenge: in terms of policy, this means designing a policy framework that harmonises the roles and powers of all relevant institutions; it also means that to make a tangible dent in corruption, governments need to build the institutional capacities of a fairly large number of bodies.

If there is one leading conclusion that has emerged in the course of the studies carried out for this report, it is the **mutual reinforcement between competence and integrity in the institutions of government.** Typically, whenever the anticorruption credentials of a given government body are questioned, it is also found to be wanting in terms of institutional capacity. Conversely, any gain in professionalism has also led to improvement in integrity. A number of intervening factors ensure the linkage between the two – higher levels of remuneration, higher motivation of staff, higher premium on employment in that particular body, exposure to contacts – including international – and knowledge, better career opportunities, etc. As a result, a certain institutional momentum is gained that raises the opportunity costs of graft; a virtuous circle is then entered that further roots out corruption.

An additional consideration that is shared among all SELDI countries is the **compromised autonomy of the various oversight and repression bodies.** All countries report one degree or another of interference by elected politicians – members of parliament or government ministers – in the work of the civil service.

While all SELDI countries had one form or another of compliance control bodies at the central government level – national audit institutions, asset declarations vetting bodies, various other supervisory institutions – few report effective mechanisms for internal **integrity management within** the bodies of central and local government and other public bodies.

In the SELDI countries, the enforcement of integrity legislation needs to cover a wide range of practices contained in the concept of corruption: from the small cash bribe to doctors and traffic policemen to the sophisticated process of manipulating a law to the advantage of a party donor. In practice this entails managing repressive responses in a way that does not congest the criminal justice system. However, **none of the SELDI countries has an adequate complaints management mechanism in the public administration** as a first step to dealing with corruption. Most countries have an anticorruption body that is expected to receive complaints from the public. Complaints are then either referred to law enforcement and prosecution and/or used for analyses of corruption practices. There is little evidence, however, that these agencies add any significant value – neither as an intermediary between the public and the prosecution (if anything, this detracts trust from law enforcement agencies), nor as anticorruption think tanks. Furthermore, there seem to be no policies or guidance on complexity management of suspected corruption offences in the public administration – an automatic sorting of cases according to criteria (usually severity and complexity) which allows certain types of cases to be addressed locally by internal management, thus referring fewer cases to the (rather expensive) criminal justice system.

A deficiency that is shared in all SELDI countries is the **shortage of reliable and publicly accessible data on the performance of government institutions**, especially as relates to anticorruption. Information and statistics are either not collected, not available to

the public, or gathered so haphazardly as not to allow monitoring and analysis. Without such information no government can make a credible claim that it conducts an anticorruption policy of any kind. This is mostly due to lack of demand from policy makers; anticorruption policies are mostly limited to broadening the scope of incriminated practices and the designation of various awareness and training activities as "prevention" – neither of which relies on much evidence.

The Integrated Anticorruption Enforcement Monitoring Toolkit, developed by the CSD and the University of Trento, is intended to address precisely such gaps. It will integrate corruption victimisation data – such as provided by SELDI's CMS – with a measurement of the enforcement of anticorruption policies. The toolkit will assess corruption risk in a given government institution and the effect of the corresponding, if any, policy that seeks to reduce it. This will allow anticorruption policy making to enter a mature phase by equipping it with a feedback mechanism.

3.1. SPECIALISED ANTICORRUPTION INSTITUTIONS

The establishment of specialised anticorruption institutions in the SELDI countries has been warranted on several grounds:

- It reflected the level of seriousness with which corruption was viewed as a government priority and served to reassure the public and international partners of the commitment of the government to anticorruption.
- Given the wide spread of corruption, affecting significantly law enforcement bodies, it was warranted to create an anticorruption body "from scratch" thus ensuring that it would not be easily captured by existing corrupt networks. This reasoning has come as response – as the analysis in this report shows, not a very convincing one – to the conundrum facing countries of high corruption: how is a corrupt system of governance to be reformed when it can only be done by way the same system of governance?
- Such institutions were required by the fact that corruption is a broad concept that entails interventions in a number of public sectors, through a variety of policies spanning the whole range of public institutions, across all three branches of power, and thus necessitating a coordinating and unifying body to tie all these aspects together.
- The need to concentrate expertise: the design of anticorruption policies requires significant input from monitoring of the spread of corruption and analysis of policy options.
- There was a need to maintain a high level of public awareness of the significance of anticorruption which such agencies could achieve.

One of the key issues facing the design of a specialised national anticorruption institution is **how to combine preventive and repressive functions**. Typically, the SELDI countries have tried to have their anticorruption institutions do both, although repression is by far the lesser aspect of their work. Most of the tasks of these bodies are related to some form of supervision and control, usually of the national anticorruption strategies.

The establishment of such institutions, however, has been plagued by a number of **difficulties**, which the SELDI countries have not been particularly successful at solving:

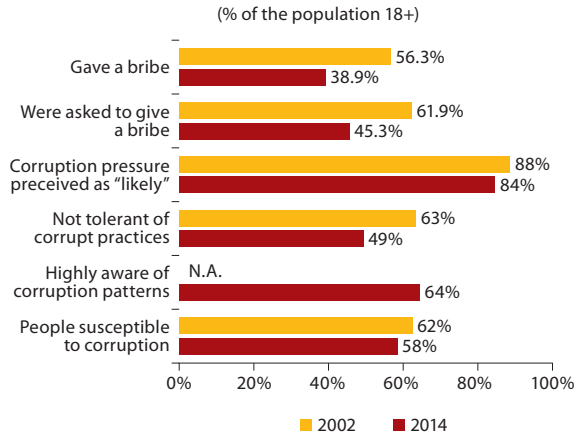
- **Constitutional considerations**. High as corruption might have been on the governments' agendas, it was not feasible to create institutions with extraordinary powers that would somehow affect the constitutionally established balance of power. Besides, extraordinary powers would defeat the very purpose it has been created for – uphold good governance. On the other hand, such an institution could be neither ad hoc (this would undermine claims that corruption is a high priority issues) nor permanent (because of constitutional considerations). The typical compromise is for these agencies to be attached to the executive government and given supervisory powers which, however, are usually limited to requiring other government agencies to report on the implementation of the tasks assigned to them by the national anticorruption strategies.
- Such agencies had to be careful **not to duplicate powers** already conferred to other oversight bodies (e.g. national audit institutions or law enforcement).
- Most were provided with **limited institutional capacity** – budget, personnel – despite intentions to the opposite.
- These agencies were often promoted as having the powers to set the government's anticorruption policy. There is little evidence, however, that they

had any significant influence on the government's legislative agenda.

A much discussed aspect of the work of anticorruption agencies is their role as **coordinating bodies**. On the hand, this is justified given the broad range of institutions involved in anticorruption. On the other, concerns about "coordination and cooperation" fail to appreciate that government institutions are by their nature bureaucratic structures that are expected to strictly follow rules and procedures. Such concerns are indicative of either overlaps or gaps; in other words, either of duplicating legal provisions or lapses in policies. It is not through the good will and extra effort of the senior managers of public institutions that effective governance would be achieved. Compatibility and complementarity should be built into government policies that collate the various anticorruption aspects and institutions; institutional coordination will then follow by default.

In **Albania,** although there is no typical specialised anticorruption agency, there is a National Coordinator for Anti-Corruption – the Minister of State for Local Government – who coordinates the anti-corruption activities of government and independent institutions at the central and local level. Furthermore a network of focal points was established in all line ministries and independent institutions, which will monitor and guide the relevant officials in the implementation of the *Anti-Corruption Strategy* and report to the National Anti-Corruption Coordinator.

Figure 27. Corruption profile of Albania



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

Bulgaria has no independent institution to focus efforts, make proposals and drive action against corruption. Still, there are several institutions at the central government level mandated to determine the country`s anticorruption agenda.

The Commission for the Prevention and Combating of Corruption is chaired by the Deputy Prime Minister and Minister of Interior and has the mandate to take decisions on the course of the Bulgarian anticorruption policy. The Commission is supposed to analyse corruption and conflict of interests and propose policies to counteract them; it is also expected to carry out corruption proofing of legislation. In theory, its functions seem considerable and come close to a comprehensive body for anticorruption policy. The establishment of 28 regional anticorruption councils is a positive development, especially in the context of the very low regional engagement with anticorruption.

In practice, however, the Commission lacks the necessary capacity to perform its functions effectively. This is apparent in its coordination of the implementation of the *Integrated Strategy for Prevention and Countering Corruption and Organised Crime*, where it proves very difficult to integrate the various action plans and implementation reports into a strong, synergetic approach against corruption. The Commission`s obligation to present results of its work in the form of annual reports is performed inconsistently – the last available report is for 2011 but cannot be accessed despite being available on the official webpage.

The **Centre for Prevention and Countering Corruption and Organised Crime** (known under its Bulgarian acronym BORKOR) is a specialised anticorruption body, established at the Council of Ministers in 2010 to assess, plan and develop preventive anticorruption measures. Its main tool is software which aims at identifying weak spots and developing "network measures against corruption". For the period of existence of BORKOR its efforts have been focused on acquiring a "cyber-system of the type V-Modell XT" claimed to be "a unique highly-technological instrument without analogue in the world" to be used in developing anti-corruption measures following the identification of environments conducive to crime.

The lack of results and clarity in its mission statement has drawn repeated criticisms from civil society and the media. With a spending of BGN 10.3 million (over €5 mln) between 2011 and 2013,[28] the Centre has also been criticised for unjustified spending of public money.

[28] (Център за превенция и противодействие на корупцията и организираната престъпност, 2014).

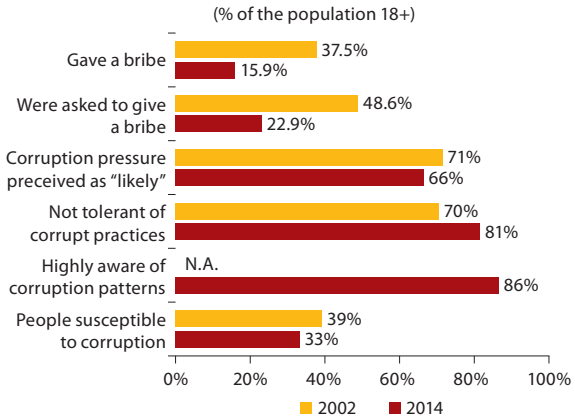
The number of personnel is considered excessive with a total of 155 employees (40 permanent and 115 temporarily relocated from other administrative structures). Management has also been controversial: two directors have so far been replaced – one dismissed on the grounds of unsatisfactory results and the other without any justification. According to media publications, this situation almost led to a decision to close the Centre in the autumn of 2013.[29] In July 2014, the Ministry of Interior withdrew its staff seconded in BORKOR and debates about closing the Centre were reopened.

In January 2013, one year after the Consultative Council asked BORKOR to prepare and implement a model in the area of public procurement, BORKOR published its first interim report, which identified corruption risks, and listed numbers of vulnerable areas without naming them (at least they were not named in the publicly available version of the report).

One of the exotic ideas, launched by BORKOR in the beginning of 2014 was the intention to require all politicians and high-ranking civil servants to declare their personal relationships. In addition, the current chairman of the Centre has already revealed his intention to discard the cyber model and to turn BORKOR into a kind of complaints clearinghouse – receiving the complaints and referring them to the competent authorities. A plan was also revealed to scan for corruption all public procurement tenders within the government investment program.

In Bosnia and Herzegovina, the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption was established in 2009 but the management was appointed with a two year delay in August 2011; its budget was only approved in June of 2012 allowing it to establish premises (the US Department State describes the budget as "minimal").[30] The Agency appointed its first civil servants in April 2013 (15 out of the foreseen 29 positions); thus, four years after it had been legally inaugurated, the Agency is still not fully operational. The delay in forming the Agency led to the delay in the implementation of the *Strategy for the Fight against Corruption* because the majority of the measures depend on the capacity of the Agency. The *Global Integrity Report 2010* finds that appointments in the Agency were made according to political criteria and it could thus "be concluded that removal also would be based on similar criteria." Besides coordination and the supervision of the implementation of the strategy, the Agency is expected to receive and process corruption-related complaints, including those submitted online. Initial civic activity does not seem to have been significant – in 2012 it received 75 complaints online, mostly related to the work of custom officers, health and education employees and public administration.[31] As with some other SELDI anticorruption bodies, it is expected to refer complaints to the prosecution and use the information for analyses of the prevalent corrupt practices.

Figure 28. Corruption profile of Bosnia and Herzegovina



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

The **Croatian** government's Committee for Monitoring the Implementation of Measures for the Repression of Corruption was envisaged as an operative and coordinative body which reports to parliament. In addition to coordinating the implementation of the *Anticorruption Strategy* and the accompanying *Action Plan*, the Committee is supposed to evaluate the risks of corruption and propose measures (again, as in the other countries, „measures" rather than „policies" is the preferred term) for prevention and better inter-institutional cooperation. It is technically supported by an "Independent Sector" at the Ministry of Justice.

The Committee does not seem to be a step forward in terms of institutional response. There had been similar arrangements before – previous governments had had the same body but some of its members were prosecuted for corruption, thus defeating its very purpose. There are no publicly available reports of behalf of the Committee on the implementation of measures for the suppression of corruption. It has had no specific agendas, or other managerially relevant documents.

[29] (Медиапул, 2013).

[30] (U.S. Department of State, 2013b, p. 19).

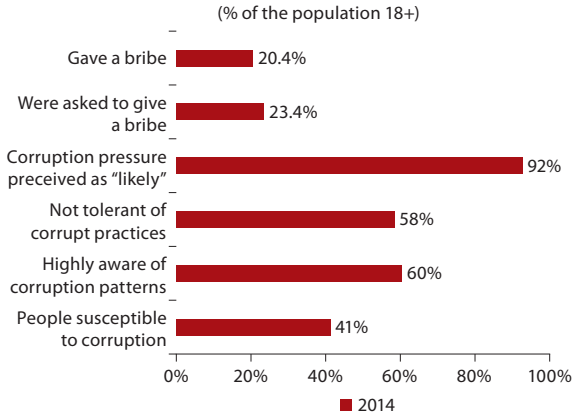
[31] (Agencija za prevenciju korupcije i koordinaciju borbe protiv korupcije Bosne i Hercegovine, 2012, p. 9).

The National Council for Monitoring Anti-Corruption Strategy Implementation is a body of the Croatian Parliament whose assignment is to evaluate and assess the implementation of the *Anticorruption Strategy*. Although it is envisaged to have a supervisory function, it can suggest improvements to certain institutions but cannot enforce them. There are no examples indicating that decisions of the Council have changed or improved any operation or effort against corruption. It has published 3 reports since 2006, the last being issued in 2010. This means there has been a gap in monitoring the implementation of the Strategy since 2010.

The mandate of the **Kosovo** Anti-Corruption Agency is focused on detecting and investigating corruption cases, on efforts to prevent and combat corruption and increase public awareness. The Agency is expected to analyse the causes of corruption, control potential incompatibilities with public office, including commercial activities by officials, enforce restrictions regarding the acceptance of gifts related to the performance of official duties, monitor assets, and enforce restrictions on contracting entities participating in public tenders. While its preventive work is well resourced (one of its departments is entirely focused on that, including a division concentrating on assets monitoring and one on conflict of interest and gifts), its specialisation in combating corruption through repressive means is less so. Repressive tasks are concentrated in the second division, which – besides a range of other legal tasks – deals with the Agency's investigative activities. This means that of the overall staff in the Agency only a few are directly engaged in combating actual corrupt behaviour. "This small number of staff also have limited experience in investigative work. As for most employees within the [Agency], their background is that of lawyers with some experience in courts of law: none of them has a specific police-related background."[32]

The main achievement of the Agency is the process of disclosure of assets: over 90% of officials fulfilling this obligation. However, "the Agency has been able to verify only 20 per cent of the reports received from public officials due to capacity constraints,"[33] while other observers noting that it is "showing minimal results."[34] The best evidence for the deficiencies in this function is that most public officials, especially members of parliament, hold a second job in a public

Figure 29. Corruption profile of Kosovo



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

institution (e.g. in the Post and Telecommunications of Kosovo). A further weakness is the "low quality of the information the Agency sends to the prosecutors resulting in most of them being rejected by prosecutors for further actions. […] General Auditor also found serious problems in the Agency such as the failure to register its inventory; violation of employment procedures, employees received per diems while officially on vacation, etc."[35]

In **Macedonia** there is a State Commission for Prevention of Corruption which functions as a specialised anticorruption institution. The commissioners are elected by parliament for a four-year professional mandate and with the right for one re-appointment. Commission's powers are fairly typical for the SELDI countries in that they cover policy making, oversight, monitoring, training and awareness. Its policy function includes the design of the *State Programme for Anticorruption* (the national anticorruption strategy); it also prepares opinions on draft laws relevant for the prevention of corruption. Nominally, its oversight powers are quite broad, and include control of the finances of political parties and the monitoring of asset declarations of public officials. As regards political parties, in its own admission further legislative changes are needed for the Commission "to be able to adequately discharge its functions in terms of direct insight into the financial and material work of these entities."[36] Additionally, it is not clear whether its coordination with the State Audit Office covers the issues of party funding, which would be crucial for effective control.

[32] (FRIDOM, 2010, p. 27).

[33] (Transparency International, 2011, p. 5).

[34] (KIPRED, 2014, p. 7).

[35] (Task Force on European Integration, 2012, pp. 19-20).

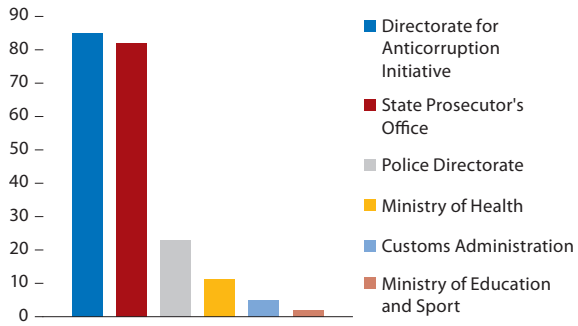
[36] (State Commission for Prevention of Corruption of Macedonia, 2011, p. 18).

The Commission is expected to register and monitor the assets and the change in assets of elected officials. It conducts random verification of asset declarations which could be said to have a preventive anticorruption effect. The effectiveness of this function is undermined, however, by the lack of registry of elected and appointed officials and the capacity of the Commission to go beyond checking of formal compliance. Generally, its institutional capacity – its powers are enforced by seven commissioners and 18 staff – is quite inadequate for its broad mandate. The Commission also files requests to the public prosecutor's office for criminal proceedings in cases where evidence exists for wrongdoing. No analysis is available of the follow-up on these requests or the outcomes of instituted prosecutions, in order to assess the effectiveness of this function. The EC's evaluation is that these "rarely lead to successful prosecutions."[37] As of November 2013, the Commission "had not filed any misdemeanor charges based on the complaints it received."[38]

In **Montenegro,** for the past 13 years the government has formed several specialised anticorruption bodies. Among these, the Directorate for Anti-Corruption Initiative, established in 2001, is the main one. It is entrusted with raising awareness and conducting corruption research; it is also responsible for the adoption of the international anticorruption standards in Montenegro (including cooperation with GRECO, UNCAC, etc.). The Directorate does not have policymaking powers, which undermines its overall standing. It has no internal management document, which is indicative of low institutional capacity. One of its responsibilities is cooperation with other government authorities in dealing with complaints that the Directorate receives from the public. In 2012, the Directorate has received a total of 85 complaints that have been forwarded to the competent state authorities for further action.

The Anticorruption Agency of **Serbia is** a public body accountable to the National Assembly. It has a range of competences most of which are preventive. These entail the identification of occasions and situations that offer incentives for corrupt behaviour and the design and establishment of mechanisms aimed at eliminating corruption-inducing conditions before they lead to corrupt actions. The objective of its monitoring and oversight competences is to examine whether the existing environment already contains irregularities with regard

Figure 30. Corruption complaints received by Montenegrin government bodies in 2012



Source: *Directorate for Anti-Corruption Initiative Bulletin, July 2013.*

to exercising public authority susceptible to developing corrupt conduct, and, should the examination outcome turn out to indicate a need, to undertake measures to eliminate those irregularities and their consequences, as well as to institute proceedings in order to determine the responsibility and to sanction the persons who have caused or contributed to them.

A key preventive action by the Agency has been the provision of information and advice relating to the introduction of integrity plans in a large number of public institutions in Serbia. Its function of overseeing the enforcement of conflict of interest regulations requires that the Agency establishes information exchange protocols with a number of other agencies – Business Registers Agency, Tax Police, Central Securities Depository, etc. The European Commission's 2013 evaluation stresses the role of the Agency with respect to the financing of political parties and electoral campaigns, but only 3 – 4% of the Serb public believe it is capable of complete control of the financing of political parties;[39] it also "lacked efficiency in publishing required reports, such as reports on political party financing."[40] Even though it initiated proceedings against and filed a number of misdemeanour charges against political parties that have not submitted reports on the costs of their election campaigns, "the Agency inefficiency is best seen through the fact that none of those subject to criminal proceedings for corruption by other organs were identified by the Agency to have any conflict of interest or committed any crime of corruption."[41]

The Serbian government also has an advisory body – the Anti-Corruption Council – which is expected to analyse

[37] (European Commission, SWD(2013) 413 final, p. 41).

[38] (U.S. Department of State, 2013c, p. 17).

[39] (UNDP Serbia, December 2013, p. 37).

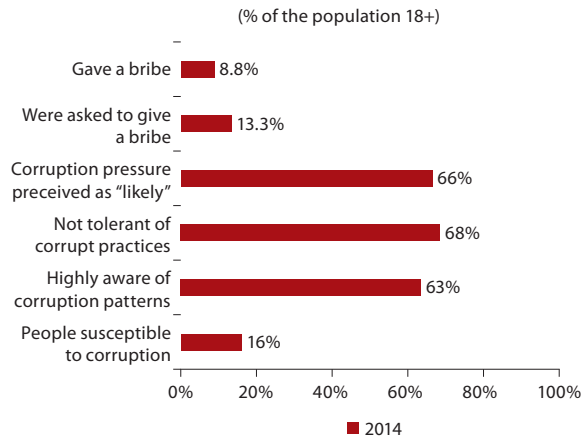
[40] (U.S. Department of State, 2013e, p. 18).

[41] (Bertelsmann Stiftung, 2014a, p. 30).

corruption patterns in the country based on complaints received by citizens. Individual complaints are used for analysis and referred to the relevant institutions. Despite having drafted many reports on the most important corruption cases in Serbia "few of the criminal complaints filed by the Council have ever been prosecuted."[42]

In **Turkey**, the main body at the central government level that deals with anticorruption issues is the Prime Minister's Inspection Board. The Board has the mandate to inspect and supervise ministries, public institutions and other public bodies in cases of corruption. It "is responsible for investigating major corruption cases,"[43] however, its capacity "is perceived as insufficient, in particular in terms of the number of staff, to ensure the required follow-up of proposals."[44]

Figure 31. Corruption profile of Turkey



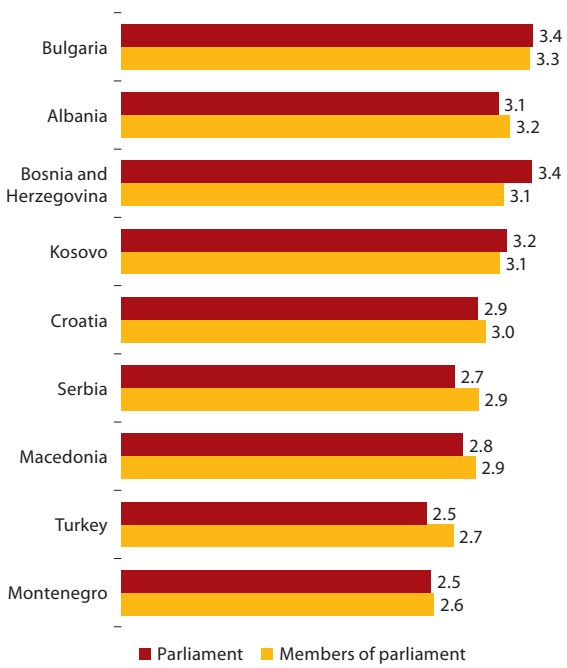
Source: *SELDI/CSD Corruption Monitoring System, 2014.*

Earlier evaluation reports on Turkey had noted that there had been "no central body in charge of developing and evaluating anti-corruption policies, inadequate coordination of the various institutions involved in the fight against corruption and no independent body in charge of monitoring the implementation of anti-corruption measures."[45] In 2009, the Board was given the coordination role in the implementation of government's *Anti-Corruption Strategy*. It is doubtful whether the Inspection Board could fill this gap as its role is rather technical. In fact, the current SELDI round is addressing one of the needs identified by its working groups – a suggestion not followed up by any other institution in Turkey – namely, **conducting a national survey of corruption**. The working groups have also suggested the establishment of comprehensive tracking of data on corruption, a need that this SELDI report has identified as applicable to all SELDI countries.

3.2. LEGISLATURE AND PARTY FUNDING

It is the executive branch of government that usually comes under most intense scrutiny as regards corruption. Legislative corruption, however, could incur even more significant damages if it allows a capture of the law-making process by special interests. Parliaments in the SELDI countries do not rank high in the public trust and this unenviable position is not without its reasons. Codes of ethical behaviour are rare and unenforced; lobbying regulation is even rarer; only recently have procedures for lifting immunity from prosecution started to be introduced, albeit timidly; wherever there is an anticorruption body in parliament, it is typically to supervise some executive agency, rather than deal with corruption among members.

Figure 32. Estimates of the corruptness of parliaments and MPs[46]



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

[42] (Freedom House, 2013).

[43] (U.S. Department of State, 2013t, p. 35).

[44] (SIGMA, 2012, p. 14).

[45] (Chêne, 2012, p. 1).

[46] For public officials the scale is from 1 to 4, where 1 is "Almost no one is involved" and 4 is "Almost everybody is involved". For institutions the scale is from 1 – "Not proliferated at all" to 4 – "Proliferated to the highest degree."

An issue of significant concern in the SELDI countries is the financing of political parties and electoral campaigns. Most countries have implemented GRECO's recommendations on part funding but a number of problems – such as anonymous donations, voter bribing, insufficient capacity to audit party finances and limited powers to enforce sanctions – persist.

The **Albanian** parliament has no anticorruption committee and the corruption and anticorruption issues are dealt with by other committees such as National Security Committee. There is no comprehensive written code of conduct for MPs. Regarding the provisions against corruption in the funding of political parties, the obligation upon political parties to submit detailed information on their annual resources and expenses was introduced only in 2011. The following year templates for financial reports to be submitted by political parties and of guidelines for the auditing of such reports by independent auditors were introduced. GRECO's third evaluation round was generally positive on the fulfilment of its recommendations in this regard.

Bosnia and Herzegovina has provided an example of a setback in the integrity of parliament. A 2002 law regulating conflict of interest is being changed to shift its oversight from the Central Elections Commission to a parliamentary committee; thus the enforcement of the law could be compromised as elected politicians would have to adjudicate their own cases. The move has been much criticised by observers and the head of the EU delegation and the US ambassador have gone so far as to send a letter saying that the law should not be adopted because of serious concerns.[47] Rules for funding of political parties are also changing in a way that is opening opportunities for abuse and manipulation. Limits for individual contributions made by individuals or companies are being increased, as well as contributions from party members. The new law allows the use of premises owned by public institutions by political parties, which was not allowed in the past. Further, while contributions to parties are made easier, the fines for breaking the law are decreasing.

The **Croatian** parliament has a commission for the resolution of conflicts of interest. Although its regulation requires that candidates for members of the commission should be of high integrity and reputation, in 2008 within the USKOK and police action "Index," the chairperson of the commission was arrested and later sentenced to 14 months in prison for repetitive cases of bribery in relation to her position as professor at University of Zagreb.[48] The commission was not functioning from 2011 until the end of 2012, when its new members were finally appointed.

In February 2011, the Croatian parliament adopted the *Political Activity and Electoral Campaign Financing Act* which was a step forward in adopting best international standards and better regulation of this issue as it introduces a monitoring system over the funding of political parties, independent lists and candidates and of their electoral campaigns. The National Elections Commission and the State Audit Office were authorised to oversee its enforcement. The first test on this Act was Parliamentary elections 2011 when the National Elections Commission for the first time exercised control over the financing of election campaigns. Civil society observers concluded that results of monitoring over the funding of political parties and analysis of reports submitted indicate that the parties have made a visible progress in the transparency of campaign funding.[49]

The regulations of the **Kosovo** parliament define the rights and responsibilities of MPs, their immunity and procedures for revoking it, as well as the obligations that MPs have under a Code of Ethics. The Code is an annex to the regulation that each MP is expected to adhere to.

Kosovo's law on the financing of political parties was adopted in 2010. A study by the Kosovo Democratic Institute has given the law a score of 6.6 out of 10. Deficiencies are mainly related to preventive measures and reporting to the oversight body, the Central Elections Commission. Results of the study show "that political party financing in Kosovo lacks the legal infrastructure regulating preventive mechanisms such as the existence of a centralised system of bank transactions, a ban on cash deposits, and the existence of preventive measures against the abuse of government resources."[50] Political parties do not prepare financial reports for the public, and their bookkeeping records do not reflect incomes from private donations. Other evaluations conclude that "political parties in Kosovo do not conform to the requirements of the law and often violate its principles."[51]

47 (European Forum for Democracy and Solidarity, 2013).

48 (Metro Portal, 2008).

49 (GONG, 2011).

50 (Group for Legal and Political Studies, 2013, p. 8).

51 (Group for Legal and Political Studies, 2013, p. 8).

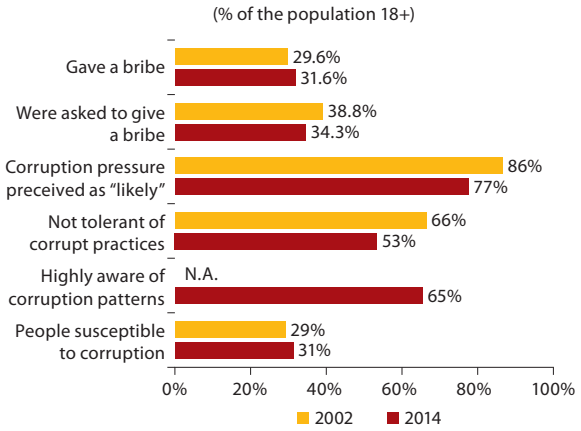
The **Macedonian** parliament does not have a specialised anticorruption committee. A Commission of Inquiry can be established provided twenty members of parliament raise an issue to determine the liability for corruption involving elected or appointed officials, responsible persons in public enterprises and in other legal entities which dispose of public funding. As of April 2014, such a Commission has not been formed. Individual members can also have recourse for an opinion to the State Commission for Prevention of Corruption in case of suspected conflict of interest.

The two key pieces of anticorruption legislation (which contain some duplicating provisions) – *Law on the Prevention of Corruption* and the *Law on Prevention of Conflicts of Interest*, including fairly detailed provisions on conflict of interest, incompatibilities, gifts and asset declarations – apply to members of parliament. In addition, there are parliament-specific provisions which regulate the transparency of the legislative process, which are "fairly transparent in practice."[52] Although the *Rules of Procedure of the Parliament* allow civil society representatives and other stakeholders to participate in the legislative processes through hearings and public debates, this remains an issue of concern. A recent analysis found that only part of the draft laws released for public review (41%) were open for consultation to the public.[53] In 2012, only 7 debates, 1 hearing and 1 public discussion were held.

Macedonian law stipulates that the financing of the political parties should be overseen by the State Audit Office. The latter evaluates the annual financial reports of political parties, and if it finds irregularities it is obliged to refer it to the Public Prosecutor's Office. The Commission for Prevention of Corruption also has a jurisdiction in this matter, as it is mandated to assess potential criminal or misdemeanour liability in a case of complaint about pressure exerted on legal entities and individuals for the purpose of raising funds for a political party. A significant shortcoming of the laws, however, remains the lack of obligation for donors to political parties to report their financial contributions. As regards enforcement of the legislation, "control is not efficient and sanctions are not enforced in practice."[54] In the last few years, stricter penal instruments and new criminal offenses were introduced in the *Criminal Code* in order to achieve transparency in the funding of political parties and preventing abuses. Sanctions were also made more severe for perpetrators of criminal offenses against elections and voting, such as the criminal offence "abuse of funds for election campaign financing." Nevertheless, in the *2011 Global Integrity Report* on Macedonia, the financing of political parties had the lowest score of all evaluate sectors, save for law enforcement.

In **Montenegro**, the parliament established an Anti-corruption Committee in 2012. It is a body for oversight of the executive but also examines issues and problems in the implementation of laws relating to the fight against corruption and organised crime and proposes amendments. Significantly, a member of opposition is chairing the Committee. It was granted the right of access to confidential data without prior permission. Five oversight hearings have been held: on the case of alleged corruption in the privatisation of the company 'Telekom Crne Gore', on the Prevlaka border issue with Croatia, on the 2004 murder of a journalist, on the alleged illegal activities and violation of state interests regarding the issue of electricity supply to the Aluminum Plant Podgorica, and on the fulfilment of the obligations stated in the report of the Council of Europe's Commission against racism and intolerance of February 2012.

Figure 33. Corruption profile of Montenegro



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

In **Serbia**, the applicable law allows the financing of political parties from the state budget to a considerable extent. Eligible private sources include membership fees, contributions from legal entities and natural persons, income from promotional activities by political parties, income from properties of political parties and legacies. The fact that the law recognises as legal any membership fee defined by the statute of the party has brought about at least one interesting development:

[52] (GRECO, 2013, p. 8).

[53] (Sazdevski & Ognenovska, 2012, p. 35).

[54] (McDevitt, 2013, p. 14).

party statutes often contain a provision prescribing that all the persons who hold public offices as a result of the membership of a party, have an obligation to pay a certain portion of their salaries to their party. Political parties are explicitly forbidden to receive funding from public enterprises. The purpose of this provision was not to protect the parties from the influence of these entities, but to protect the assets of these entities from being channelled into political parties. A potential for illicit financing is contained in the provision of services to political parties below market prices; cheaper advertising space in some media outlets can serve as an illustration. Despite the fact that the law does prescribe that the amount below the market price should be considered as a contribution, the procedure of who determines "the market terms" has not been defined.

The **Turkish** parliament has no standing code of conduct for MPs. In 2007, the parliament established a sub-committee which was supposed to establish an Ethics Committee to serve as an inspection and an adjudicating body for the ethical conduct of MPs. The sub-committee however, was not successful in implementing such an internal body and the proposal has been on standby since.

There is a legislative act (No. 3628) which bans MPs from receiving gifts above a certain value from any foreign person or institution. Cases of violation of this act are reported in the Inspection Board's records; however, they are not open to public. For instance, in 2009 a civic initiative has requested the Prime Minister to reveal the value of gifts sent by US President Barrack Obama during his visit to Turkey. The initiative failed to gain access to this information but was informed that the particular gift giving was appropriate according to international diplomatic protocol.[55]

The incompatibilities applicable to MPs are spelled out in the Turkish Constitution and include concurrent jobs in other public bodies, in corporations and enterprises affiliated with the state, in the executive and supervisory organs of public benefit associations, whose special resources of revenue and privileges are provided by law. The Constitution also regulates the parliamentary immunity of MPs, which includes the provision that they cannot be arrested, interrogated, detained or tried unless the Assembly decides otherwise. This article poses many problems to the Turkish Grand National Assembly, given the number of official requests to remove such immunity of certain MPs due to alleged corruption or infraction of rules. The assessment of the European Commission is that "the scope of parliamentary immunity in relation to corruption charges is particularly wide."[56]

The legal provisions for the state budget funding of political parties in Turkey favours large parties since it sets a 7% threshold for eligibility of state aid. As a result, only three main political parties get financial aid from the state treasury. These parties' finances are provided almost 90% from the state treasury. The financial auditing of political parties in Turkey is done by the Constitutional Court. Chairpersons of political parties are obligated to hand in an annual comprehensive budget report not only to the Constitutional Court, but also the Supreme Court of Appeals – Prosecutor's office. However, political parties in Turkey are not obliged to publish their financial reporting. The auditing report that the Constitutional Court compiles is published in the Official Gazette but it does not include all the information. Thus, the public cannot get access to all the auditing reports of the political parties, which directly obstructs transparency of political parties in Turkey. Election financing of political parties in Turkey is also not regulated by any legislation. The annual budget report that is sent to the Constitutional Court must include information on budgeting of electoral campaigns. However, this section does not include records of sponsorships to individual party members or the candidate MPs' expenditures during the campaign. GRECO's third evaluation round concluded that its recommendation that annual accounts of political parties include income received and expenditure incurred individually by elected representatives and candidates of political parties for political activities linked to their party, including electoral campaigning, had not been implemented.[57]

3.3. NATIONAL AUDIT INSTITUTIONS

Supreme audit institutions are considered here as examples of the role general oversight bodies have in reducing corruption. The key starting consideration in understanding their anticorruption function in the SELDI countries is that – and this applies more generally, but especially in **countries of limited state budgets**

[55] (Bilgi Edinme Hakkı, 2010).

[56] (European Commission, SWD(2013) 417 final, p. 8).

[57] (GRECO, 2012b, p. 17).

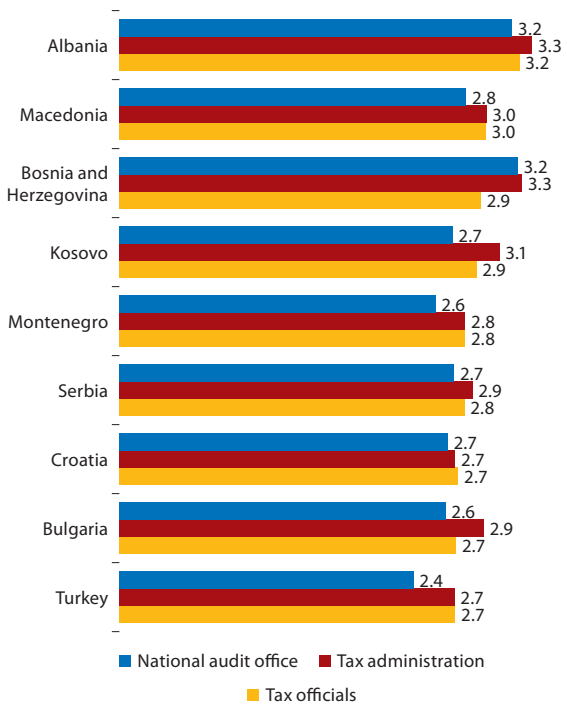
and early stages of institutional development – the anticorruption effect of external national audit is achieved through a kind of "collateral benefit" to good governance rather than as a narrowly defined corruption-combatting task. Their ultimate effect is to bring about robust internal control mechanisms which then make graft difficult. To this end, their most effective tools are financial and compliance audits.[58] It is that "strong financial management systems, based on effective financial reporting and the disclosure of any deviations, have a dissuasive effect on those who might otherwise engage in corruption."[59] In the anticorruption strategies of the SELDI countries the national audit institutions are rarely mentioned in reference to corruption prevention (the latter mostly understood as sets of awareness and training activities). It is, however, exactly in prevention that these bodies achieve their most significant and lasting anticorruption effect. The national audit institutions are especially valuable in closing the loopholes that high level, sophisticated corruption schemes exploit. While petty, everyday bribery can leave no trace, political corruption produces a number of tell-tale signs that can be used as clues about the nature of the schemes and the destination of the illegal profits.

> *The role of the Audit Office is not primarily the fight against fraud and corruption, but to determine whether systems and procedures of internal control are established and well functioned in order to prevent fraud and corruption or to reduce the space for such action.*
>
> **Audit Office of BiH**

Thus, several sets of **problems** emerge from the analysis of these institutions in the SELDI countries:

- **Capacity**: the audit institutions of SELDI countries have insufficient budgets given their wide remit. The number of auditees is quite large which risks turning audits into perfunctory checks, thus defeating their very purpose.
- **Lack of follow-up to audit reports**. National parliaments pay little attention to reports from the audit institutions and auditors have little institutional leverage to enforce their recommendations on the auditees.
- Discussions of the audit institutions of the SELDI countries quite often invoke the issues of "**coordination and cooperation**" with other government agencies, e.g. with the electoral commissions on overseeing political party financing. The considerations noted in the beginning of this chapter are applicable here – an appeal to more cooperation is indicative of some deficiency in policies and regulations. No amount of coordination and cooperation can make up for the lack of clarity of rules on the division of functions among government bodies or the absence of standard operating procedures in cases of cross-institutional competence.

Figure 34. Estimates of the corruptness of national audit institutions and the tax administration and officials[60]



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

The Supreme State Audit of **Albania** was established early on in 1992 as a parliamentary institution; few years later it was given the power to fine auditees. It was not before 2000, however, that its model (court or collegiate) was determined. Currently, it audits the budgets of state and local government institutions and of those institutions where the state owns more than 50% of the shares. It is not untypical for its audit reports to be ignored or only given superficial attention by the

[58] It will be some time before most of these institutions are capable of carrying out proper performance audits, as do some of their experienced counterparts in Europe.

[59] (Evans, 2008, p. 3).

[60] For public officials the scale is from 1 to 4, where 1 is "Almost no one is involved" and 4 is "Almost everybody is involved". For institutions the scale is from 1 – "Not proliferated at all" to 4 – "Proliferated to the highest degree."

government; "the Albanian Parliament pays limited attention to [its] reports."[61] A shortcoming of the legal regulations governing the Supreme State Audit is the lack of clear criteria for a dismissal of its chairperson. In late 2012 – early 2013, proposals were made to mandate the Supreme State Audit to audit the use of EU funds in Albania, an authority which it lacked previously. After several attempts of the Supreme State Audit in addressing this issue, a draft law was presented in March 2014.

As with most other SELDI countries, the key issue at the Audit Office of **Bosnia and Herzegovina** is the follow-up on its auditing reports. Few, if any, of its recommendations are implemented and auditees seem to take little notice of these. For example, out of the 73 institutions audited in 2012, only four received a clean positive report, while all others had some remarks; there were no negative reports.[62] Audit reports that find wrongdoings are expected, among other things, to trigger prosecutorial investigations but this is often not the case. For example, during the past few years the Prosecution of the Brčko district worked on the investigation of 103 cases; only two audit reports resulted in filing indictments against two people.[63]

In **Croatia,** again typically for many SELDI countries, whenever the State Audit Office finds irregularities in the work of a certain institution, there are no penalties foreseen by the law. The only remedy is for the state audit to refer the case to the prosecution. For example, in privatization cases, State Audit has filed 178 cases to relevant prosecutors. There is no publicly available record whether any investigation was initiated by prosecutors based on the State Audit report.[64]

The **Macedonian** State Audit Office is the body responsible for auditing public institutions. The General State Auditor and a deputy are appointed by the parliament for a nine year term without the right to re-appointment. The legal safeguard against removal on partisan grounds is the requirement for a qualified majority in parliament in order to dismiss the State Auditor. The resources at the disposal of the Office are inadequate; the European Commission calls it "understaffed and underfunded".[65] Although the range of its auditees is extensive – over 1,400 bodies – the State Audit Office is not required to audit the implementation and management of EU funds. Given its limited budget, the obligation for the Office to audit the finances of all political parties each year "restricts the independence of the State Audit Office in defining its work programme" and "may adversely affect its image of independence and objectivity, and [..] also affects the freedom to use its audit resources according to its own decisions."[66] This finding is supported by the fact that on no occasion has a party been penalised for violating the law on the financing of political parties. Furthermore, "the auditors did not establish the appropriate procedures that would lead to pointing out accountability and punishing those that were responsible in the election campaign."[67]

In **Montenegro**, the State Audit Institution independently decides on auditing entities; the exception are the financial reports of political parties, the obligation to audit which was introduced in 2012. The Institution looks into compliance, good management, effectiveness and efficiency of budgetary funds spending and state property management. The current audit capacity of the Institution, with around 35 positions filled, is very limited. As with the other SELDI countries, performance audit work is at a very early stage. Amendments to the law on the State Audit Institution enhancing its financial independence have yet to be adopted. Even though the law on the audit of EU funds of February 2012 provides for a separate audit authority for EU funds, it has not yet been established as a distinct body.

The Court of Accounts is the supreme auditing authority in **Turkey**. The Court's audit mandate "covers 4,127 public and statutory funds and resources, including municipal enterprises and state economic enterprises as well as European Union funds."[68] While the Court has the ability to initiate and perform its own investigations in terms of financial audits, due to several amendments and subsequent repeals of these amendments by the Constitutional Court, the Court of Accounts has not been able to conduct any comprehensive reporting in the years of 2012 and 2013. In December 2013, a decision made by the Court of Accounts has revealed that it will not be able to perform any audits in the next three years. This causes a major obstruction to its accountability and transparency.

61 (SIGMA, 2013a, p. 35).

62 (Ured za reviziju institucija BiH, 2013).

63 (Tužilaštvo Brčko distrikta Bosne i Hercegovine, 2013).

64 (Perica, 2012).

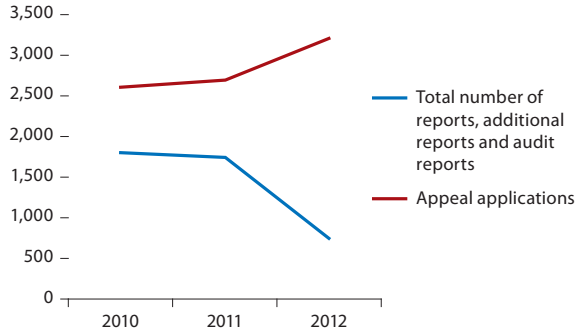
65 (European Commission, SWD(2013) 413 final, p. 41).

66 (SIGMA, 2013f, pp. 40-1).

67 (Transparency International Macedonia, 2013, p. 53).

68 (SIGMA, 2013t, p. 5).

Figure 35. Reports, additional reports and appeal applications submitted to the prosecution by the Turkish Court of Accounts



Source: *(SIGMA, 2013t).*

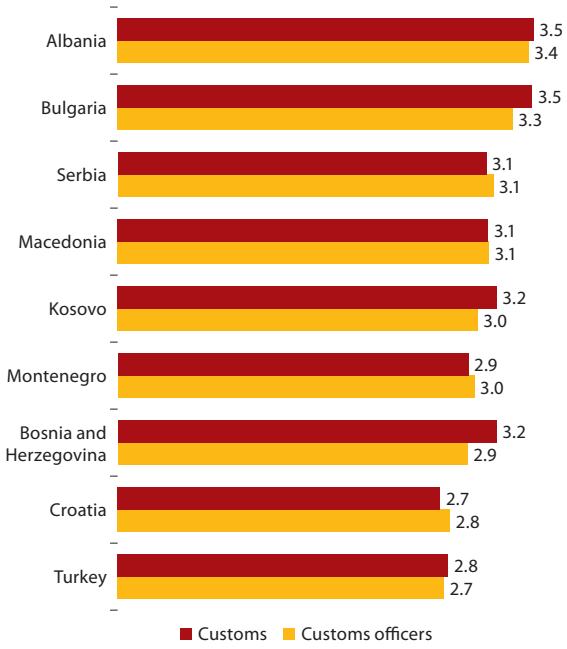
3.4. INTEGRITY OF THE CIVIL SERVICE

Reforms aimed at enhancing the integrity of the public administration in the SELDI countries – including an effective legislative framework and institutional environment for its transparent operation – are needed because discretionary exercise of administrative authority creates the greatest opportunities for corruption. The challenge is how to make transparency and accountability essential characteristics of the civil service while also enhancing its professionalism. Quite often, it is the lack of professionalism, poor management, obscure criteria and inadequate division of powers and responsibilities that hamper reform and undermine government authority.

The present state of the civil service corresponds to the transitional nature of the SELDI countries and the lack of adequate legal and institutional tradition. Despite some differences among the countries, the need to facilitate managerial and organisational development is common to most. The culture of "control" of the administration instead of managing its work is what obstructs both enhanced professionalism and reduced corruption.

In **Albania**, the Department of Internal Control and Anti-Corruption is a body in the Council of Ministers responsible for administrative and anticorruption control in the institutions of executive power and various ministries. It is mandated to supervise administrative investigations related to corrupt practices committed by civil servants. The Department "conducted a number of its own investigations into corruption

Figure 36. Estimates of the corruptness of customs and customs officers[69]



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

complaints but produced no significant reports and referred no cases for prosecution. It was generally considered ineffective."[70]

In 2013, Albania amended its civil service legislation, which marked a step forward towards depoliticisation, promotion of professionalism and meritocracy. The law came into effect in 2014, only after secondary pieces of legislation were adopted. The bylaws proposed by the Council of Ministers cover the evaluation of the work of civil servants in public administration institutions, independent institutions, and units of local government, as well as the competences for evaluation. The evaluation will be carried out on an annual basis and will be based on achievements of a set of objectives and professional behaviour of civil servants. In addition, the Civil Service Commissioner has been given more authority.

The procedures for hiring people under a civil servant status were blocked for some months until Albania obtained the status of an EU candidate country in June 2014. Since this law was considered a hot issue in

[69] For public officials the scale is from 1 to 4, where 1 is "Almost no one is involved" and 4 is "Almost everybody is involved". For institutions the scale is from 1 – "Not proliferated at all" to 4 – "Proliferated to the highest degree."

[70] (U.S. Department of State, 2013a, p. 15).

Albanian politics, the government did not want to take a risk and start its adoption before the decision of EU on its candidacy status.

In **Bosnia and Herzegovina** the legal regulations on the integrity of the civil service – codes of conduct for civil servants, regulation of incompatibilities – are relatively well developed. In practice, however, "bribery, abuse of office and malpractice by civil servants are difficult to prevent, punish and eradicate, since the area is not backed by explicit local political will and sufficient prosecution of corruption."[71]

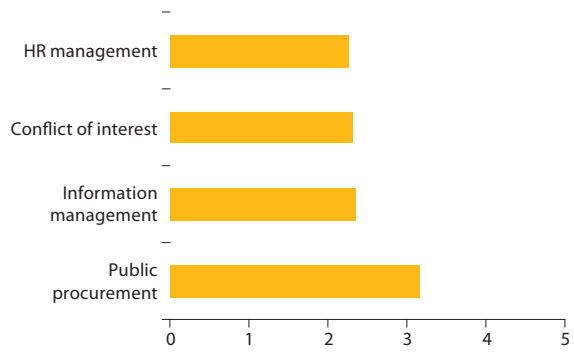
In the past five years at least 267 civil servants in 33 state agencies had been appointed without going through the required civil service procedure. In all cases, appointment commissions ruled that the already employed candidates were the best qualified among all applicants.[72]

The Bosnian case of civil service reform provides an example of the perils of the introduction of formulaic reforms – elsewhere proven successful – without consideration of the local context. A proposed amendment to the state level civil service law in Bosnia and Herzegovina would cut in half the frequency of performance evaluation of employees in the Institutions of BiH – from every six to every three months (at the other BiH levels it is done annually). Civil servants with two consecutive negative appraisals would be fired. However, given that there is no experience in such appraisals at the state level, SIGMA's 2013 report concludes: „The Draft *Law on Amendments to the Law on Civil Service* in the Institutions of BiH constitutes a drastic step backwards in building a professional, impartial and sustainable civil service at the State level."[73]

Croatia's code of ethics for civil servants establishes the institute of "ethics commissioner." The commissioner is appointed by the head of the respective public body. Based on a report by the commissioner, the head of the respective government body may, considering the nature and severity of the violation in question, instigate proceedings for a breach of official duty or give the concerned civil servant a written warning of his/her unethical conduct and express the need to comply with the provisions of the code of ethics. According to the Ministry of Public Administration, a total of 325 complaints were filed 2012.[74] Given, however, that the commissioners are working in various departments and this is not their primary but an auxiliary function, it is not clear how independent they can be in their ethics work.

The appointment and employment procedures in the Croatian civil service are one of the few setbacks in terms of the control of corruption, fight against corruption, efficiency and accountability of the public administration.

Figure 37. Performance index of selected Croatian municipalities



Source: *(Podumljak, 2012).*

In an integrity assessment of ten Croatian municipalities (Figure 37), the average scores have indicated that Information Management, Conflict of Interest and Human Resources Management are three major obstacles in the fight against corruption and efficiency and accountability work of the public administration. On the scale from 1 to 5 (5 being the best), these three sectors have reached just little above 2, being evaluated in many subsectors as 1, meaning there are no existing measures or written procedures. The sector of specialised institutions such as USKOK, PNUSKOK and the USKOK Courts, situation is of even greater concern as the intention to control work of such institutions by the political players is even greater.

A problem specific to the SELDI countries – but also to other transition countries with large public sectors – is the **low level rent seeking from public sector workers who are not civil servants**. A large number of doctors, school principals and all kinds of employees in public agencies and enterprises are in position to extort money for services while being neither controlled nor protected by a civil service status. This can be illustrated by the cases of **Kosovo and Macedonia**. In

71 (SIGMA, 2013b, p. 8).

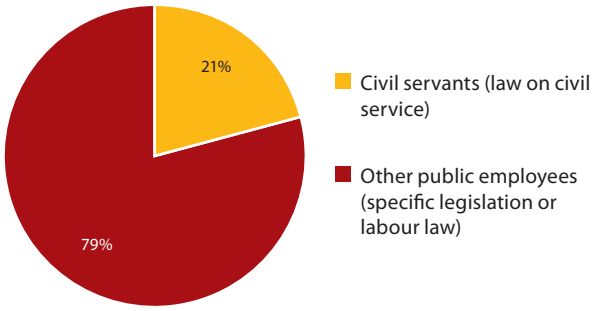
72 (Center for Investigative Reporting, 2012b).

73 (SIGMA, 2013b, p. 5).

74 (Republika Hrvatska, Ministarstvo Uprave, 2012).

the latter, the number of employees regulated by a law different than that for the civil service is four times that of civil servants.

Figure 38. Share of civil servants and public employees in Macedonia



Source: *(SIGMA, 2013f).*

In **Kosovo**, the 2010 *Civil Service Law* – which still awaits its full implementation – envisages a limited range of positions that would be considered civil servants; as a result, only 24% of public employees are civil servants. The legal definitions are, however, not very precise which "causes confusion as to whether support staff should be categorised as civil servants."[75] This indeterminate state of affairs compromises the efforts to enhance the integrity of the public administration.

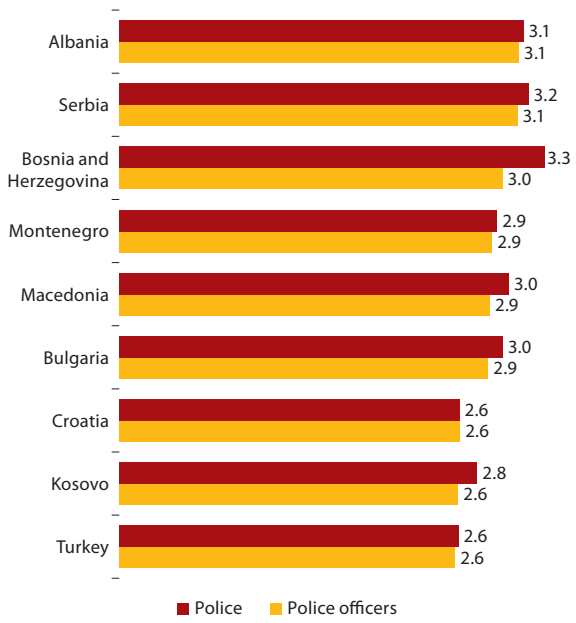
3.5. LAW ENFORCEMENT

The anticorruption role of law enforcement agencies in the SELDI region needs to be understood against the background of the constantly expanding range of incriminated corruption-related practices. Added to the limited capacity of other government bodies to address corruption in their own ranks, this risks channelling a disproportionate number of cases to law enforcement and the prosecution.

The anticorruption role of law enforcement agencies in Southeast Europe is further compromised by their **high vulnerability to corruption, especially by organised crime**. In one of the most comprehensive studies published on the links between organised crime and corruption in Europe, the CSD found that the "most wide-spread and systematic forms of corruption targeted by organised crime is associated

[75] (SIGMA, 2013k, p. 46).

Figure 39. Estimates of the corruptness of the police and police officers[76]



Source: *SELDI/CSD Corruption Monitoring System, 2014.*

with the low-ranking employees of police and public administration."[77]

The police forces in most SELDI countries have units specialising in counter organised crime operations; usually, these units are also expected to work on anticorruption. Accommodating these two functions into one body is warranted mostly by the use of corruption by organised crime but also by the need for special investigative methods in uncovering sophisticated corruption schemes – expertise that is usually vested in the anti-organised crime departments. These units are, however, typically embedded in the larger police force or the ministries of interior which deprive them of the institutional autonomy that is required for a specialised anticorruption institution.

In **Bulgaria**, despite the fact that the police enjoy stronger confidence than institutions like the parliament, the prosecution and the courts, the public considers corruption to be widespread in its ranks.

"Although in the last few years, especially after the country joined the EU in 2007, important institutional and legal changes have been introduced limiting police

[76] For public officials the scale is from 1 to 4, where 1 is "Almost no one is involved" and 4 is "Almost everybody is involved". For institutions the scale is from 1 – "Not proliferated at all" to 4 – "Proliferated to the highest degree."

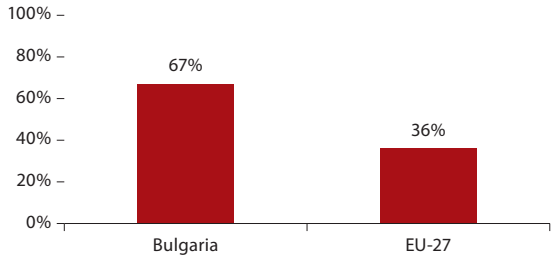
[77] (Center for the Study of Democracy, 2010b, p. 13).

Box 3. How organised crime subverts law enforcement

- Young professionals are placed in relevant security sector jobs, or special service officials and volunteers are hired to provide early information for a fixed monthly remuneration.
- Security officials maintain contacts with crime bosses for the supposed purpose of using them as informers. In reality, such relations grant criminals the latitude to sustain their shady activities.
- Some security officials investigate sources and channels of leakage among corrupt inferiors linked with smugglers only in order to capture a share of the gains or to prevent such officers from further revealing discrediting facts.
- Election-time fundraising from criminal sources in exchange for immunity from investigations is particularly common.
- Certain private companies provide information to the special services, which, in exchange, help them monopolise the respective business sectors.
- Leading security sector positions are occupied by inexperienced political and economic appointees. Reshuffling at the highest levels is often followed by staff and organisational restructuring involving expert officers and key unit directors. Often professionals of undisputed expertise are dismissed to prevent them from interfering in the threefold relationship between the security sector, political corruption and organised crime.
- The unofficial privatisation of official information has become a profitable business for individual security officials. Information leaks to the media, on the other hand, are a means to sustain smear campaigns directed by corrupt officials in certain parties or by corporate interests. The public is often unaware that abuse of such information by those who hold it turns into racketeering of political and other public figures.

Source: *(Center for the Study of Democracy, 2009, pp. 52-53).*

Figure 40. Estimates of police and customs corruption: Bulgaria compared to EU-27[78]



Source: *(TNS Opinion & Social, February 2014).*

misconduct at medium and senior levels, conflicts of interests and corruption on both local and national levels of the police continue to present a serious challenge."[79] Dealing with internal corruption in the Ministry of Interior are the Inspectorate and the Internal Security Directorate. The latter focuses mainly on police abuses and is directly subordinated to the Minister of Interior. The directorate has much wider powers than its predecessor (before 2008) and in this respect is similar to internal security structures in the US and in other EU countries. It has some functions similar to the Inspectorate: undertaking screening inspections, participating in the assessment of corruption risks, participation in disciplinary proceedings, etc. The increased capacity of the Internal Security Directorate is evident in the statistics about its inspections. In 2011, the Directorate succeeded to screen 728 such cases: in 475 complaints overt methods of verification were used, 39.4% of which turned out to be substantiated. In 305 cases covert methods were applied and in 143 of them initial suspicions were confirmed. This shows that when covert operational methods are used the percentage of uncovered misconduct is much higher although the verification process takes longer.[80]

The declining effectiveness of law enforcement is evident in the rising number of discontinued pre-trial proceedings against the background of decreasing number of investigations brought to court (Figure 41).

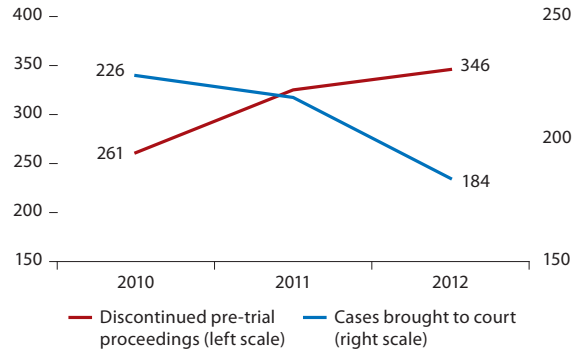
Statistics on the sentencing of corruption-related crimes reveal a collapse in the number of prosecuted cases of more sophisticated forms of corruption in the

[78] Responses to the questions: In your country, do you think that the giving and taking of bribes and the abuse of power for personal gain are widespread among the following?

[79] (Center for the Study of Democracy, 2013b, p. 99).

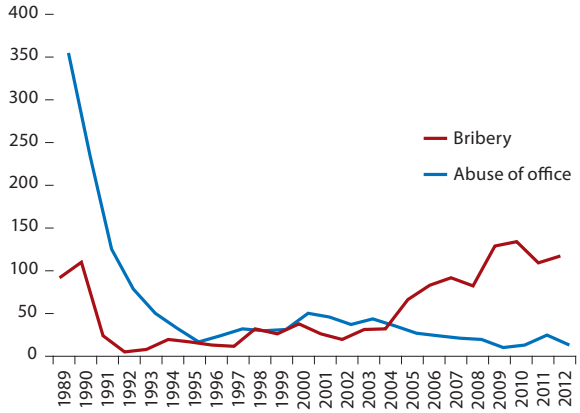
[80] (Center for the Study of Democracy, 2013b, p. 105).

Figure 41. Discontinued proceedings vs new cases in Bulgaria



Source: *Prosecutor's Office of Bulgaria.*

Figure 42. Number of persons sentenced for bribery and abuse of office in Bulgaria



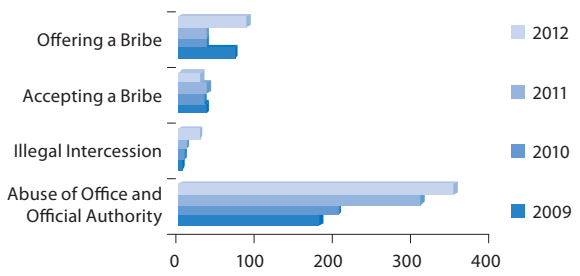
Source: *National Statistical Institute.*

early 1990s, and an increase of the number of persons convicted for bribery since the mid-2000s.

Instructive in this context is the **Croatian** experience with its Bureau for Combating Corruption and Organized Crime (better known under its Croatian abbreviation USKOK),[81] an institution much discussed in the literature. It is its singular status within the criminal justice system, in addition to its specialisation in corruption, that is of particular interest. USKOK is a body of the State Prosecutor's Office and its director is at the level of deputy prosecutor general. It is governed by a special law that specifies the offences – a fairly broad range – against which USKOK is to act. Other government bodies that come into evidence that an offence within this range might have been committed are obligated to report to the Bureau and provide it with extended assistance by delivering required files and data during its investigations. While being a prosecutorial not a police body, it is allowed to use special investigative methods, including undercover operations and surveillance.

The case of USKOK is a best practice in the way its institutional capacity – budget, personnel, professionalism – and its legal authority have grown in parallel. The US Department of State Report 2013 finds that it "operated effectively and independently and was sufficiently resourced",[82] and the European Commission points to its "good track record of investigations into allegations of high-level corruption."[83] In 2012, USKOK had a 95% conviction rate, "successfully prosecuting a former prime minister, a former vice president, a former top level general, and other high level officials."[84]

Figure 43. Annual numbers of corruption-related indictments, Croatia



Source: *Croatian Bureau of Statistics.*

The experience of **Kosovo** is somewhat different. Its Special Prosecution Office has an Anti-Corruption Task Force composed of local and international EULEX[85] prosecutors, who are supported by police officers and financial experts. The Task Force with the Kosovo Ministry of European Integration finds that key weakness of the Task Force is that no prior research was made to assess the need of establishing a new anticorruption mechanism, the weakness of non-coordination and non-information between local and international prosecutors, since EULEX prosecutors deal with high profile corruption cases, while local prosecutors only deal with lower-ranking profile cases. Thus, the "establishment of the task force is not justified."[86]

[81] Not to be confused with PN-USKOK, which is the corresponding body within the national police service and established much later. The corresponding judicial institution – the USKOK courts – are discussed in the next chapter.

[82] (U.S. Department of State, 2013r, p. 14).

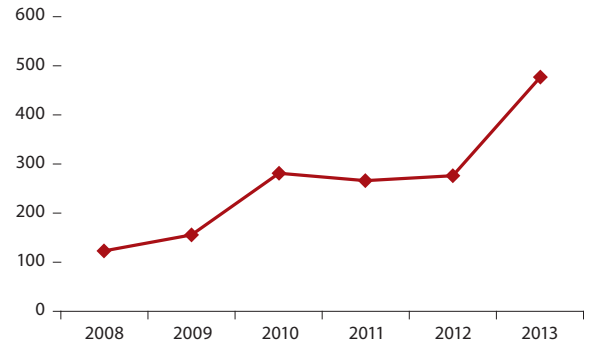
[83] (European Commission , COM(2014) 38 final, p. 2).

[84] (KIPRED, 2014, p. 13).

[85] The EU rule of law mission in Kosovo.

[86] (Task Force on European Integration, 2012, p. 20).

Figure 44. Number of unresolved corruption-related criminal charges in Kosovo



Source: (KIPRED, 2014).

The perils of placing high expectations in such specialised units are evident in the arrest and conviction of the Head of the Anticorruption Task Force on charges of corruption.[87] Further, the reliance on police officers from the interior ministry could compromise the independence of this prosecutorial body. KIPRED goes as far as suggesting that the Task Force should be abolished in order to "strengthen the overall mandate of [the Special Prosecution Office] which should have the leading role on anticorruption and fighting organized crime."[88]

3.6. RECOMMENDATIONS

Anticorruption institutions in the Southeast European countries require the following in order to make their interventions effective:

1. Introduce a **feedback mechanism for the enforcement of anticorruption policies**. The mechanism could be based on innovative new instruments made more readily available in recent years, such as the *Integrated Anticorruption Enforcement Monitoring Toolkit* developed by the Center for the Study of Democracy and the University of Trento. It allows policy makers to assess corruption risks in a given government institution and the effect of the corresponding anticorruption policy, identifying the highest impact solutions.
2. With respect to the risk of corruption in law enforcement from organised crime:
   2.1. Provide **adequate resources and sufficient powers of anticorruption departments** by establishing local level structures, allowing them full access to operational information and enhancing their effectiveness by introducing a method for distinguishing between minor and serious corruption cases.
   2.2. **Introduce internal monitoring mechanisms** in order to **evaluate corruption pressures**. Internal monitoring could be designed and periodically conducted to better understand the threat of corruption in law enforcement. This would identify vulnerable departments, positions or regions where there are heightened risks from corruption.
3. The **institutional capacity** of the relevant government bodies – particularly the specialised anticorruption agencies and oversight agencies such as the national audit institutions – including their budgets, facilities and personnel need to be aligned with the wide remit these institutions are given. Alternatively, they should design more narrow annual or mid-term programmes, which prioritise interventions.
4. **National audit institutions should also have their institutional leverage strengthened**, including the powers to impose harsher sanctions. Both auditees and national parliaments should be obligated to follow up on the reports of these institutions. The national audit institutions should also be mandated to audit the management of EU funds where these are administered by national authorities. As performance audit work is at a very early stage, they should develop their capacity to carry out more of these.
5. Further measures are needed to ensure that **recruitment to the civil service is merit based** and not dependent on political party affiliation.
6. The **anticorruption work needs to be shared more evenly among government bodies.** Expanding the range of statutory incrimination should be balanced by enhanced capacity in all public bodies to address corruption in their ranks through administrative tools instead of "buck-passing" responsibility to police and prosecution. General public administration bodies should act as gatekeepers of the criminal justice system by dealing with as many corruption cases as their administrative powers allow them. At the very least, this entails the creation of effective complaints management mechanisms
7. All SELDI countries have **anti-money laundering/financial intelligence agencies** whose role, however, in anticorruption is limited. Given that the capacity to transform illegal proceeds into political clout is of

[87] EULEX, Summary of Justice Proceedings in May 2013.

[88] (KIPRED, 2014, p. 21).

crucial significance for high level corruption, these institutions can and should acquire a more central role in investigating political corruption.

8. The **forfeiture of illegally obtained assets in corruption cases** is an anticorruption tool the application of which should be expanded. While special care needs to be applied to balance the rights of the accused with the interests of public good – especially in an environment of often corrupt public administrations – wealth confiscation following criminal convictions is an important deterrence which is still underutilised in SEE.