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ANTI-CORRUPTION IN SOUTHEAST EUROPE: FIRST STEPS AND POLICIES

The Southeast European Legal Development Initiative (SELDI) was launched in late 1998. It was initiated by the Center for the Study of Democracy and the International Legal Development Organization, Rome. The Southeast European Legal Development Initiative brings together the efforts of various government organizations and experts from different countries of Southeast Europe. It creates opportunities for cooperation between the most active public institutions and public figures, the governments, and international agencies in Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania, and Yugoslavia.

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5 Alexander Zhendov Str., 1113 Sofia
phone: (+359 2) 971 3000, fax: (+359 2) 971 2233
www.csd.bg, csd@online.bg

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Lazar Antonic, Center for Liberal Democratic Studies, Belgrade, Yugoslavia
Boris Divjak, Transparency International, Banja Luka, Republika Srpska, BiH
Danijela Vidovic, Transparency International, Banja Luka, Republika Srpska, BiH
Dragan Tumanovski, Supreme Court of Macedonia, Skopje, Macedonia
Ioana Veghes, The Gallup Organization Romania Ltd., Bucharest, Romania
Ivana Aleksic, Center for Policy Studies, Belgrade, Yugoslavia
Kreshnik Spahiu, Albanian Center for Economic Research (ACER), Tirana, Albania
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Predrag Bejakovic, Institute of Public Finance, Zagreb, Croatia
Sorin Ionita, Romanian Academic Society (SAR), Bucharest, Romania
Sterjo Zikov, Public Prosecutorsí Office, Skopje, Macedonia
Vanja Mihajlova, Consultant, Skopje, Macedonia
Zef Preci, Albanian Center for Economic Research (ACER), Tirana, Albania
Zoran Jacev, Center for Strategic Research and Documentation FORUM, Skopje, Macedonia

Editors / Contributors

Alexander Stoyanov, Director of Research, Center for the Study of Democracy
Boyko Todorov, Program Director, Center for the Study of Democracy
Emil Tsenkov, Senior Fellow, Center for the Study of Democracy
Maria Yordanova, Director, Law Program, Center for the Study of Democracy
Marko Hajdinjak, Research Fellow, Center for the Study of Democracy
Ognian Shentov, Chairman, Center for the Study of Democracy

I. INTRODUCTION

Corruption has become a major issue, particularly in the countries of transition. It has become an accompanying phenomenon of the transition from state-socialism to market capitalism and democracy in Southeast Europe (SEE). The common problems that post-communist societies face contribute to this fact significantly, but there are also a number of characteristics specific to the countries in SEE:

- Public sector operations are non-transparent, performance is poor and distrust of the citizens towards public officials is high.
- The collapse of the Communist regimes left behind an over-extended public sector and high expectations in the population that it will receive assistance in all walks of life (a "premature welfare state", as it was called)
- The combination of weakness, lack of transparency and overburdening in the SEE public sectors constituted fertile ground for both petty and large-scale corrupt practices.

These features, which originate in the recent past, however, cannot alone explain the extraordinary scale of corrupt transactions in the new Balkan democracies. The process of transition of state-owned economy into private ownership through privatization, in addition to the restitution of property, created huge opportunities for the misuse of public power at the expense of the public. Another often ignored sphere of systemic corruption is the **de-facto privatization of cross-border transactions** through bribing state officials at the customs, border police and other regulatory and law-enforcement bodies. Given the open nature of the Balkan economies, cross-border transactions constitute up to 2/3 of the GDP for any single country, hence they generate even more dirty money, then privatization itself.

Table 1: Main problems in the countries of SEE

	Albania		Bosnia and Herzegovina		Bulgaria		Macedonia		Romania		Croatia		Serbia		Montenegro	
	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002
Unemployment	44.4	44.8	60.9	60.9	67.8	68.9	75.3	58.2	39.5	33.9	66.0	78.5	30.3	38.0	53.1	51.1
Low incomes	39.3	40.8	39.6	39.3	49.0	47.0	62.0	26.7	41.3	49.4	39.1	44.2	39.2	33.6	35.6	37.2
Poverty	24.4	28.2	29.8	31.9	41.5	42.7	1.1	43.9	50.6	57.4	31.6	28.7	39.7	44.4	34.8	43.4
Corruption	*60.8*	*68.4*	*47.6*	*48.3*	*37.5*	*35.1*	*35.1*	*31.2*	*59.9*	*59.9*	*41.7*	*41.1*	*37.2*	*37.3*	*30.8*	*35.9*
Crime	36.0	24.6	32.9	32.8	25.7	32.9	27.6	23.9	10.2	12.5	33.5	30.4	44.1	41.4	31.5	30.1
High prices	24.0	23.3	10.9	13.9	22.4	20.9	25.4	7.8	35.6	35.6	27.3	18.4	24.7	24.0	21.2	17.7
Health Care	3.7	2.3	9.9	9.5	14.0	17.2	7.2	1.7	17.4	15.4	7.1	8.9	8.7	9.8	4.0	2.0
Political instability	49.6	46.0	37.0	33.9	17.0	13.1	33.2	55.9	29.9	11.6	20.1	28.7	47.8	35.3	59.3	57.7
Education	3.9	3.2	4.6	4.8	2.1	1.8	3.7	0.8	7.9	8.8	4.4	4.1	6.3	7.8	4.5	3.9
Environment pollution	5.2	3.6	3.8	3.1	2.7	1.5	6.0	1.0	1.6	3.2	2.8	3.5	2.5	5.6	4.8	2.7
Ethnic problems	3.0	2.4	15.6	17.1	1.7	1.4	14.9	40.7	2.4	1.6	7.0	3.6	10.2	8.2	8.6	5.2
Other	0.9	4.4	1.8	1.3	1.9	4.5	0.5	0.9	1.1	1.5	2.1	3.1	0.6	1.8	1.5	3.0
DK/NA	0.2	0.8	0.3	0.7	1.6	0.5	3.0	1.2	0.2	2.7	1.6	1.7	1.1	1.9	1.8	0.3

Source: SELDI Corruption Monitoring System. Scores close to 1 correspond to low spread of corruption, those close to 10 to highest degree of proliferation.(For further details see http://www.seldi.net/indexes.htm)

In most of the SEE countries, state institutions were subordinated to private interests in the first stage of the transition in the early 1990s. The symbiosis between the state and "high-risk" businesses under unclear rules of the game and a paralysis of the judiciary bred systemic corruption within society.

In addition, other types of misuse occured: *clientelism*, nepotism, and a secondary symbiosis of the state and businesses. In this case, state interference in business affairs is much greater than the opposite trend – "buying of politicians" by strong private-economic power-groups. In this case, some throwbacks to the past occur, which make possible state/party interference in the economy despite the privatization of state-owned property. In situations like these, the opposition blames the ruling party for imposing neo-authoritarian forms of government that favor private interests close to those in power.

Understandably, it is grand - political and systemic - rather than administrative or petty corruption, which is the main target of anti-corruption efforts by civil society; and public reforms, rather then purely preventive measures are needed most urgently to remedy the existing situation. Independent monitoring and assessing of the gray zones of socially high corruption risk, designing and recommending anti-corruption instruments and reforms, and the lobbying for their adoption by national assemblies and executive branches, are the main areas of civil society mission in countering corruption.

This report is yet another illustration of what NGOs from SEE can do best, namely painting an objective and as detached picture as possible of the impact of corruption upon social, economic and political developments in every single Balkan country, and in the region as a whole.

* * *

Despite the fact that SEE countries have achieved different levels of economic development, political stability and democracy, and have different affiliations with international institutions, the prevailing international opinion still attributes a high corruption risk to the *region as a whole*. Nevertheless, most attempts so far to look into corruption in SEE have been based on an evaluation of the political, legislative and economic conditions of individual countries.

The Southeast European Legal Development Initiative undertook to develop this report in order to look into the truly regional factors contributing to corruption in SEE. Several factors warrant this approach.

The first one relates to the *scale* of the problem of corruption in these countries. Societies in SEE are faced with a corruption culture that permeates all structures of the body politic and which became a systemic feature of their political structures. The spread of corruption throughout the whole spectrum of possible forms – from the usual *bakshish* to the traffic police to the entry of organized crime into the mainstream economies through corrupt privatization practices - presents a challenge that goes beyond the effectiveness of traditional anti-corruption tools. The systemic nature of corruption in SEE has become the major factor impeding their development efforts. It has distorted the restructuring of their economies, the modernization of their education systems and public health care, and has affected many social programs (e.g. public housing). All this has had a negative impact on the public's trust in the emerging democratic and market economy institutions and has bred disillusionment with reforms in general.

The second relevant aspect relates to the factors facilitating the corruption on such a scale. *The institutionalization of corruption in the SEE countries cannot be explained by the national circumstances alone.* Although corruption is mostly manifested and experienced at the national level, a number of *region-wide* factors need to be taken into account if we are to comprehend the nature of the problem. In general, regional instability in the past ten years has undermined effective law enforcement throughout the region, has raised considerably the cost of regional trade, and thus the stakes of smuggling, which consequently has become a breeding ground for organized crime on a regional scale. The driving of the SEE economies into the gray, and even criminal zone, has been the main dynamic behind the high levels of corruption.

The specific set of circumstances and the tragic and unfortunate sequence of events, which unfolded in the region in the last decade, contributed substantially to the spreading of corruption in the Balkan countries. The war in the former Yugoslavia and the sanctions and embargo regimes, imposed on the warring republics, led to proliferation of organized crime, and especially of smuggling, trafficking and illegal trade in the peninsula. This gave an enormous boost to spreading of corruption. Smugglers and other involved in the trans-border organized crime networks did not operate past the state institutions, but (especially in the case of illegal trade with arms and oil) through them. It is thus hardly sur-

prising that customs officers in all Southeast European countries top the charts, measuring corruption among the state officials (see Table 2).

As the first part of this paper intends to show, **the specificity of corruption in Southeast Europe, as contrasted with other transition or post-communist countries, lies in the cross-border illegal trade, centered on the war-ridden Western Balkans, but affecting all the countries on the peninsula.**

As the largest redistributing mechanism of national wealth, the national borders in the region represent the single largest source of corruption, and the impact of the illegal trans-border trade on overall corruption in Southeast Europe cannot and should not be underestimated.

Table 2: Public opinion of the level of corruption in the various professions

	Albania		Bosnia and Herzegovina		Bulgaria		Macedonia		Romania		Croatia		Serbia		Montenegro	
	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002	2001	2002
Customs officers	86.6	89.8	58.8	62.2	75.2	74.15	72.2	83.1	63.4	54.9	51.3	51.5	80.9	77.8	61.9	63.42
Lawyers	70.6	58.9	41.0	46.5	52.9	55.53	42.2	44.7	55.2	49.5	45.3	44.6	55.7	60.6	36.9	33.43
Public prosecutors	70.9	64.3	37.8	41.2	51.3	55.35	39.4	50.2	49.3	41.3	29.6	36.6	56.8	48.9	32.5	37.76
Judges	80.1	74.4	42.6	43.7	50.1	55.00	49.2	52.9	55.7	50.1	38.4	47.3	63.7	55.4	37.7	42.02
Tax officials	79.0	80.1	54.4	59.7	53.7	51.26	52.3	75.0	49.0	32.5	40.6	48.0	63.5	54.6	44.7	47.19
Investigating officers	52.7	51.4	44.5	48.2	43.8	48.04	29.8	44.9	45.3	35.1	28.0	41.9	57.0	48.7	33.0	38.27
Members of parliament	61.8	60.4	47.5	46.6	51.7	47.78	60.8	77.0	65.9	54.5	33.1	41.4	45.9	43.9	31.0	39.33
Officials at ministries	66.2	66.2	52.5	54.3	49.7	47.08	47.5	52.5	54.5	44.2	47.0	46.7	56.1	42.8	42.5	48.52
Police officers	56.4	65.6	46.5	59.2	54.3	47.00	46.3	53.9	64.4	55.3	47.3	47.5	73.2	66.7	50.7	50.97
Ministers	67.8	76.5	54.2	54.4	55.0	45.34	61.0	77.5	58.0	45.1	37.3	40.5	55.3	46.1	41.9	52.26
Adm. officials in the judicial system	63.0	60.6	41.6	42.4	40.2	41.17	31.0	36.1	51.6	40.6	32.8	40.4	50.3	42.7	33.3	35.80
Municipal officials	69.1	64.4	51.4	56.4	41.6	39.34	36.8	39.1	47.9	45.6	48.1	48.0	60.1	50.3	47.0	45.18
Municipal councilors	55.2	55.5	46.2	46.2	32.1	31.77	33.4	36.3	43.1	40.2	27.7	40.7	45.0	41.8	31.1	33.19
University officials or professors	46.0	32.1	35.7	37.6	28.1	27.68	42.9	42.7	24.7	21.8	40.4	31.3	39.1	41.5	25.7	32.31
Journalists	18.8	14.8	24.3	24.8	13.9	12.27	17.1	17.0	22.1	15.4	22.8	20.3	34.0	30.7	36.3	46.80
Teachers	11.6	10.4	20.9	22.1	10.9	9.75	18.7	22.7	20.4	17.5	19.3	16.2	28.5	33.4	18.0	20.59

Source: SELDI Corruption Monitoring System for SEE

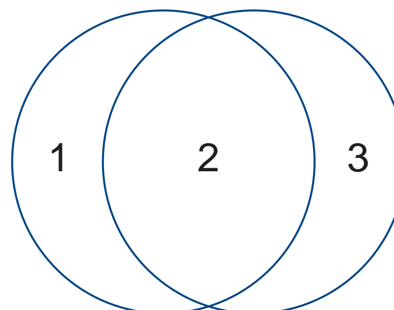
This report does not attempt to present a comprehensive program for action in SEE but rather to sensitize politicians and civil society to the specific set of sources of corruption in the region. So far these sources have been treated as the domain of law-enforcement agencies. However, both the scale of the problem and the fact that it has significant impact on development efforts, and on economic development and social reforms in particular, warrant that response is sought under a broader partnership between politicians, law enforcement, civil society, business (both local and international) and the international community.

In this context, this report is a result of the efforts of the Southeast European Legal Development Initiative to establish a platform of cooperation between public and private institutions in SEE with the support of the international community. In the course of its development, SELDI managed to establish a regional network of organizations trained to evaluate the institutional aspects of corruption and serve as a watchdog of the reform process.

Several lessons learned in this context need to be highlighted. The gravity of the problem calls for bold and radical measures if corruption is to be stemmed. These measures should upset the already entrenched interests, which fuel the institutionalization of corruption. For this to happen, broad public coalitions need to be formed both within countries, and region-wide. Traditional bureaucracies - be they national or international - cannot muster the type of public support needed if these reforms are to be successful.

However, support coming from a cross-section of society, involving major public and private actors, could only be enlisted in this process if society has a clear view of the severity of the problem. This warrants the introduction of a new type of corruption assessment, which goes beyond traditional law-enforcement methods. This new type of assessment could only be successful if it is based on **cooperation between the public institutions, involved in designing and implementing anti-corruption policies, and civil society institutions which are expected to generate civic support for these policies.** For this to happen, the assessment on which these policies are based, needs to be carried out in a public-private partnership.

The interaction between the role of governments and civil society in assessing corruption could be illustrated in the following way by superimposing the public sector (left circle) and NGO sector (right circle):



– Area 1: assessment related to measures for streamlining corruption prevention in law enforcement (customs, police, etc), prosecution; this area is strictly (inter)governmental, assessment is confidential;

– Area 2: (the area of public-private cooperation): assessment of the institutional and legislative adequacy and efficiency (including performance of public administration and judiciary), international assistance evaluation, general evaluation of political and institutional reforms, etc.

– Area 3: monitoring by and of the media, monitoring of corruption inside civil society, monitoring of public attitudes (trust in institutions).

* * *

The above considerations determined a two-tier structure of this report. The first part analyzes the origins of cross-border corruption in the region, which is seen as a result of the rise of transnational crime, influenced by the violent break-up of former Yugoslavia. It intends to show that regional factors significantly contribute to national-level corruption and could undermine national anti-corruption efforts.

In the second part, the report evaluates the national circumstances in which the regional factors develop. It compares the national legislation and institutional practice in a number of areas critical to anti-corruption efforts: regulatory and legal framework, institutional prerequisites, corruption in the economy, the role of civil society and media, as well as the international cooperation. The coverage of the national institutional and legal aspects making regional corruption possible is not intended as a comprehensive inventory of regulations and practices in all coun-

tries, but rather emphasizes some of the issues relevant to potential efforts for stemming regional sources of corruption in SEE.

The second part is ultimately a collection of contributions from watchdog organizations in the countries in Southeast Europe. In fact, the nature of regional concerns about corruption is evident in the limitations of this report – namely that the level of institutional development, policy implementation practice and international affiliations of the countries in SEE are varying to such a degree that only a "bird's eye view" could reveal the source of common problem. Thus, aware of these limitations the editors have adopted the two step approach to compiling the report – analyzing the most significant roots of corruption in the region and supplementing that with an overview of the national contexts against the background of which these processes take place. This is very much in line with the USAID approach that there is a strong conceptual distinction between law- enforcement approaches to corruption, which try to strengthen crime-fighting efforts, and a more holistic approach that addresses poor governance systems more broadly.

The countries covered by this report include Albania, Bosnia and Herzegovina (BiH), Bulgaria, Croatia, Macedonia, Romania and Serbia. The SELDI Corruption Monitoring System, the results of which are presented here, also covers Montenegro.

II. THE BACKGROUND: ORIGINS OF TRANS-BORDER CRIME AND CORRUPTION IN SEE

The problems, related to corruption, which have been troubling the Southeast European countries during their transition to democracy and market economy, are not unique and specific only to this region. The long list of problems, described and analyzed in detail in the second section of this work, could be compiled for virtually any transitional country, regardless of its geographic location. The situation regarding corruption in state administration, judiciary or in the economy in Southeast Europe is in principle not that different from the situation in Central Europe or in Latin America. The main difference is in the scale of this phenomenon and in the circumstances which fostered its exceptional permeability in the Balkan societies. This, however, might be to an enormous extent a consequence of a very specific set of circumstances the Southeast European countries (unlike the ones in Central Europe) faced, especially during the first half of the 1990s.

The war in the former Yugoslavia and the sanctions and embargo regimes, imposed on the warring republics (especially the sanctions imposed on the Federal Republic of Yugoslavia, which, due to the fact that FRY borders on all Southeast European transitional countries, directly effected the whole region) **led to proliferation of organized crime,** and especially of smuggling, trafficking and illegal trade in the peninsula. This in turn gave an enormous boost to spreading of corruption. The already high potential for corrupt practices, based on the drawbacks of communist system, non-existent or low-developed democratic norms and values, inefficient and underdeveloped economy and non-transparent decision-making processes, was thus transformed into one of the most important and persistent problems the region faces today.

Due to the character of the processes of appearance of post-Yugoslav states and establishment of their national-state sovereignty, the armed conflict between the central government in Belgrade and the authorities in the seceding republics seemed highly likely. In the name of the higher goals like protection of national independence and sovereignty, the leaderships of seceding republics had to set up and arm the newly created republican armies in the only way possible – illegally, by using existing as well as newly established smuggling channels. The party leaders and high-ranking figures in the Yugoslav army and the Yugoslav secret service largely tolerated these activities and in their turn contributed to the development of a stable smuggling system. This system was built both vertically (from political leaders to actual smugglers) and horizontally (it included the whole chain of smuggling channels, passing across the new state borders and connecting through common interests the political elites in all post-Yugoslav republics).

The elites in the Yugoslav republics were actively involved in **development and organization of smuggling channels,** and they protected and assisted those who were directly involved in their realization. This prosperous "business" was controlled in close cooperation between politicians, their security forces lobbies and organized crime structures. The Yugoslav experience shows that temporary symbiosis between authorities and organized crime during the process of creation of new states leads to permanent transformation of state/national interests into private ones and fosters the development of corrupt, non-transparent and crime-permeated societies.

The free reign given to the organized crime in the war-ridden Western Balkans, had an impact also on other countries on the peninsula. The connection between the events in the former Yugoslavia and the trans-border crime and related corruption in the Balkans was most clearly visible during the trade and arms embargos, imposed by the UN on post-Yugoslav states. The sanctions and embargos fostered the development of the regional net of smuggling channels, with the organized crime structures in countries like Bulgaria, Romania and Albania playing a crucial role in this process. Furthermore, smuggling of goods under embargo to post-Yugoslav countries became an important source of income for people of all social groups, ranging from political leaders to people, living in the border areas. As a result, corruption permeated law-enforcement agencies and political elites in these countries.

Understandably, the Yugoslav conflicts and the interweaving of political-ethnic and criminal interests in the Western Balkans are not the only reasons for the creation and growth of the regional criminal infrastructure, based on permanent smuggling channels and systemic corruption. There are at least two more important factors, which contributed to the criminalization of trans-border traffic and the ensuing corruption.

The first is the **liberalization of movement of goods and people** and the lifting of visa and other restrictions in the regional post-Communist countries. In combination with the weakening of the state control, this has created favorable conditions for trans-border crime. In particular, the withdrawal of the state from strict control over the movement of people and goods across the borders encouraged the processes of privatization of both old and the newly-created smuggling channels. These channels were thus taken over by the criminal and semi-criminal groups in close cooperation with former agents of security services. State administrators, employed in key institutions like customs, police and other services, involved in border control, also got included in the scheme through the expanding corruption networks. It can be said that to a great extent **border control** passed from the hands of the state and **became an unlawfully acquired private domain of illegitimate actors**. In addition, most of the borders have not been defined and mutually recognized, and consequently properly controlled, until well into the 1990s. Furthermore, the succession of armed conflicts and ethnic cleansing campaigns in the former Yugoslavia led to creation of quasi-states (Kosovo is the most obvious example of such an entity) and weak states, practically unable to control their borders.

The second factor contributing to dynamic development of trans-border crime and corruption during the last 12 years was the impact of one of the main features of Balkan economies: namely, that **the national borders in this period represented the largest redistributing mechanism of national wealth.** Due to a small capacity of regional economies, the value of goods transported to and from the Balkan countries reached up to 85% of GDP in some cases. If we calculate the losses the countries have suffered because of the illegal import and export over the last 12 years, they will most likely exceed the value of revenues from privatization, including the countries where privatization is almost completed (Bulgaria and Croatia).

Of course, the impact of the **region's geographic position should be also considered**. Balkans have traditionally been the most important European point of entry for the Asian heroin. During the last decade, they also became an important distribution center for the South American cocaine. The region is also the most important land route for hundreds of thousands of illegal immigrants from Near East and Asia, who are trying to reach the EU countries. It is also an important source, transit and even destination region for women and girls, trafficked to be employed in the sex industry. The Southeast Europe is also one of the most important links in the chain of European cigarette smuggling. All these aspects represent a practically bottomless source of corruption, mostly among the border police and customs officials, but also in the judiciary and the public administration. Furthermore, the scale of these criminal activities also bred political corruption because of the need for political protection of the criminal networks.

The illegal transactions, however, are not limited only to trans-border business (import and export). Their destructive impact can be seen also in the deformed structure of national economies, since the extraction of enormous revenues from the illicit import and export can be possible only if the large enough gray sector exists. After the collapse of the Soviet model of total state control over the economy, illegal transactions performed in the **gray sector came to comprise between 30 and 50 percent of the Balkan national economies**. A common practice is that those who are actively involved in the trans-border crime are also directly or indirectly involved in the conduct of trade operations in the frame of the unofficial economy.

Becoming aware of the true dimensions of the regional trans-border crime and of its impact on the regional corruption patterns requires that a comprehensive approach be adopted. For now, the regional approach in counteracting trans-border crime and corruption is still overshadowed by individual national efforts, which are further fragmented by the artificial division on challenges to internal security on one side, and external security of a particular country on the other. The proposed analysis offers an argument in support of complex programs and efforts for reflecting the new complex challenges, which are facing not only the societies in Southeast Europe, but also the countries of the European Union.

2. 1. The Original Set-Up of Trans-Border Organized Crime Schemes

Three different patterns, along which the trans-border organized crime networks in SEE were developed, can be distinguished:

- In Croatia and Bosnia-Herzegovina, smuggling (predominantly of weapons) was organized by the republican governments in order to secure the independence and sovereignty of two republics. Similar pattern, in organization of Kosovo Albanian political leaders, can be observed later also in Kosovo.

- In the Federal Republic of Yugoslavia (Serbia and Montenegro), governments were also directly involved in organization of smuggling schemes for illegal import of oil, weapons, and numerous other goods.

- In Albania, Bulgaria, Macedonia and Romania, the smuggling and trans-border crime were not a part of the hidden agenda of the governments of the states, but were rather organized and conducted by individuals and groups within or closely connected to the ruling elites.

* * *

The development of the smuggling channels in Croatia, Bosnia-Herzegovina and Kosovo was influenced by very specific circumstances which could not be observed in the other former Yugoslav republics and even less so in other transitional countries. The war in which the Croatian, Bosnian Muslim and Kosovo Albanian armies were fighting against a militarily superior and better armed adversary contributed to the creation of socio-political environment in which smuggling (especially of weapons) was not perceived as harmful for the interests of Croatia, Bosnia-Herzegovina, and Kosovo. On the contrary, it came to be regarded as **essential for their survival.**

Setting up channels for illegal import of weapons into Croatia in order to arm and equip the newly created Croatian army was a necessary step if Croatian authorities wanted to go through with their plans for secession of Croatia and thus came to be regarded in Croatia as a state-building and not as a criminal act. This illegal operation, despite being a clear violation of a number of the UN Security Council resolutions, which imposed arms embargo on all former Yugoslav republics, is today still generally perceived in Croatia as a legitimate step, necessary for securing republic's independence.

It is impossible to estimate the full quantity and value of weapons smuggled into Croatia while the republic was subject to international arms embargo. No data is available for 1991 and 1992, when majority of the weapons were smuggled into Croatia. In the period 1993 – 1995 alone, **Croatia imported for $308 million worth of weapons.** The arms trade business offered numerous opportunities for personal enrichment to those involved, especially to the circle of Croats from Herzegovina, centered around the Defense Minister Gojko Susak, and thus significantly contributed to the spread of corruption within the Croatian ruling elites.

The smuggling channels in **Bosnia-Herzegovina** were developed in a similar fashion. The crucial role in the smuggling of arms to Bosnia-Herzegovina was played by the **Third World Relief Agency** (TWRA). TWRA was founded in 1987 in Vienna as a humanitarian agency for Muslims. In 1992 it opened an office in Sarajevo and started to cooperate with the Bosnian government. It became the main financier of the smuggling of weapons for the Bosnian Muslim army. Between 1992 and 1995, around **$350 million** were deposited on its account, donated by Saudi Arabia, Iran, Sudan, Turkey, Brunei, Malaysia and Pakistan. Most of the weapons supplied through TWRA were Soviet-made and bought in various Eastern European countries. TWRA started to abandon its activities in Bosnia in 1994. The Austrian anti-terrorist police unit raided the TWRA headquarters in September 1995 and confiscated enormous amount of documents, related to arms smuggling and other illegal activities of the agency. After the TWRA's retreat, Iran took over as the most important supplier of weapons to Bosnia-Herzegovina. The investigation showed that the value of weapons smuggled into Bosnia in 1994 and 1995 reached **between $500 and 800 million.** Illegal business of such a grand scale as a rule represents a breeding ground for corruption, and like in Croatia, those involved in the Bosnian arms trade (for example, Hasan Cengic, a close associate of the President Izetbegovic) became some of the richest people in Bosnia-Herzegovina.

In Kosovo, the arms trade was inseparably linked with the drug trade. Kosovo Albanians have been associated with the European **drug trade** for decades. Their presence has been felt especially on the heroin markets in Germany, Austria and Switzerland. Apart from remittances from abroad, the drug money was the most important pillar the Kosovo Albanian-organized social and health care and education were based on after 1991. By 1994 and especially after the Dayton Agreement (November 1995), which completely ignored the Kosovo issue, Kosovo Albanians started to turn towards the armed resistance. Again, remittances from Kosovo Albanians working abroad (they supplied roughly one third of the funding, setting aside 3 percent of their monthly income for the purpose) and the drug money were the primary sources for funding the arming of the newly-created Kosovo Liberation Army (KLA).

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Unlike the other republics of the former Yugoslavia, Serbia and Montenegro, which constituted the Federal Republic of Yugoslavia after 1991, had no need to import arms, since they “inherited” the lion’s share of the YPA’s arsenal. Because of their role in the war in Croatia and in Bosnia-Herzegovina, the UN Security Council imposed international sanctions on the two republics in the summer of 1992. The Serbian province of Vojvodina has always been known as “the bread basket” of Yugoslavia and even under the sanctions, Serbia and Montenegro had little problems in producing enough food to cover the domestic needs. Serbia was also (apart from Slovenia) the only former Yugoslav republic which was an energy exporter and as such had enough reserves to “survive” few years of sanctions. What Serbia and Montenegro lacked, above all, was oil. The Serbian war machine in Bosnia especially depended on smuggled fuel, without which it would have been brought to a standstill.

The Serbian smuggling channels were developed and ran in cooperation between the state administration, state security service and the criminal underworld. The links between the three are most clearly shown by two people, who played the crucial role in establishment of the Serbian smuggling networks - Zeljko Raznjatovic Arkan (a notorious war criminal, unofficial ruler of the Serbian underworld, and an agent of the Serbian security service) and Mihajl Kertes (first the deputy-chief of the security service and then the head of Serbian Customs).

Apart from oil, **cigarettes** were the most sought-after commodity and cigarette smuggling, for which Montenegro became notorious, brought enormous profits to people involved in it. Cigarette smuggling schemes were developed by people from the top echelons of the Serbian secret service. Part of the profits was used for financing war effort in Bosnia-Herzegovina, but the rest went to private accounts of those involved, including some of the highest Montenegrin officials.

Figure 1: Oil smuggling routes to the Federal Republic of Yugoslavia

The smuggling channels in Serbia and Montenegro were established to circumvent the international sanctions and as such gave the appearance of serving the interests of the state. Smuggling did in fact generate revenues which were used for financing a number of state services (from security forces to state-owned media) and state-run enterprises, but above all, smuggling financed the ruling regime, since the increasing share of the profits was diverted to various private bank accounts abroad.

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The Southeast European countries which have not been involved in the war nor were they subject to international sanctions were nevertheless strongly affected by both. The proximity to the war zone and the possibilities the sanction-busting offered to the well-placed individuals and groups influenced the rapid development of smuggling and other illegal activities, as well as pro-

liferation of organized crime and corruption in Macedonia, Albania, Romania and Bulgaria.

During the war in Bosnia-Herzegovina, Macedonia was involved in the **illegal arms trade.** According to press reports, three Macedonian ministers of defense, one foreign minister, the head of intelligence service and one MP were involved in the illegal weapons trade. According to estimates of the international organizations, Macedonia was **among the most active violators of sanctions** imposed on the rump Yugoslavia. The Serbian-Macedonian border witnessed the countless not-too-hidden passages of whole convoys of tank trucks, organization of which would have been impossible without the involvement of government officials. Numerous Macedonian "businessmen" participated in a popular scheme used by thousands of Serbian entrepreneurs for side-stepping the sanctions. The scheme involved an establishment of a phantom company in Skopje. The Serbian goods (which could not be legally exported) were smuggled across the porous Serbian-Macedonian border and then exported, branded with the Made in Macedonia label. For few years, this scheme was one of Macedonia's main foreign currency earners. Needless to say, all these activities had an enormous impact on the spread of corruption in Macedonia.

The majority of the **Albanian** smuggling channels were developed by the former agents of the Albanian secret service *Sigurimi*. *Sigurimi* was abolished in July 1991 and replaced with the National Intelligence Service (NIS). As a result of this restructuring, many of the approximately 10,000 Sigurimi agents lost their positions and turned to organized crime, often in partnership with the **Italian organized crime**, which has entered Albania almost immediately after the collapse of the country's Stalinist regime. The **smuggling of oil** to the rump Yugoslavia (especially to Montenegro) soon became the most lucrative activity in the northern Albania. The realization of this project would not be possible without participation or at least without the knowledge of authorities in Podgorica and Tirana. According to the source in the Albanian railway company, more than 1 million liters of oil were transported from Durres to Montenegro in September 1994 alone. The involvement of government officials and the former *Sigurimi* agents, who were appointed as the leading figures of the customs and tax authorities, was confirmed by Genc Ruli, the former Finance Minister in Sali Berisha's government.

Channels for **trafficking people** to Greece and Italy were also set up almost immediately after the collapse of the communist regime. The trafficking of people to Italy was developed in cooperation with the Italian organized crime, especially with the Sacra Corona Unita clan. The first contacts were connected with the Italian mafia's purchases of weapons and explosives from their Albanian partners, who had easy access to Albanian arms depots due to their close ties with the former *Sigurimi*. The cooperation soon extended to include drugs and illegal immigrants.

The severity of Ceausescu's regime in **Romania**, the pauperization and shortages, created by the mismanagement of the command economy and the drive to repay the Romanian foreign debt created the extremely fertile ground for proliferation of trans-border organized crime. Unable to buy raw materials and to sell their products on open market, numerous large and small state-owned enterprise managers participated in development of a huge black market. Many agents of the Romanian Department of State Security, popularly known as *Securitate*, also played an exceptionally important role in its development and expansion to include money laundering and cigarette, drugs and arms smuggling schemes. Cigarette, drugs and arms smuggling was initiated in 1970s with the goal of obtaining hard currency for *Securitate's* covert operations abroad. Yet, because the poor living conditions in Romania were so widespread, even the privileged *Securitate* agents were affected, and this gave them a strong incentive to abuse their positions and to begin diverting the funds, generated through smuggling, to their personal bank accounts abroad (mainly in Switzerland).

Like all other Serbian neighbors, Romania also exploited the opportunities offered by the international sanctions imposed on the rump Yugoslavia. In the year 2000, the then-President Constantinescu accused his predecessor, Ion Iliescu, and the former Foreign Minister Melescanu of being involved in the **oil smuggling** to Serbia. Such allegations are not uncommon in the Southeastern European political infighting and should be treated with caution. Yet, it is hard to believe that the largest operation, involving around 1,000 railway wagons loaded with fuel and which, as subsequent investigation has revealed, crossed from Romania into Serbia at the Jimbolia border crossing, could have been performed without the knowledge of some of the most senior Romanian public officials.

Romania was also among the largest exporters of arms to all warring sides in the former Yugoslavia

during the arms embargo imposed on them. The **illegal arms exports** were controlled by former *Securitate* and army employees. Viktor Stanculescu, the former head of the quartering corps for Romanian army and a member of the tribunal which sentenced Ceausescu to death, became the owner of several leading arms exporting companies (all of which were selling weapons to Croatia and to Serbia) almost immediately after the revolution.

The smuggling channels in **Bulgaria** were set up by the communist state and were controlled by the former State Security – the secret service of the communist regime. Regretfully, proof of this criminal activity no longer exists. Only accounts of anonymous participants in the smuggling channels and some indirect evidence are available today. There are also the accusations by western states of smuggling of arms, drugs, medications, and excise goods.

In the period 1987-1989 certain individuals were granted control over part of these channels and vast authority to dispose with the undercover companies. This allowed them to appropriate former secret funds into personal accounts. Following the collapse of the totalitarian system and the subsequent transformation of the State Security structures in the period 1990-1993, thousands of police officers were made redundant or left the Ministry of the Interior, taking with them a large part of the archive files on agents, connections, and mechanisms for evading border control. At the same time, the ensuing vacuum in the exercise of control functions by the state, as well as the economic recession, especially in 1989-1991, created favorable conditions for **illegal trafficking in goods** intended to meet the domestic demand for a wide range of products. While until November 10, 1989, when the Communist regime fell, the State Security was mostly engaged in trafficking to other countries and transiting of drugs and banned goods, after that date the same smuggling channels came to be used for the illicit import of anything that could be sold in Bulgaria. Evading payment of customs and excise duties and fees, certain circles of former police agents and party activists earned illegal profit and accumulated huge financial resources.

Macedonia, Albania, Romania and Bulgaria had to face numerous difficulties when they started their transition to the market economy. The swift political and economic changes, the rising unemployment, and the rising discrepancy between wages and prices pushed many people into the gray economy and on the black market. The abolishment of tight restrictions on movement of goods and people (especially in the case of Albania and Romania) at the same time removed many obstacles which hitherto prevented people from engaging in the shadow economy. In the first years of transition, smuggling was a nationwide phenomenon tolerated by the authorities to avoid the social upheaval among the pauperized population, which had little choice apart from engaging in small-scale oil smuggling to the rump Yugoslavia and in the "suitcase trading." Of course, the corrupt involvement of numerous high-ranking government officials in the large-scale smuggling operations is another, even more significant reason why in the early 1990s virtually no attempts to counter smuggling - and corruption that made it possible - were made.

2.2. Expansion of Trans-Border Organized Crime and Corruption: Causes and Course

The trans-border organized crime networks, set up semi-officially with the knowledge and often even active participation of the highest state officials, were soon "privatized" by certain well-placed individuals and groups within or closely connected to the ruling elites. The process of "privatization" of the smuggling channels was well underway by 1992 in all the regional countries and largely concluded by 1995 (the only exception was Kosovo where the process could be observed between 1997 appearance of the KLA as an important regional player and the 1999 NATO campaign). During the same period, the channels initially established for smuggling predominantly weapons and oil were expanded to include other goods, such as drugs, stolen vehicles, cigarettes, alcohol and other commodities. The origins of the constantly growing Balkan trade in human beings can also be traced to the 1992-1995 period and to the lucrative business of "assisting" refugees to escape from the war zones to safety. Thus, trans-border organized crime and corruption started to seriously undermine the normal functioning of the states in the region.

While the regimes, which were actively engaged in development and organization of the smuggling channels, remained in power, virtually no attempts were made to stem trans-border crime and the corruption that facilitated it. In Croatia, Bosnia-Herzegovina, Montenegro and Serbia, where due to the specific circumstances (involvement in the war being the most important one) the same regimes remained in power for almost the whole decade, all the attempts to check the flow of smuggled goods were only cosmetic, if made at all. In countries, where governments did

change (Albania, Bulgaria, Macedonia, Romania), some measures to stem proliferation of smuggling were taken. Unfortunately, in most cases these measures were ineffective, and led only to the change of people involved in the smuggling.

The Croatian authorities justified the proliferation of smuggling and their virtually complete inability (or unwillingness) to put an end to it with the fact that Croatia was still engaged in the armed conflict and that more than a third of Croatian territory was not under their control. Liberation of these territories was declared as having the absolute priority and all other issues, including the fight against corruption, organized crime and illegal trade, were conveniently put off to some unspecified future. Little has changed after the war ended. Many of the high ranking individuals engaged in smuggling and other criminal activities enjoyed complete immunity from prosecution, due to their "defenders of the homeland" status.

Before the Dayton Agreement, which ended the war in Bosnia-Herzegovina, any attempt to put an end to illegal trade was unthinkable. No legislation, no police force, no customs services, and even no clearly defined and recognized borders existed. Above all, there was absolutely no willingness on the side of the authorities to tackle the problem. Trans-border organized crime and war formed a closed circle in which the war generated the need for smuggling and the profits smuggling was bringing to those involved generated the need to prolong the war for as long as possible. After the war, the provisions of the Dayton Agreement, which aimed above all to preserve peace and stability in the country, created conditions in which any serious action against organized crime and corruption was made virtually impossible. Complicated political and administrative arrangement, division of the country on two entities (of which the Croat-Muslim federation was further divided into 10 cantons), as well as the more pressing issues like post-war reconstruction, return of refugees and displaced persons, and preservation of peace, sidetracked the fight against organized crime, smuggling and corruption. These issues were not addressed properly until the end of the decade.

In the Federal Republic of Yugoslavia, the international sanctions offered the same excuse the war offered to the elites engaged in the illicit trade in Croatia and Bosnia-Herzegovina. Smuggling was "necessary" to help Yugoslavia survive under the "unfairly" imposed sanctions. While Milosevic's regime was in power, not surprisingly, no attempts were made to fight against the illegal trade. Furthermore, even the general public, the civil society and the majority of opposition parties hardly ever raised the issue, despite the fact that it was already more than clear that the only survival the trans-border organized crime made possible was the survival of Milosevic's regime. The explanation for this might lay in the fact that huge segment of the population was either directly involved in or dependent on smuggling (predominantly small-scale or so called "suitcase" smuggling).

In Kosovo, the KLA's armed insurrection and the consequent clashes between the KLA and the Yugoslav security forces destroyed even the last vestiges of law and order in the province, giving the drug smugglers an almost completely free reign. The alleged goal behind the drug trade continued to be the "liberation" of Kosovo from the Serbian "occupation" while in fact it served primarily for personal enrichment of the members of 15 clans, allegedly controlling both the drug trade and the KLA. Prior to the UN Mission in Kosovo (UNMIK) taking over the administration of the province in 1999, effectively no authority existed which could possibly try to curb the drug traffic.

In Albania, the weak government, inadequate and non-enforced legislation, corrupt and ill-equipped security forces and dire economic situation all contributed to creation of a perfect environment for proliferation of organized crime. The involvement of the highest representatives of the governing Democratic Party in smuggling and other criminal activities prevented any serious action against the illicit trade before the 1997 collapse and the subsequent change of the government. The 1997 events exacerbated the problem to an extent that the new, Socialist government, even if we assume that it was actually wiling to do so, was completely powerless to do anything on its own and the international community had to step in. The most important development was the establishment of European Commission's Customs Assistance Mission in Albania, deployed in June 1997 on request from the new Albanian government.

During the rule of the Party for Social Democracy (PSDR, the former communists) in Romania, which lasted until the 1996 elections, numerous ties were forged between some governing officials and the shadow economy structures. The former provided the latter with easy access to unsecured credits from the state banks (three of the main state banks were driven to the edge of bankruptcy because of this practice), with legal "blessings" for their trading monopolies, and

with the preferential treatment in privatization procedures. The new Romanian "business" class provided their political mentors with funds for their electoral campaigns and other, official and unofficial, needs. In such an environment, the fact that hardly any measures were taken to curb corruption and the gray economy, including smuggling and trafficking, hardly comes as a surprise.

In Bulgaria, where six regular and two interim cabinets were in power in the period 1989-2001, the following pattern could be observed every time the government changed (the situation was very similar also in other countries):

- The electoral campaign, in which promises to fight corruption and organized crime play an exceptionally important role, in fact intensifies the activities of the trans-border organized crime networks, since those involved try both to build up "reserves" for an uncertain future and to take advantage of the ensuing power vacuum between the elections and the inauguration of the new government.
- When the latter takes place, some swift and highly publicized steps are taken – some contraband channels are broken, some of the involved (most often including some customs officers) might be dismissed or arrested.
- The smuggling and corruption, however, are rarely significantly effected. Rather, new people, close to the new authorities, take over the smuggling networks.

2.3. Trans-Border Organized Crime and Corruption in Southeastern Europe

Trans-border organized crime and corruption are intrinsically connected. When something is to be transported out of or into the country in order to avoid payment of customs duties and other fees and taxes, it very often requires the assistance of border and other officials from various government agencies – passport control, immigration, customs, etc. Corruption is particularly common in the case of smuggling of commercial goods.

Smuggling-related corruption is found at every level of the public administration in the region. The claims that corruption only implicates the rank and file of administration while top management levels are supposedly "immune" against it are incorrect. The series of disclosures concerning corruption and personal gains on the part of senior public officials, the striking rise in their standard of living, and the information about funds and property they have acquired all suggest that corruption exists even in the higher ranks of public officials.

The smuggling of goods has inflicted considerable damage to economies of the SEE countries. It is often accompanied by trafficking in banned or controlled substances and items; criminal acts; competition between the organized smuggling groups, and between traffickers and lawful importers. Moreover, in order to stay in the market, lawful importers are forced to resort to violations of the established foreign-trade regulations.

Trans-border organized crime has a destructive effect not only on the economy, but also on the institutions and the rule of law in a given country. The huge resources accumulated in this manner allow engaging in covert financing and refinancing of various types of legal and illegal undertakings. This is largely due to the fact that the revenues from smuggling do not enter official government statistics; they are never declared and thus never registered with the relevant authorities. Practice shows that all too often proceeds from illegal trafficking serve to finance political parties, labor-unions and other organizations in SEE. Illegal import adversely affects domestic production and harms sectors of strategic importance to the country. In its various forms it is in fact one of the means companies employ to enter a given market. It is also used to monopolize a certain economic or other sector of activity – for instance the trade in alcohol, cigarettes, grain, sugar, video and audio equipment.

The goods most frequently subject to smuggling are those with high import tax rates (cigarettes, alcohol, motor vehicles), goods subject to national bans and restrictions such as arms, narcotic substances and precursors, pornographic materials, subsidized goods, protected animal species and plants, goods and technologies of civil and military use, works of art and objects of cultural and historical value, strategic raw materials, forged goods and products violating intellectual property rights, goods subject to international control, nuclear and radioactive materials, hazardous and toxic substances and wastes, hi-tech products, etc.

Illegal import can be carried out at any time and anywhere along the border, with the actual places of occurrence falling in two main zones – points where customs control is executed (ports, airports, border checkpoints, free trade zones, and others) and points outside customs control – a remote location along the coastline, a minor port or airport.

Depending on the nature of smuggled goods, as well as on the initial and final buyer (destination), citizens of different states are engaged as perpetrators. In a number of cases the citizenship of the person used for the smuggling is of great significance insofar as there are visa restrictions on the movement of persons and goods in certain regions of the world - for instance, the Schengen Agreement. Illegal trade with a final destination in a Schengen country usually involves nationals of these countries, or persons frequently traveling to these countries.

A key factor for increasing or reducing smuggling is the adequacy of customs control in the detection, detainment, and seizure of illegally imported or exported goods. Typical for Southeast Europe is the hierarchical corruption pressure on the officials exercising the border control, the lack of coordination among the various agencies, the lack of established and effectively functioning information systems and information dissemination networks, inefficient internal control mechanisms, and inadequate resources and facilities. When traffickers realize that control is weak, that corruption is rampant among customs officers, and that they run a low risk of being intercepted and punished, the situation in the state is considered favorable to engaging in smuggling. This is mostly been the case in SEE throughout the 1990s.

All forms of trans-border crime that take place with the awareness and assistance of officials involve the commission of a crime – bribery or misuse of public office. In the cases of mass smuggling, and especially in the trafficking in fast-moving consumer goods, there are simultaneous violations of the customs and criminal legislation.

The specific forms of corruption in SEE can be summarized in several more general types of criminal interaction between smugglers and public officials:

- Corrupting the customs administration in order to speed up a certain operation, including the processing of documents, and thus allow a businessperson or organization to conclude a given transaction in the fastest possible way.
- Corrupting officials in order to cover up violations of customs laws and internal regulations.
- Participation of border and customs administration in the setting up and operation of smuggling channels across the border.

Certain enduring and recurrent schemes of combining the interests of traffickers and corrupt officials exist. Moreover, the linking and interaction of interests follow a definite logic. There is a connection between the level of organization of smuggling activity and the officials involved in corruption.

The so-called "suitcase trade," in which hundreds of thousands of individuals in the whole region are engaged, typically involves one, and occasionally more than one, family member. They establish contact with individual representatives of customs authorities and other control agencies, effecting a corruption deal. Regardless of the actual role of the public official – whether passive or active under criminal legislation definitions – the smuggler pays a certain "fee" to the official authorizing the illegal transfer of the goods.

The use of smuggling channels in SEE involves a more complex chain of corruption deals, including the **redistribution of the bribes received.** This chain implicates officials from different agencies, who supply railway tanks, transport corridors, terminals for the loading and unloading of fuel. All too often public officials illicitly work for the owners of the smuggling channels, which have been "privatized" by semi-criminal and criminal groups. A stable system is thus formed of a dual loyalty of key officials: legitimate, to the state; and covert and illicit, to the group that bribed them.

The third, and most dangerous, form of interaction between traffickers and public officials is the illicit transfer of goods which benefits the political elite of the country and is thus protected by a political "umbrella." Those instances involve the so-called "grand corruption."

Below four categories of smuggling and related corruption in SEE are examined in more detail.

Mass Smuggling ("The Suitcase Trade")

Mass smuggling is a specific form of the illegal trade in goods. Its significance is often underestimated, despite the fact that it constitutes a considerable part of the illegal imports and exports in Southeast Europe. Suitcase traders cross-borders daily (sometimes even several times in the same day). Upon each crossing, they transfer merchandise for which no customs duties and other fees are paid. Instead, a bride is often paid to the border police and customs officials. Suitcase traders make additional profit due to the price differences of the smuggled goods on both sides of the border. The goods most often smuggled in this man-

ner include gasoline, household consumer goods, foodstuffs and beverages, fruits and vegetables, clothes, medicine, etc. The goods subject to import and export bans may also be involved. Turkey plays the role of the most important regional "shopping center," with suitcase traders from Bulgaria, Romania, Macedonia, FR Yugoslavia and Albania contributing an important share to the enormous turnover the suitcase trade generates in Turkey (according to the Turkish statistical data, **the volume of suitcase trade is between $8 and 9 billion per year**).

All countries in SEE have been affected with this phenomenon to a greater or lesser degree. In some, however, the suitcase trade reached such proportions that it begun to seriously threaten the local economy. Croatia is such an example. In the second half on the 1990s, Croatia became arguably the most expensive transitional country in which a rapidly growing number of people found it increasingly difficult to get by. The solution was found in the virtually nation-wide phenomenon of "suitcase" smuggling, with scores of Croats daily visiting Bosnia-Herzegovina, Hungary and even Slovenia to buy food and other commodities. The exceptionally high prices in Croatia were partly a result of war and the consequent destruction of industries and infrastructure, and partly of the rampant corruption and the related "tycoonization" of Croatian economy, which resulted in majority of enterprises being plundered and brought to bankruptcy. The resulting corruption of the law-enforcement administration has become extremely difficult to overturn.

For years, Croatian authorities did nothing to curb the "suitcase" trade, despite the losses it was bringing to its domestic production and to the state budget. On the contrary. Viewing the "suitcase" trade as a safety valve for preventing the social upheaval, Croatian authorities even made custom frauds and smuggling much easier by opening around 200 border crossings, of which 108 between Croatia and Bosnia–Herzegovina alone (in addition to numerous official crossings, there were up to 400 unofficial points of entry between Croatia and Bosnia–Herzegovina where goods were smuggled in or out of the country). Only 20 of them were properly equipped for control of passengers and goods. Due to the lack of customs officials, many border crossings were controlled only by the police who rarely did anything but check the identity of the passengers.

Mass smuggling in **Kosovo** represents perhaps even a more pressing problem than anywhere else in the region, because numerous indications exist that it is controlled by the organized crime structures, which have evolved from the KLA and which are closely connected with the local political elites. Kosovo smugglers are making huge profits through customs frauds, which UNMIK (the United Nations Mission in Kosovo) has so far been unable to tackle. In 1996, the governments in Belgrade and Skopje signed an agreement according to which a flat one percent duty is charged on all goods, traded between the two countries. UNMIK respects this agreement and consequently, the same low duty is levied on all imports from Macedonia, Serbia and Montenegro to Kosovo. The duty for imports from all other countries is 10 percent. The smugglers use this and forge documents and stamps to present goods (including even bananas and oil), coming from other countries, as originating in Macedonia. In first four months of 2001 alone, over 200 false certificates, issued by the Macedonian customs authorities, have been detected. The situation is even worse on the "border" with Serbia, where, due to the still unclear status of Kosovo, only semi-official "control points" exist, at which the taxes collected by the "border officials" end up in their pockets, instead of in the Serbian and Kosovar budgets.

Some estimates about the range of suitcase smuggling and customs frauds in **Albania** can be made from the data on collected customs revenues. The reforms in the customs and tax authorities, initiated in 1997 by the new Socialist government with the assistance of international institutions, soon produced some tangible results:

- In 1996, customs revenues were only $10 million.
- From September to December 1997 alone, $28 million were collected.
- However, the estimated losses from **unpaid customs duties for 1998 were still over $80 million,** and the extent of smuggling and corruption in Albania continues to be higher than anywhere else in Europe.

One of the ways to estimate the scope of the suitcase trade is the number of "exits" from the country. In **Bulgaria**, such research was conducted by the Center for the Study of Democracy and based on the information supplied by the National Statistics Institute. In 1996 and 1997 more than 3 million exits were registered. Most of the visits of Bulgarian citizens were made to the neighboring countries: about one third of all departures were to the Federal Republic of Yugoslavia, 17 percent

to Turkey and 15 percent to Romania. In nine out of ten cases, “tourism” was the reason cited for the trip. Yet, “tourism” can be regarded (to an extent) as a valid reason only in the case of Turkey, which is in fact a popular tourist destination. In cases of Yugoslavia and Romania, the numbers offer a very good indication of the potential scope of the suitcase trade. According to this estimates, there is reason to claim that between one fourth and one third of 900,000 people engaged in the private sector are involved in the suitcase trade. This makes it the **largest sector of the Bulgarian economy** in terms of the number of people engaged. A large number of small and medium-sized enterprises in Bulgaria depend on suitcase trade.

Smuggling of Excise Goods

The goods which are smuggled most often are mainly those that tend to undergo transformation, or are completely consumed, when used. Such are fuels and lubricants, alcoholic and non-alcoholic beverages, foodstuffs, raw materials for the production of goods, etc. In other words, when they appear in the market and are sold, they are difficult to identify, and since they subsequently disappear they cannot be tracked down should it be established that they were imported illegally. The second important characteristic of most often smuggled goods are the high import tax and duty rates (so-called excise goods). Cigarettes and other tobacco products have both of these two features. It is thus hardly surprising that cigarette smuggling became one of the most profitable and widespread illegal activities in the region.

The cigarette smuggling in the region involves both the locally produced cigarettes and the major international brands. The schemes for smuggling locally produced cigarettes usually involve “export” to a neighboring country, followed by illegal transport of these same cigarettes back into the country of origin. Cigarette smuggling was facilitated with the existence of several borders in the region, which were deliberately kept porous for political reasons (border between Croatia and the Croat-populated Herzegovina, border between Serbia and the Serb-populated Republika Srpska, and the border between Serbia and post-1999 Kosovo). Another popular customs fraud, used in cigarette smuggling, is to present cigarettes as being produced in a (real or non-existent) domestic factory, and not abroad as it is really the case.

Representatives of the World Bank and the IMF estimate that Bosnia-Herzegovina **loses around $250 million annually** because of the illegal cigarette imports.[1] For example, every month approximately 280 tons of cigarettes, produced in the Croatian tobacco factory *Tvornica duhana Rovinj,* are sold in the republic. However, only around 100 tons are legally imported every month.

After the fall of Milosevic’s regime, the new Serbian authorities took numerous measures to cut the cigarette smuggling channels and to regulate the trade with cigarettes and other high-duty commodities:

- According to the Serbian Prime Minister Djindjic and the head of the Federal Customs Administration Begovic, the share of the illegal cigarettes on the market decreased from 65 to 15 percent by September 2001.
- In 2000, just slightly over $400,000 were collected from duties on cigarette import.
- In 2001, the sum was 32 times larger (almost $13 million).
- In 2001, 5,313 tons of cigarettes were legally imported, against the 3,078 tons for the whole period between 1995 and 2000.
- Numerous arrests were made and over 500,000 boxes of cigarettes confiscated.

Still, according to estimates of G17, a Serbian think-thank involving many of the country’s top economists, Serbia still looses **$120 million annually** in revenues due to the illegal cigarette import.[2]

According to the estimates, **95 percent of cigarettes** smoked in Kosovo were smuggled into the province. Most of these cigarettes entered the province from Serbia.

According to the data of the former Macedonian Interior Minister Trajanov, between June and September 2000 alone, more than 1,300 trucks of cigarettes were exported duty-free to Serbia and Kosovo and then smuggled back into Macedonia.

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[1] Elizabeth Sellwood Oxfam. *“*Policy Recommendations for Sustainable Post-Conflict Reconstruction in South Eastern Europe,*”* *International Security Information Service*. 19 February 2001. <http://www.isis-europe.org/isiseu/conference/conference_3/part_2b_recommendations.html>.

[2] Tatjana Stankovic. "Reforme iza dimne zavese." *AIM Press*. 30 September 2001. <http://www.aimpress.ch/dyn/pubs/archive/data/200109/10930-014-pubs-beo.htm>.

There, they were sold on the market by small traders and street vendors. Trajanov estimates that the organizers of the smuggling (who are, according to him, closely connected to the two ruling parties) pocketed **$57 million of profits.**

One of the biggest **Romanian** smuggling scandals of 1990s involved the illegal import of cigarettes and had dealt a significant blow to the administration of President Constantinescu. It involved smuggling of cigarettes worth several millions USD to Romania through the Otopeni military airport near Bucharest.

According to the most conservative estimates, the annual sales volumes of cigarettes in **Bulgaria** are about $120 million. The imported cigarettes sales amount to 15 percent of the cigarettes sold ($18 million). Yet, in 1998 the value of the legally imported cigarettes was only about $2.5 million, which means that only 14.1 percent of the imported cigarettes, sold in the country, have been registered with the relevant authorities and that the proper taxes have been paid. The situation even worsened in 1999. A comparison shows that the duties paid by October 1999 had dropped by about 35 percent compared to 1998. The cigarette import often involves the most flagrant forms of smuggling, with entire shipments smuggled into the country, with documents being forged with false customs seals and with involvement of ghost companies.

The cigarette smuggling in **Montenegro** has reached such proportions in the last decade that the tiny republic has acquired an infamous name of the "Cigarette Empire" in the international press, with allegations of the direct involvement of the republic's highest government officials in this illegal activity often being made. According to the estimates, Italy looses a few hundred millions USD annually in unpaid taxes due to cigarette smuggling. The German government's customs investigator, dealing with the cigarette smuggling, estimates that in the years 2000 and 2001, the **EU lost $3.4 billion** because of the unpaid taxes for cigarettes smuggled from Montenegro. In December 1999, the former Montenegrin Foreign Minister Branko Perovic was indicted on charges of cigarette smuggling and racketeering by the Public Prosecutor in Naples. In May 2002, the prosecutors in Bari opened an investigation against Montenegrin President Milo Djukanovic in regard with his alleged involvement in a cigarette smuggling ring and links to organized crime.

Figure 2: Heroin smuggling routes through Southeast Europe

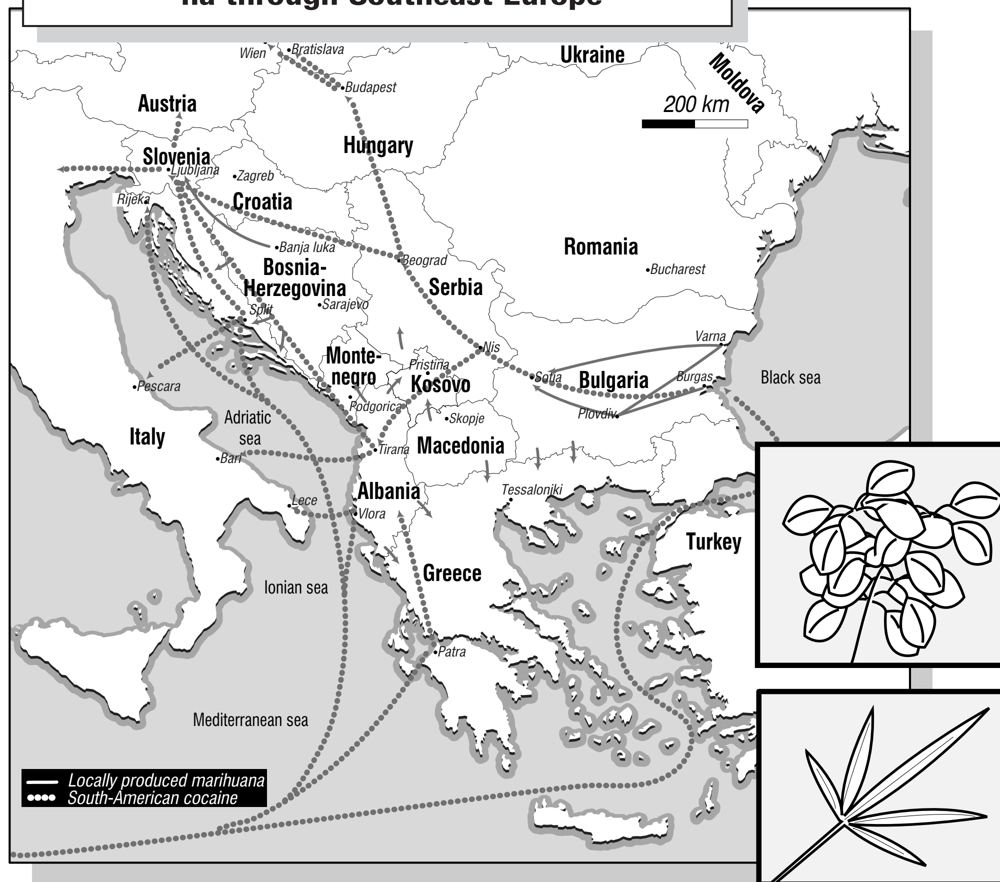
The Smuggling of Illicit Drugs

The Southeastern Europe is a bridge between the Middle Eastern and Central Asian drug producers and the Western European drug consumers. The heroin produced in Afghanistan travels through Iran to Turkey, where it is refined, and then to Bulgaria.

Bulgaria is the crossroads where three main drug smuggling routes through the Balkans separate:

■ The bulk of the Asian heroin traveled from Bulgaria through the former Yugoslavia prior to 1991. During the war in Croatia and Bosnia-Herzegovina, this route was temporary cut off and two alternative routes took over its predominance. After 1995,

Figure 3: Smuggling of cocaine and marihuana through Southeast Europe



this “classical” route was again revived, and after 1997, a sharp increase in drug traffic through former Yugoslavia was noticed, testified with the increasing number of drug seizures, as well as with a drastic increase in drug consumption in the major urban areas.

- The northern route leads through Romania and from there either through Hungary to Czech Republic and Slovakia (and from there to EU countries) or through Ukraine to Poland (and from there to EU).

- The southern route leads from Bulgaria through Macedonia and Kosovo to Albania. After becoming de facto independent from Yugoslavia in 1999, **Kosovo** reaffirmed its “role” as the center of the Southeast European drug smuggling networks. The International Narcotic Enforcement Officers Association estimates that the Kosovo mafia handles between **four and a half and five tons of heroin monthly** now, which is more than double than before the 1999 war. The drug smuggling is closely connected to the 2001 conflict in **Macedonia**. Numerous indications exist that like the KLA, the so-called National Liberation Army in Macedonia was closely connected with the drug trade.

One of the consequences of the war in the former Yugoslavia was that now the illegal drug trade encompasses all the countries in the region. Political instability, poverty, corruption, weak democratic institutions, insufficient and poorly equipped security forces and ill-guarded, porous borders made the region ideal for drug smuggling.

The drug trade enabled the international organized crime (especially the Italian mafia, and Turkish and Middle Eastern drug smuggling networks) to establish its presence in the region, adding further incentive to the vicious circle in which corruption and organized crime reinforce each other. Traffic of heroin through the region represents the biggest problem, but it is far from being the only one:

- According to Interpol estimates, over 80 percent of heroin, sold in the EU, has traveled through Balkans.

- Some of the regional countries, most notably Croatia and Albania, also became the most important European points of entry for the South American cocaine.

- The Southeast Europe has also turned into an important drug producing region, especially of cannabis and opium poppies.

- Laboratories for production of synthetic drugs have also appeared.

- The increased traffic in drugs has led to increased local drug consumption, and especially the pace at which heroin abuse is spreading is alarming.

Trafficking in Human Beings

Trafficking in people is growing with alarming speed. It includes the transfer of illegal immigrants, women to be engaged in prostitution, labor force to work under inhuman conditions, trafficking in children, and illegal adoptions at exorbitant prices. The illegal flows are under control of organized crime. Trafficking in people involves officials from passport control services who accept forged identification documents. The persons involved in trafficking in people often have double citizenship and use different names. Involved in the traffic are companies providing visa services and tourist agencies. Traffickers use networks of trusted hotel owners and people renting private lodgings.

The clandestine leading of people across the border is done by traffickers that are often repeat offenders who continue to engage in this type of activity. The crossing of the border by land is typically done in groups led by a guide who is familiar with the area to be traversed. He is connected to a centre of operations in one of the large cities where the grouping of the potential migrants is carried out. Candidate migrants usually have a meeting point – a railway station, restaurant, or private house. There they are boarded on means of transportation and finally placed in the charge of the guides. The channels for the trafficking in people are controlled by organized crime and the organizers inside the country as a rule get a share of the proceeds.

The trafficking in people is very often done in secret compartments of buses and trucks. Typically the “shipments” are accompanied by the organizers of the channel or other trusted individuals by car. They escort the “shipment” to the border checkpoint and wait until the vehicle crosses the border. The clandestine migrants are often accompanied by their children, have little baggage and carry no money or identification papers with them. Young women who have been kidnapped and forced to engage in prostitution also cross the border illegally.

Trafficking in Illegal Immigrants

According to the UN Office for Drug Control and Crime Prevention, human trafficking is the fastest growing criminal business in the world. Southeast Europe is one of the most important transit regions for illegal immigrants from Turkey, China, Iran, Pakistan, Bangladesh, Iraq, Afghanistan, and other Middle Eastern and Asian countries on their way to the EU. It is also an important source region, with Romanians, Albanians and Roma being among the most numerous groups of illegal immigrants in the EU. Among the reasons for the exceptionally fast growth of human trafficking business is that the profits are incomparably higher than risks and costs involved. Unlike drug smuggling, human trafficking is considered in most countries as a minor infraction which carries light sentences. No special equipment is needed and no organized network for distribution (like in the case of drugs) is essential. In case of danger, the immigrants (who pay in advance for the “service”) can be easily abandoned by their guides, and in practice, they often are. The financial gains made through the trafficking are enormous. Estimates, based just on the recorded cases (40,000 immigrants) only in Austria only for the year 1999, gave figure of $100 million. For the whole EU, estimates are that **traffickers earned $3 billion in 1999.**

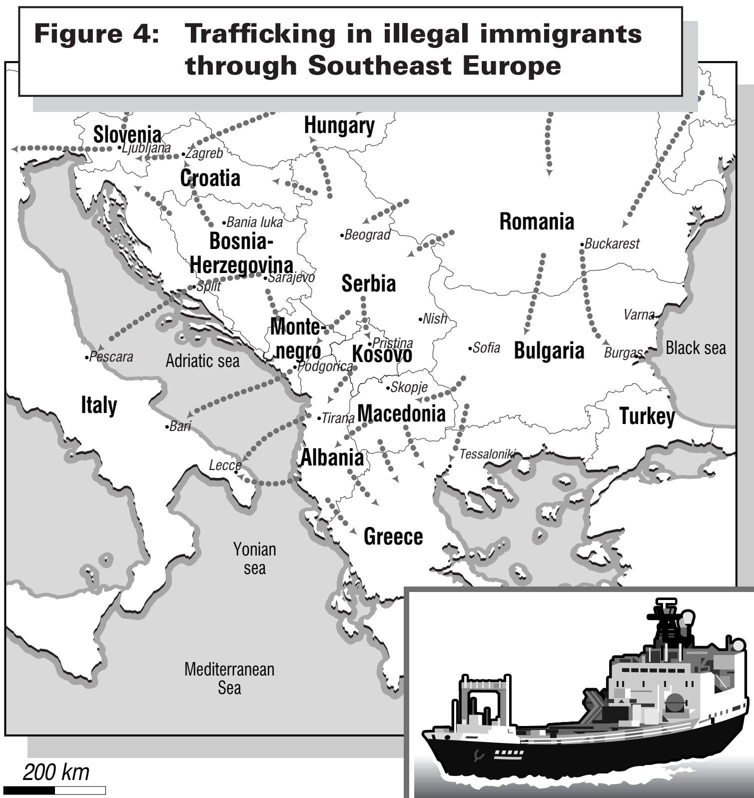


Figure 4: Trafficking in illegal immigrants through Southeast Europe

Due to their location, Bulgaria and Romania are the most important entry points for illegal immigrants. Until recently, Bosnia-Herzegovina and Serbia were also significant entry points for numerous immigrants –

most notably for Iranians (Bosnia) and Chinese (Serbia). The most popular land route leads from Bulgaria and Romania through Serbia, Bosnia-Herzegovina, and Croatia to Slovenia, and from there to Italy and Austria. Many illegal immigrants travel also across Hungary. Equally important is the route across the Adriatic Sea. Numerous routes from Bosnia, Serbia and Bulgaria (via Macedonia) therefore lead to Montenegro and Albania, where well-established channels for clandestine traffic across the sea exist.

The trafficking in illegal immigrants through Southeast Europe seems to be organized by the same groups who were previously engaged in smuggling of weapons and drugs or in “assisting” refugees to reach safety for a price during the war. Similarly, the same routes are being used and the same partners from the other side of the border are involved. This seems to be especially the case in the countries of the former Yugoslavia. In Montenegro and Albania, the traffic in illegal immigrants across the Adriatic Sea to Italy is organized by the same people who are engaged in smuggling of drugs and cigarettes to Italy. Additional proof that the same people are really involved is offered by the findings of the Italian authorities. According to the former Italian Finance Minister, the gangs, operating the smuggling across the Adriatic Sea often combine two businesses – the trafficking in illegal immigrants and the smuggling of drugs. Italian police has caught immigrants with heroin in their backpacks. The explanation for this is that they are forced to act as couriers to pay for their passage.

Trafficking in Women and Girls for the Sex Industry

Trafficking in women and girls for the sex industry represents an even more alarming and disturbing aspect of the trafficking in human beings. In most cases, it involves coercion, violence and humiliation of the victims. Trafficked women and girls are often forced into prostitution, held in slave-like conditions, and repeatedly raped, brutalized, denied food, water, sleep and medical care, and sold like property by one brothel owner or trafficker to another. Many of them are girls under 18 years of age, and numerous were either tricked to leave their homes (with false promises of well-paid employment or marriage) or kidnapped. In Albania and Kosovo, cases when families sold their own daughters or sisters to traffickers were registered. By various estimates, hundreds of thousands of women and girls are trafficked across European borders every year. In most cases, women and girls from Eastern Europe are trafficked to the EU, but many (especially from the former Soviet Union) are trafficked also to other Eastern European countries and “employed” in sex industry there. Often, the trafficked girls are forced into prostitution in Eastern European countries for a certain period while on their way to the EU.

Figure 5: Trafficking in women through Southeast Europe

In recent years (after the end of the war in the former Yugoslavia), trafficking in women from, into and through Southeast European states rapidly increased. The successor states of the former Yugoslavia (especially those with the significant international presence) have become important destination countries for women and girls from Ukraine, Russia, Moldova, and Romania. Belgrade became one of the most important transit centres. Due to their location, Bulgaria, Macedonia, and Albania also became crucial transit countries for trafficked women.

Considering the alarming pace with which trafficking in women and girls is spreading, and the horrifying ordeal the victims of trafficking have to go through, the realization of how little has actually been done by the

regional governments to fight trafficking comes as a shock. In most of the countries, trafficking is still considered as having a lower priority as compared to the fight against more "serious" crime like the drug smuggling.

* * *

The above should be ample evidence that the most potent source of corruption pressure in the countries of Southeast Europe occurs on a transnational basis, mostly from cross-border crime. This has its roots in the particularly violent transition from communism to democracy which allowed well-integrated regional criminal networks to emerge, primarily with the support of political elites in these countries.

This process has affected **all** countries in the region, albeit through different mechanisms – either as part of the achievement of state independence or as abusing the opportunities provided by the international embargoes. Nevertheless, transition developments in the countries have taken different shape and were implemented with varying speed. Thus, while this section reviewed the **regional** sources of corruption, the rest of the report will summarize the **national** institutional and legal environments against which these regional processes develop.

III. REGULATORY AND LEGAL FRAMEWORK FOR ANTI-CORRUPTION

The shortcomings of the laws and other regulatory instruments are particularly well exploited by those involved in corrupt practices. In order to minimize the conditions favorable to corruption and to devise mechanisms of control over corrupt practices in the SEE countries it is necessary to undertake a comprehensive reexamination of the existing legislation in terms of sanctions and prevention, as well as envision the appropriate legislative changes.

This chapter presents a general overview of the existing anti-corruption legislation and its implementation. The main objective of the analysis is to outline the common problems and the specifics in the individual countries and to formulate recommendations regarding the future development of the legislation and its effective implementation. The most important issues examined are:

- **Anti-corruption policy**, including the adoption and implementation of anti-corruption strategies and special anti-corruption laws and instruments as well as the establishment of special anti-corruption bodies;
- **Criminal law**, including the sanctions and other criminal law measures in areas often marked by corrupt actions;
- **Criminal procedure** with a special focus on the guarantees for openness and transparency of the criminal proceedings;
- **Civil law and procedure**, including the laws and regulations concerning business transactions, company and property registration, impartiality of the court and speed of the proceedings, as well as execution of judgments as a part of civil procedure.

3.1 Anti-Corruption Policy and Special Anti-Corruption Laws and Instruments

Anti-Corruption Strategies

In most of the countries in the region special instruments regarding the fight against corruption in the form of strategies and action plans have been recently adopted or are in process of preparation. Although these documents are not pieces of legislation they have considerable anti-corruption significance since they provide analysis of the current situation in the respective countries, outline the activities and measures to be taken including legal reforms, and specify the institutions responsible for their implementation.

In **Bulgaria** the first anti-corruption activities were initiated by the non-governmental sector in early 1997 and resulted in launching in the spring of 1997 of the *Coalition 2000*[3] anti-corruption process – an initiative of Bulgarian non-governmental organizations aimed at limiting corruption in Bulgarian society through the development of public-private partnership between state institutions, non-governmental organizations, and individuals. Within the framework of *Coalition 2000* an Anti-Corruption Action Plan for Bulgaria was developed and endorsed by a Policy Forum in November 1998. The Anti-Corruption Action Plan successfully became part of the social agenda as a broadly approved system of measures and actions for curbing the extremely dangerous social phenomenon of corruption. Parallel to the elaboration of the Action Plan *Coalition 2000* experts developed a Corruption Monitoring System, which represents a system of empirical studies and analytical reports aimed to regularly present information about the scope of corruption in the country and the public attitudes, assessments and expectations. Each year, starting with 1999, the basic findings of the Corruption Monitoring System have been incorporated in a Corruption Assessment Report, which presents a general evaluation of the state and dynamic of corruption in Bulgarian society and of the efforts to counteract corruption in the respective year.

On October 1, 2002, Bulgarian Government adopted a *National Anti-Corruption Strategy* aimed to facilitate comprehensive measures for achieving greater transparency and accountability of the functioning of the state. The Strategy incorporated many of the measures proposed by *Coalition 2000* Action Plan of 1998. Following the

[3] For more information see www.online.bg/coalition2000.

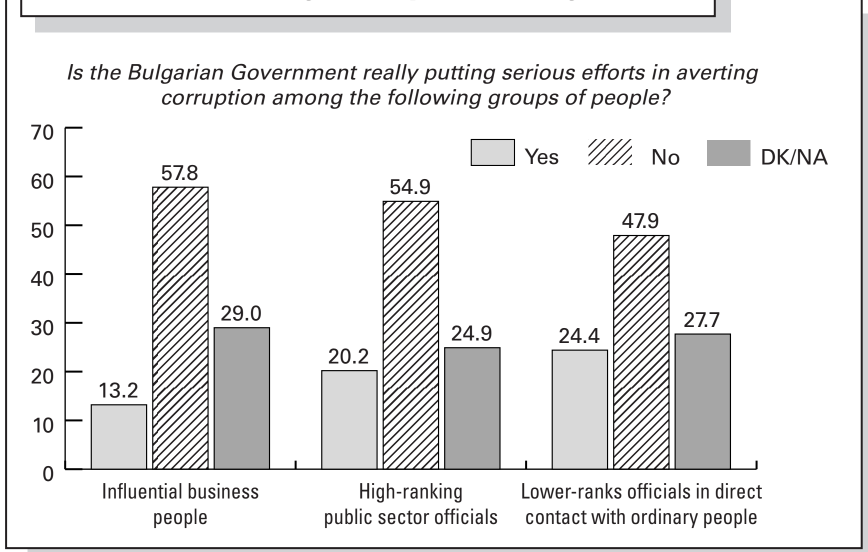


Chart 1: Evaluation of Government Efforts in Preventing Corruption – Bulgaria (%)

adoption of the Strategy, the Government adopted a *Program for the Implementation of the National Anti-Corruption Strategy* and appointed a special Committee for Coordination of the Anti-Corruption Activities, chaired by the Minister of Justice Mr. Anton Stankov. An Operations Plan for Execution of the National Anti-Corruption Strategy was recently developed by a joint task force including experts and representatives of state institutions and non-governmental organizations. The first measures for the implementation of the Strategy included amendments to the criminal legislation, the *Law on the Judiciary* and the *Code of Civil Procedure*.

In **Republic of Croatia** a group of independent experts to the Ministry of Justice, Administration and Local Self-Government, supported by the Government, prepared a National Anti-Corruption Program entitled *Anti-Corruption Action Plan* that is currently in Parliamentary procedure.[4] The Program explains the harmful consequences of corruption and contains a comprehensive Action Plan for fighting corruption with determined tasks, responsible task carriers and timing. Tasks are directed towards establishing the rule of law and improving its effectiveness, establishing of a specific body specialized in the prosecution of cases of corruption, raising the efficiency of the criminal prosecution of corruption, developing organizational measures in the administrative system, decentralization, financial responsibility measures and other economic measures, as well as stimulating political and civil responsibility, and international activity.

In **Romania** the elaboration of an *Anti-Corruption Strategy* was launched by the Government in 2001. The Strategy includes the goal of improving the legal framework related to the prevention and sanctioning of corruption, development of the most appropriate infrastructure for fighting corruption and organized crime, continuous training of persons involved in the fight against corruption, and ensuring transparency.

In November 2001 the Government of the **Republic of Serbia** launched an Anti-Corruption Initiative including five basic tenets for fighting corruption. These are: 1. securing the institutional frame (court reform, strengthening parliamentarian control); 2. reform of the public administration (imposing internal and external budget control, control of the state services); 3. economic reform (macroeconomic stabilization, liberalization, fiscal reform, privatization); 4. motivating the participation of civil society (affirmation of media freedom, encouraging NGO campaigns); 5. affirmation of the political environment that favors the fight against corruption (political party financing, conflict of interest regulation).

The Anti-Corruption Initiative of the Serbian Government is divided into two segments: *counseling initiative* and *operative initiative*.

- Under the counseling initiative in November 2001 the Government formed the *Council for the Fight against Corruption.*

The role of the *Council* is to give recommendations to the Government for formulating and implementing the national anti-corruption strategy and policy. The Council has also an obligation to monitor concrete measures implemented by the Government on stopping corruption, and to evaluate and give suggestions for their improvement.

Following the request of the *Council* in January 2002, the Government has announced publicly all information on the participation of higher state officials in boards of directors of publicly owned companies, which was one of the major media events.

[4] The Program could be found at www.transparency.hr

Information showed that high state officials have several functions which created numerous controversies in the public. As a result the *Council* gave initiative for *Avoiding Conflict of Interest Law*. At the initiative of the *Council*, the Government formed a work group, including two representatives of the *Council*, which started to prepare the draft law. The *Council* also initiated *Registering State Officials' Property Law* and *Financing Political Parties Law.*

However, in order to further increase the effectiveness of the Council it is necessary to improve its financial independence.

- Under the operative initiative, the Government of the Republic of Serbia has formed the *Committee for the Fight against Corruption.* The *Committee* has formed specilaized teams to fight corruption: *anti-corruption teams* and *task force team*.

The *anti-corruption teams* are made up of the representatives of the Ministry of Interior Affairs and the Republic of Serbia's State Prosecutor Office. Up to date, 26 teams have been formed in the offices of the Ministry of Interior Affairs in all the larger cities of Serbia. At the disposal of the public are special phone numbers, which have been publicized in all media, and through which the citizens can report any case of corruption that they encounter. In the first 15 days of the functioning of the teams, there have been 456 reports of corruption, which resulted in 10 prosecutions against 13 individuals. Plans have been made for greater media promotion of the teams to increase their effectiveness.

The *task force team* is made up of the government and the non-government sector. The main function of the group is to facilitate and ease the communication flow between various state institutions and with the civil society. The members have been selected from the most important Federal and Serbian state institutions, NGOs, unions and the commercial community. This group has also a wide action implementation initiative, its members having experience and first hand knowledge of corruption in the Serbian community.

The Ministry of Finance and Economy of the Republic of Serbia is the main Government coordinator of the State's fight against corruption. The Ministry is the home to the *Anti-corruption Office,* which is the headquarters for the *Council for the Fight against Corruption* and the *anti-corruption task force*. The *Anti-Corruption Office* is designed to secure the information flow between all the parties involved, coordinates relations with the media and civil society, and manages international relations concerning the Government's anti-corruption initiatives.

Special Anti-Corruption Legislation

As to the special anti-corruption legislation most of the countries in the region have preferred the approach of incorporating individual anti-corruption provisions in the newly adopted or already existing laws and regulations rather than adopting special anti-corruption laws. According to the prevailing opinions in these countries an anti-corruption law will make little sense in a legal culture and environment marked by uncompleted overall legal reform and ineffective law enforcement.

In **Bulgaria** a *Draft Law on the Fight against Corruption and Financial Crime* was developed and introduced in Parliament in 1999 providing for the setting up of a special Government *Agency for the Fight against Financial Crime and Corruption* (financial police). The agency was designed as a specialized division within the Council of Ministers, and thus subordinated to the executive. However the draft did not gain the support of neither the policy makers' community nor the civil society and was not further discussed in the National Assembly. Thus Bulgaria followed the approach of developing the whole spectrum of laws and institutional preconditions necessary to create an environment unfavorable for corruption instead of adopting a special anti-corruption law and creating a separate anti-corruption institution.

So far only in Macedonia and Romania parallel to this approach special anti-corruption laws have been adopted.

In **Macedonia** a *Law against Corruption* has been adopted by the Parliament on April 26, 2002, providing for the establishment of a *State Commission against Corruption.* The Commission consists of seven legal and economic experts appointed by the Parliament. Under the Law there is an obligation for property disclosures for the politicians and other officials holding a high position. The members of the Commission shall be appointed within 6 months after the Law enters into force, which indicates that the Law shall not apply for the politicians and senior officials, who were in power until the parliamentary elections in September 2002. The opposition, media, NGO and experts have broadly criticized such unfavorable solution, which shows that the Government had no political will to combat corruption within its own ranks.

The **Romanian** National Assembly adopted a *Law on Fighting against Corruption and Organized Crime (78/2000*), which is supposed to bring some coherence in the legislative acts regulating this issue. It is also aimed at strengthening judicial control over a wide range of public positions by creating a *Special Department for Fighting Corruption* reporting to the Supreme Court of Justice. For the first time local units were created within county courts and special judges were appointed together with experts from various fields (i.e. public finance, banking system, and customs) to deal with important cases of corruption. However, the organization of local offices encounters difficulties and the judges complain that there is lack of notifications "from reliable sources" on such cases. Therefore, no major investigation was yet initiated.

Also in Romania the Government adopted in early April 2002 an emergency ordinance for setting up a *National Anti-Corruption Prosecutor Office (NAP)* that will go into operation from September 1 this year. NAP will deal with such practices as accepting and offering bribes, abuse of power, fraud, embezzlement, money laundering, tax evasion, criminal association and stealing of classified information from banks and other industries. The anti-corruption body only deals with criminal cases involving material losses of more than 100,000 Euro, or having a large impact in society. Moreover, NAP will deal with crimes committed by parliamentarians, government officials, judges and those who hold leading posts in public institutions, independent accounting departments and banks. NAP was set up as an independent branch of the Romanian Public Administration Ministry and is made up of 75 prosecutors, 150 police officers and 35 other specialists. The head of NAP will be appointed by the country's president and perform his duty upon authorization by the Minister of Justice.

3.2. Criminal Law and Procedure

Corruption is a serious crime, threatening the efficient and honest service to the population, undermining law enforcement and the respect of law. In the private sector it increases the costs of doing business which has adverse effects on trade and industry and the gross domestic product. When corruption has developed into system of the public administration and the private trade and industry, the criminal law approach has to be supplemented by broader measures, such as education to bring the values of decent administration, impartiality and fair-trading to life again. The attack on the system of corruption has to be supported also by the broader public, which has to develop a critical awareness towards shady dealings. Nowadays, there is almost no field in society where there is no corruption.

Criminal law has the most direct impact on the problems of corruption and is among the most important tools the legal system has to offer in the fight against corruption. Although the term "corruption" is not defined in the criminal legislation of most of the countries in the region their criminal laws include a number of provisions aimed at sanctioning various corruption related offences. In the last few years most of the countries have focused their efforts on amending the relevant criminal legislation in order to provide criminal sanctions for the largest possible range of corrupt practices and to introduce the European and international standards.

Sanctioning of Corruption Related Offences

The criminal laws of all SEE countries provide for the imposition of sanctions in cases of corruption related offences. Although the penalties provided in the laws of the individual countries differ in terms of type and amount most of the countries envisage either deprivation of liberty or imposition of fines for the offenders.

In **Albania**, the new *Criminal Code* in force since June 1995 included numerous provisions that attempted to prevent and punish corruption in the state administration and the civil service. Incriminated are the following offences:

- Offering a bribe (Articles 244) – the proposal for remuneration, gifts, or other benefits made to an official holding a state function or public responsibility, with a view to have the later act or refrain to act against what is expected from him by law, or to use his influence towards other authorities in order to obtain favors, courtesies, and any other benefits;

- Asking or receiving a bribe (Article 319) – asking for or unlawfully receiving remuneration, gifts, or other benefits, as well as procuring promises to get them, by the judge, the prosecutor, the defense attorneys, the experts, and/or every arbitrator assigned to a case, with the intent of carrying out or avoiding to carry out an act that is connected to their function.

The offering of bribe is punishable by a fine or up to 5 years of imprisonment, while the penalty provided for asking or receiving bribes is 5 to 10 years of imprisonment. These provisions give the courts considerable flexibility and leverage to

impose criminal penalties in cases of actual or attempted corruption in areas as different as public procurement, judicial proceedings, public works, money laundering, etc. It is also important to mention that the Law provides effective tools to offset corruption incentives in the judiciary system.

However Albanian criminal law has failed to provide a resolute response to the endemic corruption in the country. At least one reason for the relative ineffectiveness of the Albanian criminal law in the efforts to reduce corruption is of an objective nature: corruption deals are always kept in the dark. Secondly, pervasive corruption in the judicial system is also determined to a considerable extent by the diluted professional standards that are common among judges, prosecutors and (to a less extent) defense attorneys.

The segment of crime control in **Bosnia and Herzegovina** is a responsibility of the individual Entity Governments while at the state level cooperation was until recently minimal or nonexisting. On the other hand, criminal law was designed as an Entity matter and, therefore, we could until recently talk literally of two separate criminal justice systems in Bosnia and Herzegovina.[5]

As the country moves towards a greater degree of political confidence so is the inter-Entity crime on the rise too. Therefore the Ministry of Civil Affairs and Communications, being one of the six joint ministries, in collaboration with Office of the High Representative (OHR) will propose a Criminal Law of BiH regulating cross-Entity crime and corruption. *Inter alia*, it will handle money laundering as a criminal act, as well as the legal responsibility of individuals in criminal acts.

Meanwhile, RS has adopted a new *Criminal Law* in 2000, which engulfed provisions on: stock exchange dealings, forged bankruptcy, misuse in the liquidation procedure etc. Following the adoption of the *Criminal Law* of BiH, RS through its Ministry of Justice is likely to take over certain provisions its current law may be lacking.

In FBiH the Law will be amended before the year's end, which should cater for: money laundering, criminal acts relating to bankruptcy, stock exchange related activities, criminal acts through the privatization process (currently only valid until 2003, i.e. until the privatization process was deemed to be accomplished). These amendments will reintroduce confiscation of property for those activities, which led to illegal extra profits. It will take over certain provisions of the Council of Europe *Criminal and Civil Law Conventions on Corruption*. Generally speaking, the aim of these revisions is to increase penalties for illegal corrupt acts and it will be harmonized with the BiH *Criminal Law*.

Currently both Laws in RS and BiH respectively penalize equally those who give and take bribe and do not differentiate between these two categories.

The **Bulgarian** *Criminal Code* envisages criminal sanctions for several corruption related offences. The most important of them are as follows:

[5] A very important factor for understanding the complexity of crime control in Bosnia and Herzegovina is the internal political organization of the state and the present state of affairs in the country. Bosnia and Herzegovina (BiH) has been, ever since the signing of the Dayton-Paris Peace Agreement (DPA) in December 1995, administratively divided into two constitutional Entities with very high level of autonomy. While six ministries exist at the joint state level, the real authorities lay in fact with their counterpart ministries in Federation of Bosnia and Herzegovina (FBiH) and Republika Srpska (RS). Moreover, FBiH being a federal unit of the Bosnian Muslims and the Croats is further divided into ten Cantons, each of which has its own constitution, parliament, government, and other decentralized institutional features. FBiH was granted 51 per cent of the BiH territory by the DPA. The RS with 49 per cent of the land is far more centralized and has no cantonal structure, yet simply municipalities as the only local political level. In most of BiH and particularly FBiH the division of competencies is not fundamentally clear, which makes any proper administrative regulation rather difficult. The current political settings have dominated over the post-civil war period and it is unlikely to change since it is a product of the painstaking political consensus reached after the guns were silenced. Attempts to streamline the political and legislative processes in such a complex environment have been in the forefront of the country authorities' efforts together with the large donor community present in BiH. The interactions between these two factors have very much determined the development of the country and tackling of the problems. However, it is very worth noting that the international community has treated BiH as a semi-protectorate with its vast range of powers, vested primarily in the High Representative and his office (OHR) that has been imposing laws, permanently removing elected officials and appointing new ones to the top positions in the country. The international community has also played a pivotal role in the design of the anti-corruption strategy, individual laws directly or indirectly tackling the issue as well as in the overall guidance, monitoring and revision.

Most of the regulations and legal acts were inherited from the former Socialist Federal Republic of Yugoslavia, as the war begun immediately after the disputable declaration of the BiH independence. Consequently, the conditions to build a new regulatory system had never been established properly. Reconstruction and building of a new regulatory system was one of the most important tasks in the last couple of years for both Entities and their Governments, as well as for the State administration. No major player was prepared to do a complete legal revamping of the country and repeal most of the old, socialist legislation and so the process took a long time in adjusting the individual pieces of laws, then harmonizing them among the different political levels and finally, bringing them in line with the EU directives. Often, legislation would change several times which has additionally caused insecurity, as the system kept transforming.

- Racketeering (Article 213a) – threatening a person with violence, with making public some disgraceful circumstances, with inflicting damages on property or some other unlawful actions of grave consequences for that person or his relatives for the purpose of forcing this person to dispose of an article or a right or to undertake a property obligation;

- Blackmail (Article 214) – compelling somebody by force or threat to do, to fail to do or to suffer something contrary to his will and thereby inflicting material damage to that person or to another, for the purpose of procuring material benefit for oneself or for another;

- Accepting a bribe (Article 301) – accepting a gift or any other undue material benefit by an official: a) in order to perform or to fail to perform an act connected with his service, or because he has performed or failed to perform such an act; b) in order to violate, or for having violated his service, where this violation does not constitute a crime; c) in order to perform or because of having performed another crime in connection with his service. Accepting a bribe also includes the cases where the gift or material benefit has been given to another person with the consent of the respective official. The punishment for accepting a bribe is also imposed to an expert, appointed by a court, institution, enterprise or organization where he perpetrates such acts in connection with the tasks entrusted to him.

- Giving a bribe (Article 304) – giving a gift or any other material benefit to an official in order to perform or not to perform an act within the framework of his service, or because he has performed or has not performed such an act, including the cases where in connection with the bribe the official has violated his official duties. The provision applies also as regards to giving a bribe to an expert, appointed by a court, institution, enterprise or organization. However no punishment is imposed on a person who has given the bribe, if he had been blackmailed by the official or by the expert to do so or if he has informed the authorities of his own accord.

The penalties, provided for racketeering and blackmail, include deprivation of liberty from 1 up to 30 years (including life imprisonment for the cases where the offence has been accompanied by murder or attempt to murder) and imposition of fine in the amount of BGN 500 up to 10,000. In some of the cases the court may also rule confiscation of the whole or a part of the property of the perpetrator. The main penalty provided for bribery is deprivation of liberty (up to 30 years for particularly grave cases). Confiscation is also envisaged for some of the offences. A specific penalty as regards to bribery offences is the deprivation of specific rights such as the right to occupy certain state or public position and the right to exercise certain profession or activity.

The following tables provide some statistical data on the number of criminal cases for blackmail and bribery for the period 1999 – 2001.

Table 3: Criminal Cases for Racket/Blackmail under Section V "Blackmail" of the Criminal Code (Articles 2130-2140)

Courts	Year	Cases opened	Cases closed	Persons Sentenced					
				Total	Up to 3 years deprivation of liberty	From them: sentences on probation	3-10 years deprivation of liberty	10-30 years deprivation of liberty	Other penalties
Regional Courts	1999	56	18	22	20	11			2
	2000	52	21	31	24	18			7
	2001	73	26	29	19	13	2		8
District Courts	1999	39	15	15	9	7	4	1	1
	2000	46	19	28	21	17	5	1	1
	2001	34	14	13	9	5	1		3
Military Courts	1999	8	1	2	1				1
	2000	11	2	8	7	5			1
	2001	13	1	2	2	2			

Table 4: Criminal Cases for Bribery under Articles 301 - 305a of the Criminal Code

Courts	Year[6]	Cases opened	Cases closed	Persons Sentenced					
				Total	Up to 3 years deprivation of liberty	From them: sentences on probation	3-10 years deprivation of liberty	10-30 years deprivation of liberty	Other
Regional Courts[7]	2000	16	11	9	4	3	1		4
	2001	11	6	8	1	1			7
District Courts[8]	1999	47	27	25	21	19	1	2	1
	2000	48	27	31	23	23	1	1	6
	2001	29	12	9	5	4	2		2
Military Courts[9]	1999	21	15	16	14	12			2
	2000	20	10	7	6	3			1
	2001	28	12	17	16	12			1

In the year 2000 the **Bulgarian** *Criminal Code* was amended on two occasions. The first set of amendments (in effect from March 21, 2000) enhanced the criminal measures in areas often marked by corrupt actions. They affected drug trafficking by incriminating two new aggravated offences – enticing or forcing someone to take drugs. The sanctions were increased and the forms of crime were expanded relative to the theft of motor vehicles and smuggling. The imprisonment previously imposed for libel and slander was replaced with fine and such crimes will now be prosecuted on a complaint of the victim. The second set of amendments to the Criminal Code (in effect from June 27, 2000) increased the sanctions for bribery. Aggravated crimes were introduced, as well as criminal liability for the officials. Two completely new offences were incriminated – promising and offering bribes. The act of the official who has asked for or has accepted a bribe is criminalized. A scope, in cases of active bribery of foreign officials and outside the carrying out of an international commercial activity, has been broadened. Incriminated were also the acts of promising and offering of bribes to foreign officials. The provision on what is known as "loyalty check" (provocation to bribery) was substantially improved.

The ratification of the *Criminal Law Convention on Corruption* of the Council of Europe in 2001 was a significant step forward as well.

As a follow-up to the adoption of the Government's *National Anti-Corruption Strategy* the Council of Ministers upon proposal by the Minister of Justice submitted to the National Assembly a *Draft Law on Amendments to the Criminal Code.* Most of the amendments proposed are in compliance with the international anti-corruption instruments such as the Council of Europe *Criminal Law Convention on Corruption* and the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.

The most important amendments, currently in process of discussion in the National Assembly, envisage:

- broadening the scope of the definition for "foreign public official" by including the officials of international parliamentary assemblies and of international courts (Article 93);
- incriminating the bribery in the private sector (Article 225c);
- including the nonmaterial benefits or services as possible subjects of bribery;
- incriminating the passive bribery of foreign public officials (Article 301, paragraph 5);
- incriminating the trade in influence and the exercising of influence with the purpose of receiving benefits (Article 304b);

6 No data for cases for bribery in Regional Courts for 1999.

7 Regional Courts hear cases for bribery under Articles 304, 305 and 305a of the *Criminal Code*.

8 District Courts hear cases for bribery under Articles 301-303 of the *Criminal Code*.

9 Military Courts hear cases for bribery under all articles of the *Criminal Code*.

- incriminating the bribery of arbiters and in certain cases the bribery of defense attorneys (Article 305);

- making bribery committed by a magistrate (judge, prosecutor or investigator) as an aggravated offense;

- repealing the provision of Article 307 on the inducement to bribery.

- increasing the sanctions for bribery of magistrates – judges, prosecutors and investigators (Articles 302 and 304a).

Another part of the amendments proposed are aimed to comply with the *UN Convention against the Transnational Organized Crime,* the *International Convention on Combating Bomb Terrorism,* the *Protocol against the Illegal Trafficking of Migrants by Earth, Sea and Air, Protocol on Prevention, Counteraction and Punishment of the People Traffic, especially of Women and Children, supplementing the UN Convention against the Transnational Organized Crime*, all of which were ratified by the National Assembly in 2001.

With the forthcoming amendments to the Criminal Code the main forms of corrupt behavior are expected to be covered to a fuller extent. Nevertheless, in order to improve the legislative rules on bribes (often perceived as a synonym to corruption) some more steps should be undertaken concerning the sanctioning of illegal funding of political parties and more precisely defining the term "public officials" as major subjects of passive bribery (at present, for instance, it could be disputed if a MP or a municipal counselor is a "public official" who could be the perpetrator of passive bribery under the present language of Article 93 of the *Criminal Code*). As much as the titles of the chapters in the *Criminal Code* provide guidance in the interpretation of their content it would also be good if the title of the chapter, which deals with bribery, were amended to include the opportunities for bribery in the sphere of the economy as well. Another necessary step is the regulation by law of administrative liability (imposition of monetary penalties) for legal persons whose senior officials and representatives have committed crimes of corruption for the benefit of those persons.

In the **Croatian** *Criminal Law* (adopted in 1997 and amended in 1998 and 2000) there is no legal definition of corruption, but conventionally it is regarded as offering and accepting bribes (Articles 347 and 348); illegal intercession (Article 343), abuse in performing governmental duties (Article 338), abuse of office and official authority (Article 337), concluding a prejudicial contract (Article 294), disclosure of an official secret (Article 351), and disclosure and unauthorized procurement of a business secret (Article 295). Each of the above specifications reveals an individual element of the phenomenon of corruption, and although disputes can occur over its definition, what is indisputable is that corruption causes social and political damage and that it exists in the Republic of Croatia.

A *Draft Law on Criminal Liability of Legal Persons for Criminal Offences* is currently being prepared by a governmental working group and is expected to be adopted soon. The Draft Law provides that all legal persons, including foreign legal persons, can be held criminally liable. The criminal liability of legal person would be an indirect liability, as it would be incurred only through the conduct of a natural person, authorized to represent the legal person or acting in the framework of the legal persons' activities. The material conditions as to the imputation of the liability to the legal person are still under discussion. On this particular point, the drafting team was inspired by the French and Slovenian legal models. Regarding sanctions on legal persons, the principal sanction provided by the Draft Law would be a fine of a maximal amount of 4 million KN (approx. 550,000 Euro). Other penalties are also envisaged, such as dissolution, placing under judicial supervision, disqualification from the practice of certain activities, confiscation of the proceeds from the offence, interdiction to obtain licenses, grants, etc.

According to estimation by OECD (OECD, 2001) Croatia now possesses a relatively sophisticated criminal legislation and a relatively comprehensive anti-money laundering legislation. Although the laws could be estimated as appropriate, the main problems are in their implementation.

The *Criminal Code* of the **Republic of Macedonia** has proscribed the following criminal offences, which deal with potential corruption:

- Misuse of official position and authorization (Article 353) – acquiring some kind of benefit by an official person for himself or for another, or causing damage to another by using his official position or authorization, by exceeding the limits of his/her official authorization, or by not performing his official duty;

- Receiving a bribe (Article 357) – requesting or receiving a present or some other benefit by

an official person in order to perform an official act within the framework of his own official authorization which he should not perform, or not to perform an official act which he otherwise must do. Paragraph 2 of this article covers the situation when the official person requests or receives a present or some other benefit, in order to perform an official act within the framework of his own official authorization which he must perform, or not to perform an official act which he otherwise should not perform.

- Giving a bribe (Article 358) – giving or promising an official person a present or other benefit to incite him/her to act in the manner, described above (Article 357). It is very important to mention that the offender of the criminal offence "giving a bribe" who gave a bribe upon the request from the official person, and who reported this before the crime was discovered, shall be acquitted from punishment.

- Unlawful mediation (trade in influence) (Article 359) – receiving a reward or some other benefit by using one's official or social position and influence, in order to mediate for some official act to be executed or not.

All these offences are settled in Chapter 30 of the *Criminal Code* of the Republic of Macedonia named "Crimes against Official Duty." Other corruption related crimes are money laundering (Article 273), trafficking (Article 278), etc.

All these provisions are part of *Criminal Code* that entered into force in November 1996. In year 1999 the Code was amended with provisions dealing with foreign public officials and legal persons. Namely, Article 122 of *Criminal Code* was amended with definitions of foreign official person and foreign legal person. Also, responsible persons from foreign legal persons were proscribed as possible offenders of criminal offences receiving a bribe, giving a bribe, and unlawful mediation. This is in accordance with international efforts to combat corruption, including those of the Council of Europe. All these criminal offences are quite modern and have been amended in past few years with adding foreign persons (legal and physical) as potential active or passive perpetrators of this criminal offence. Also there are provisions acquitting from sanctions those persons who collaborate with authorities before they are discovered.

There are no adequate provisions in the *Criminal Code* for provocation for bribery, but in practice it works with legal coverage of the provisions sanctioning the giving of bribes. There are no legal provisions in Macedonian law, which regulate the legal situation of "agent provocateur".

Analyzing the annual reports of Public Prosecutors Office of Republic of Macedonia about this kind of crime, numbers can seem strange. Namely, in the last three years (1999, 2000 and 2001) the number of prosecuted persons per year in Macedonia for the criminal offences receiving a bribe and giving a bribe was between 15 and 20, but for the criminal offence misuse of official position and authorization, they were about 500. These figures show very small number of criminal procedures for classic corruption cases. It is very difficult to prove that such criminal offence has taken place without at least one of the participants in the criminal event reporting to authorities about offering or asking the bribe. In this situation police rather reports to prosecutor criminal offence misuse of official position and authorization because it is easier to prove it.

Legislative jurisdiction that is in force in **Serbia** is divided between the Federal Republic of Yugoslavia and the Republic of Serbia. The general part of the *Criminal Code* is in the domain of the Federation while the special part, which includes incriminations of most corruption offences, is in the jurisdiction of the republics.

Serbian legislation has not even mentioned the term "corruption" at all until recently. *Criminal Code* amendments adopted in March 2002 imposed corruption as a crime for the first time in the history of Serbian legal system. Although Serbian legal system still does not recognize a single definition of corruption, amendments of Serbian *Criminal Code* that have been made in 2002 provide a number of corruption and corruption-related offences according to international legal instruments, in particular the Council of Europe *Criminal Law Convention on Corruption*. Furthermore, the recent amendments of the Serbian *Criminal Code* introduced a completely new chapter related to Corruption Offences (Chapter XXI A).

The criminal law regulations contain provisions pertaining the criminal bribe taking offences (Article 254: Accepting a Bribe) and giving bribe (Article 255: Offering a Bribe). Article 242 pertains to misuse of professional capacity (Misuse of Official Position). Article 243 of the *Criminal Code* of Serbia also pertains to judges, sanctioning violations of the law on the part of judges with the purpose of securing advantages for themselves and other persons. Giving false statements

before a court of law by witnesses and experts is also sanctioned (Articles 206 and 207 of the *Criminal Code* of Serbia), as well as abuse of trust on the part of lawyers (Article 179). Relevant incrimination provided in the Serbian Criminal Code is also illegal mediation and trading in influence (Article 253).

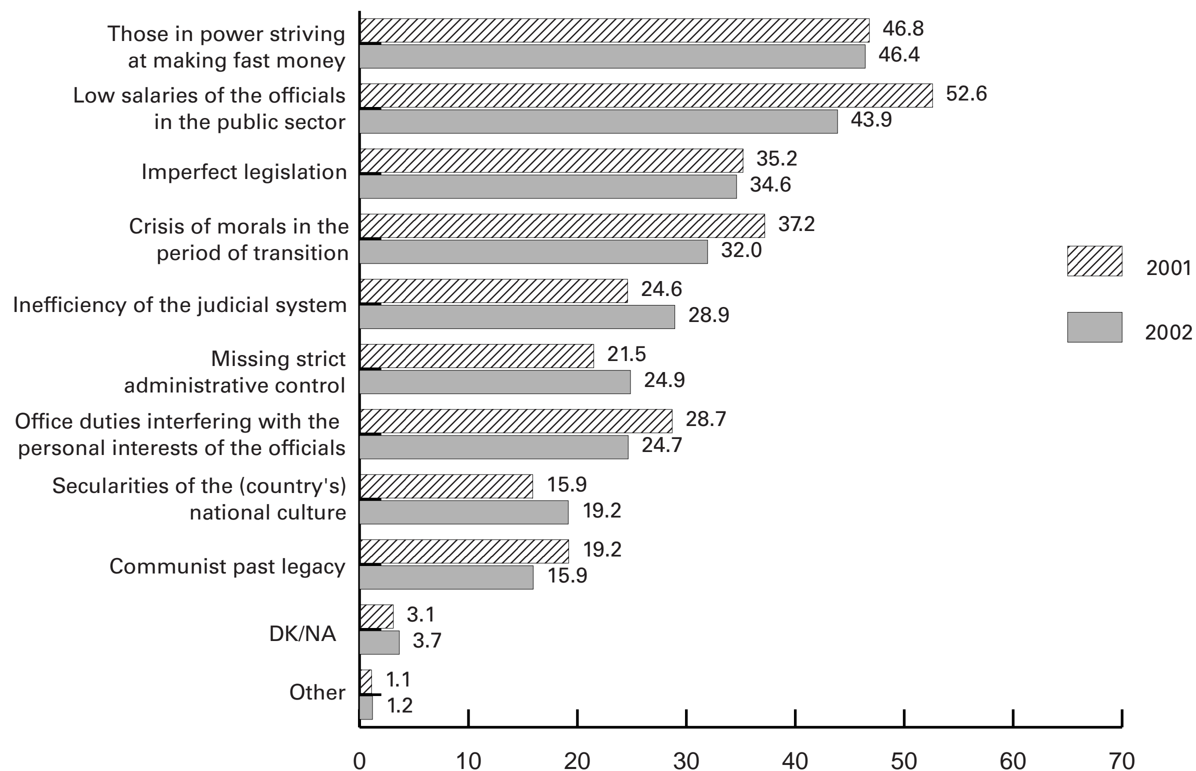
Minimum sentence for bribe receiver is 1 year of imprisonment, and for bribe giver a minimum of 6 months of imprisonment. Confiscation of the received gifts and benefits is prescribed, except if the offender has voluntarily reported the offence before its discovery; in such case, the bribe is returned to the giver.

Chapter XXI A introduces special corruption offences, a large number of which were already sanctioned by the general provisions on bribery. Corruption offences are listed in this way: corruption in the administrative bodies (Article 255b), misuse of budget means (Article 255v), corruption in public procurements (Article 255g), corruption in the process of privatization (Article 255d), corruption in judiciary (Article 255dj), abuse of proxy or attorney function (Article 255e), corruption in the health system (Article 255zh), corruption in the education system (Article 255z), stipulating sports results (Article 255i). Very different sanctions are prescribed for these incriminations, ranging from one to ten years of prison.

Incriminations of public sector corruption cover both officials of the Republic of Serbia and officials of the FRY. Corruption with a foreign element or foreign public officials is not sanctioned. Although bribery in private sector is criminalized through the term of "responsible person," the *Criminal Code* does not give any definition of a "responsible person." According to the jurisprudence of the courts, the "responsible person" would be any person in charge of particular tasks within a legal entity (enterprises, public companies, funds, institutions, organizations, etc.), a government body, or a body of local self-government and administration.

A person that gives a bribe can be exempted from the sanction if he proves that he has been solicited by the public official to do so, but only if he has reported the act to the adequate law enforcement authority before the crime was revealed (Serbian *Criminal Code*, Article 255, paragraph 3). The amendments to the Code in 2002 have introduced

Chart 2: Factors influencing the spread of corruption in Serbia



Source: SELDI Corruption Monitoring System.

additional special mitigation measures for corruption and some corruption related offences. Article 255a prescribes that disclosure of the offence, perpetration, organization or prevention of committing the offence, may be punished more leniently.

The *Criminal Code* comprises a number of offences, which do not seem at first sight as related directly to corruption, but all these areas have been severely affected by corruption, and sanctioning these offences have a direct potential to penalise quite widespread forms of corruption in the Serbia today. The list includes:

- Offences against the electoral procedure: falsification of the results of elections (Article 84); destruction of documents with records of elections (Article 85);

- Offences against the economic system: unconscientious conduct of business affairs (Article 136); causing of bankruptcy (Article 137). The other offences against economic system are: deliberate causing of damage to loan-givers, abuse of authorisations in the conduct of business (Article 86g), conclusion of contracts harmful to one's company (Article 140), revelation and unauthorised acquisition of a commercial secret, illegal usurpation of socially owned land, illegal management and allocation of residential premises, and discrimination between customers (Article 152).

- Offences against the integrity of the judiciary: commission of acts that cause obstacles to the process of deriving judicial proofs, illegal facilitation of commission of certain judicial actions.

- Offences against the integrity of official duty performance: abuse of official position, transgression of the law by a judge or magistrate (Article 243), illegal release of a detained person (Article 244), unscrupulous official duties performance, illegal acceptance or making of payments (Article 246), cheating in the performance of official duties, official secret revelation, fraud, illegal use of official resources, illegal mediation or facilitation between parties.

As most aspects of life in Serbia are affected by corruption this list may not be entirely exhaustive, so the criminal legislation that relates to aspects that are not immediately associated with corruption has the potential to penalise corruption in Serbia, which means that this list is an indication of the current state of the Serbian criminal law.

As far as acceptance of bribes is concerned, items of *Criminal Code* of Serbia are virtually identical to the corresponding paragraphs of Article 179 of *Criminal Code* of the Federal Republic of Yugoslavia: Accepting a Bribe. Other provisions of the Criminal Code of FRY that may refer to corruption are: violation of neutrality in business affairs (Article 163); creating and using of monopoly position (Article 163); abuse of official position (Article 174); illegal mediation (Article 180); transgression of the law by judges and magistrates (Article 181); illegal acceptance or making payments; illegal facilitation of making business (Article 198).

Immunity

An important issue regarding corruption related criminal rules is the immunity from criminal prosecution. The link between immunity and corruption has been publicly debated for a long time and cited as an important issue in several international documents. Thus, for instance, *Resolution (97) 24 on the 20 Guiding Principles for the Fight against Corruption* of the Committee of Ministers of the Council of Europe states that countries should "limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society." Despite the ongoing debate in individual countries the present situation is as follows.

In the Constitution of **Albania**, immunity is clearly defined for the President of the Republic, Members of the Parliament, Members of the Constitutional and Supreme Court, Members of the Government, judges of all levels, the General Prosecutor, the Ombudsman and the High State Audit. The Constitution defines how immunity is revoked, and for which reasons. However, there have been only a few cases over the last 10 years when deputies have lost their immunity and were convicted to imprisonment on corruption charges.

In **Bosnia and Herzegovina** according to the *Law on Immunity*,[10] the following persons are entitled to immunity: Members of the BiH Presidency, Delegates of the House of Peoples and Members of the House of Representatives, Co-chairs and Vice-chair of the BiH Council of

[10] Law on Immunity, (http://www.ohr.int/ohr-dept/legal)

Ministers, Ministers and their Deputies, Judges of the BiH Constitutional Court, Governor and Members of the Central Bank Governing Board. All officials and other persons employed by or authorized to represent the Presidency, Parliamentary Assembly, Council of Ministers with Ministries, Constitutional Court, Central Bank and other institutions carrying out the activities from within the competencies of Bosnia and Herzegovina have the right to immunity in the exercise of their duties for the common institutions and while traveling to and from the institutions and the place of permanent or temporary residence.

In **Bulgaria** according to the *Constitution* the Members of Parliament, the President and the Vice-President of the Republic, the Constitutional Court Judges and the magistrates enjoy immunity. The immunity of a Member of Parliament could be lifted only by a decision of the National Assembly, while the one of the President and the Vice President – by a decision of the Constitutional Court upon proposal by at least three-forths of the Members of Parliament. The immunity of the Constitutional Court Judges could be removed by the Constitutional Court itself, and the immunity of the magistrates could be removed by the Supreme Judicial Council. The failed attempt in year 2001 to amend the *Constitution* on the issue of MPs' and magistrates' immunity makes it practically impossible to introduce some of the relevant changes in the criminal regulations directed against corruption. However the issue of immunity, especially the one of magistrates, continues to be subject of discussion in view of a future amendment of the *Constitution*.

According to the Article 75 of the *Constitution* of **Croatia** the Members of the Croatian Parliament enjoy immunity. No representative can be prosecuted, detained or punished for an opinion expressed or vote cast in the Croatian Parliament. No representative can be detained, nor can criminal proceedings be instituted against him, without the consent of the Croatian Parliament. A representative may be detained without the consent of the Croatian Parliament only if he has been caught in the act of committing a criminal offence which carries a penalty of imprisonment of more than five years. In such a case, the President of the Croatian Parliament is notified thereof. If the Croatian Parliament is not in session, approval for the detention of a representative, or for the continuation of criminal proceedings against him, is given and his right to immunity decided by the credentials-and-immunity committee, such a decision being subject to subsequent confirmation by the Croatian Parliament. Further details about immunity of MPs, are regulated with the *Standing Orders of Croatian Parliament* (adopted in 2001). According to the Article 105 of the *Constitution*, the President of the Republic enjoys immunity. The President of the Republic may not be detained nor may criminal proceedings be instituted against him without prior consent of the Constitutional Court. The President of the Republic may be detained without prior consent of the Constitutional Court only if he has been caught in the act of committing a criminal offence which carries a penalty of imprisonment of more than five years. In such a case the state body which has detained the President of the Republic shall instantly notify the President of the Constitutional Court thereof. According to Article 121 of the *Constitution* judges enjoy immunity in accordance with the law. Judges and lay assessors who take part in the administration of justice cannot be called to account for an opinion or a vote given in the process of judicial decision-making unless there exists violation of law on the part of a judge, which is a criminal offence. A judge may not be detained in criminal proceedings initiated for a criminal offence committed in performance of his judicial duty without prior consent of the National Judicial Council. According to the Article 126 of *Constitution* judges of the Constitutional Court of the Republic of Croatia enjoy same immunity as members of the Croatian Parliament. According to the *Law about the National Judicial Council* (adopted in 1993) the President and the Members of the National Judicial Council also enjoy immunity.

Several constitutional rules in **Macedonia** protect the President, Members of Parliament, Members of the Government, judges, prosecutors and other public officials from harassment. These rules have been adopted to protect the function, and not the person. However, this procedure is sometimes perceived as privilege of certain persons. The question becomes particularly serious in the context of prosecution of Members of Parliament and Government for offences of corruption as such offences are usually intimately linked with the function. These rules are normally applicable to investigation and prosecution of all kinds of criminal offences, not just for corruption. The Parliament has to authorize arrest and detention for criminal offences with proscribed maximum punishment of five years of imprisonment.

According to Article 87 of the *Constitution* of the **Federal Republic of Yugoslavia**, people's deputy in the Federal Parliament (People's Assembly of FRY) cannot be detained except if caught

executing a crime for which at least six years of prison is prescribed. The same immunity system is valid for the judges of Federal Court (Article 100), members of the Federal Government (Article 100) and Federal Public Prosecutor (Article 112). Federal Parliament can lift the immunity of people's deputies, Federal Court is competent for the immunity of the judges, and Federal Government for immunity of its members. The Constitution of Serbia provides exactly the same immunity system for the Republican Parliament (People's Assembly of the Republic of Serbia) and Republican Government. Republican Public Prosecutor and judges do not enjoy immunity.

Criminal Procedure

Criminal procedure mechanisms play a very important role for the quality and speed of prosecution as well as for the procedures of the imposition and execution of penalties for corruption crimes.

Criminal proceedings and trials in **Albania** are open and transparent by law, and anyone wishing so can attend them. There are, however, some technical obstacles. For instance the courtrooms are small, not comfortable, and they lack the necessary infrastructure to accommodate everyone who wants to attend. However, this is a technical rather than a principle issue.

In **Bosnia and Herzegovina** the *Criminal Code* of the Republika Srpska, *Criminal Code* of the Federation of Bosnia and Herzegovina and *Criminal Procedure Code* for the Federation of BiH ensure the openness and transparency of criminal proceedings, for example: [11]

- The main trial is public.
- The main trial may be attended by persons who have reached the age of majority.
- From the opening of the session to the end of the main trial the panel of judges may at any time, automatically or on motion of the principals, but always after hearing them, exclude the public for the entire main trial or a part of it if this is in the interest of the national security, or if this is required to preserve a national, military, official or important business secret, to preserve public law and order, to protect morality in a democracy, personal or intimate life of the accused or the injured, or to protect the interests of a minor or a witness.
- The order to exclude the public is made by the panel in a decision which must be substantiated and made public.
- The decision to exclude the public may be contested only in the appeal of the verdict.
- The complete content of the verdict is entered in the main trial record, as well as indication as to whether the verdict has been a decision concerning costs of criminal proceedings, concerning a claim under property law, and concerning whether the final verdict is to be made public through the press, radio or television.

The *Law on Criminal Procedure* determines the costs and duration of prosecutions. It currently exists in both Entities, thought its structures have thus far not secured either a quick or an inexpensive procedure and the investigative bodies had limited authority, i.e. the entire process was largely inefficient.

Currently efforts are underway between the BiH authorities at both the State and Entity level together with the OHR to prepare new laws at both levels. The very initial draft is being prepared at the BiH level.

In FBiH the currently existing position of an investigative judge is to be abolished and replaced with public prosecution. The number of mechanisms to trigger an appeal is to be reduced, the request for protection of legality as an extraordinary appellation mechanism is to be repealed and new investigative techniques are to be introduced. In RS, the new Law will regulate the roles of the process subjects and also introduce new processes for the purpose of the pre-investigation procedure. However the reform is still in process of implementation and therefore its expected anti-corruption effect is difficult to be evaluated.

In **Bulgaria** the amendments to the *Code of Criminal Procedure* of 1999, in force since January 1, 2000, came to meet modern requirements to the criminal prosecution system – consolidation of the court's role as the principal overseer of procedure and the trial phase as the central stage in criminal proceedings; judicial control over coercive measures which may infringe upon basic human rights at the pre-trial phase; competitiveness in court; expedited procedure; and introduction of differentiated procedures. Nevertheless, these amendments did not have a significant contribution for progress in combating

[11] Criminal Code of the Republika Srpska, Criminal Code of the Federation of Bosnia and Herzegovina, Criminal Procedure Code for the Federation of BiH, (http://www.ohr.int/ohr-dept/legal)

crime in general and corruption in particular. Admittedly, the period since these amendments went into force has been short and it may be too early to judge about their effectiveness but still it should be noted that practical problems have already emerged, primarily due to some legislative amendments which were not very appropriate. Several of these amendments were made with the *Law on Amendment to the Code of Criminal Procedure*, in force since May 1, 2001, which was passed at the very end of the mandate of the 38th National Assembly. These changes have had a negative influence on the efficiency of the Judiciary's work. To the greatest degree this applies to the amendments on the issue of plea bargaining, which very quickly won recognition as an important procedural technique for accelerating criminal prosecution and preventing corrupt practices between defendants and magistrates. Data from cases tried in 2000 shows that 36, 6 % (more than 1/3) were concluded through plea bargaining.

The legal community also insisted that the amendments in question were not in line with European standards and they were not backed by necessary funding and would be inefficient.

As a whole, the 2001 amendments to the *Code of Criminal Procedure* have slowed down criminal procedure and made it more expensive. Serious fears also exist that the quality of administration of justice will be reduced due to the court clog as courts have to deal with activities for which they should not be responsible – as a result the percentage of detected and punished crimes, including those involving corruption, will decrease.

In order to improve the efficiency of criminal procedure, new legislative solutions are necessary. These actions must be based on a long-term anti-corruption strategy which will serve the public rather than short-term particularistic interests. The causes for the inefficient operation of some of the questionable provisions as well as the experience so far must be thoroughly analyzed in order to find a solution to the low detection of the crimes of corruption. It is recommended that after such an analysis, a new *Code of Criminal Procedure* be drafted; amendments in the sphere of execution of penalties should also be adopted.

On issues related to good governance, experts in **Croatia** put particular emphasis on the need for the setting-up of a policy advice capacity. As regards the rule of law, it is necessary to complete the legal and institutional framework, in particular through the review of the confiscation and provisional measures regime and the revision of the *Code of Criminal Procedure*. With regard to bribery of public officials in business transactions, three areas were presented as priorities: 1) improvement of the repressive framework by streamlining the legislation in specific areas, such as corporate liability; 2) promotion of integrity in business via the development of codes of conduct and promotion of high corporate standards; 3) enhancement of enforcement measures through training of tax professionals for detecting bribes (OECD, 2001).

It is very important to mention that authorities in **Macedonia**, which combat criminal offences, face huge obstacle in fight against corruption. Namely, Article 17 of the *Constitution* of Republic of Macedonia has proscribed very strict rules for eavesdropping and other forms of interrupting private communications. That practically means that it is forbidden for police to monitor communications, and to use this material in court as evidence. Also, there are no proscribed rules in the relevant laws for performing special investigative measures, such as legal use of agent provocateur, controlling deliveries, etc.

One of the basic rules of criminal procedure is publicity. Public can be present in the courtroom, with some exceptions, in accordance with Article 6 of *European Convention for Human Rights*. Sometimes media, looking for attractive stories, are interested in the case in the very beginning of the procedure, violating the rule of innocence of the person, and later, if criminal procedure really starts, losing the interest and ceasing to inform the public about the case.

Procedure in cases of corruption is very long, and usually lasts one or two years.This happens especially in the situation when the accused person is not in detention, since in such case, they often try to postpone the conclusion of the case. That makes the procedure very expensive.

3.3. Civil Law and Procedure

The development of civil legislation, though not always directly affecting corruption, could also deter or contribute to it. Civil law could contribute to the removal of the existing legal barriers as regards to business, which will result in minimizing the conditions for flourishing of corruption. Therefore it is important to examine the civil law provisions and procedures, concerning significant matters such as:

- business transaction (including acquisition of property, privatization and concessions);
- company legislation and commercial bankruptcy;
- company and property registration, etc.

Acquisition of Property, Privatization and Concessions

Acquiring property in the countries in transition has been in many cases subject to corruption. This conclusion refers in particular to the process of privatization and the granting of concessions since privatization and concession deals are in many cases target for corruption.

Based on the civil law, the acquisition of property in **Albania** can take place according to the provisions of the *Civil Code* and other ways defined by special laws. Some of the ways to acquire property are: acquisition by contract (Article 164); acquisition by inheritance (Article 165); acquisition by goodwill of movable properties (Article 166); positive prescription (Article 168); acquisition by merger (Article 173); acquisition by processing property (Article 177).

Another form of using property (rather than buying it) is a concession. The *Law (No. 7973, July 26, 1995) on the Concessionaries* was approved 6 years ago, but has been implemented only during the last 3 years. Although the need and the possibilities can make this investment form widely used, the number of the concessions has been very limited.

The following legal improvements are suggested in order to fight corrupt practices:

- The Law must place terms for the main procedures. In the case of the bid the period should be no more than 60 days from the promulgation to the supply assessment. It is necessary to determine clearly this period because it helps the private investor and eliminates abusing;
- According to Article 11 of the Law, the concessionaire company is obligated to form a commercial association and to register it in the tribunal within 30 days from the signing of contract. This is difficult because there is a long period from the moment of signing to its enforcement and there is no reason to create a company that does not act. At the same time, not respecting this law is a violation. That is why it is necessary to change the law so that the registration of the company can be related to the enforcement of the contract;
- The law requirement to determine the fees, professional payments, etc. in the contract is not accepted by investors, because of the impossibility of accomplishing it in the time of contract signing.
- The Law doesn't clearly express what the "industrial zone" notion means, and that might give way to abuse and misunderstanding.

The phenomenon of unjustly acquiring property during the transitional period has thrived for a number of reasons, among which the most important are:

- Acquisition of property from politically affiliated people as a reward for their political loyalty;
- Disrespect of legal framework and exploitation of the weak implementation power of the legal framework;
- Directly corrupting public officials who turn a blind eye on unjust procedures that lead to property acquisition.

In **Bosnia and Herzegovina** the *Law on Foreign Investment and Concessions* in Republika Srpska (adopted in April 1998) stipulates that concessions are granted by the Government of RS. Concessions may not be given to foreign persons for any activity on the territory of RS in areas, which, according to the provisions regulating general national defense, are considered as forbidden zones. For the use of goods of public interest in accordance with the Space Plan of RS, concessions are given by the Government, but prior to that, the opinion of the National Assembly of RS should be obtained. In other cases the Government has to obtain the opinion of the respective governing ministry. Concessions may be given for duration of up to 30 years. Concessions are granted under the condition that the business to be conducted secures the maintenance of the technical and technological unity of the system, its efficient functioning and rational management, and that it does not jeopardize life. Concessions are regulated by a contract in writing.

In the FBiH, concessions are regulated by the *Cantonal Concession Law* and the *Foreign*

Investment Law. Concessions must gain the approval of the federal agency responsible for the foreign economic relations and the district cantonal government agency responsible for economic activities. The competent cantonal and federal agencies may permit the foreign investor to build, operate and transfer after a certain period of time, under the conditions set out in the permit, a specified facility, installation or a plant on a state-owned or public-owned land.

Privatization is additionally supervised by the Entity Assemblies, which directly supervise work of the Entity Privatization Agencies, besides the Entity Governments that regulate the mere operations, but not the essence of their work or the administrative line of accountability.

Due to the influence of politics on public companies, and to some extent, on private companies, corruption in this area is still significant. This is particularly true in the pre-privatization period and in the course of the privatization itself, as will be discussed in the later chapters of this paper.

In **Croatia** the primary legal framework for acquisition of property, business transactions and publicly traded companies consists of the 1993 *Company Law* (CL), the 1995 *Law on Issuing and Trade of Securities* (amended in 1998) and the 1997 *Law for the Takeover of Joint Stock Companies*. All traded securities must be in the legal form of shares in joint stock companies, which are governed by the *Company Law*. While moving towards integration with the EU, the legal reform necessary for that integration remains at an early stage. Croatia's laws have not yet been comprehensively reviewed for compliance with the Directives of the EU. The *Securities Law* governs the securities markets and establishes the primary securities regulatory agencies: the Croatian Securities Depository Agency (SDA) and the Croatian Securities Commission (CSC). The *Securities Law* also regulates the trading of securities and sets out the extent of civil and criminal liabilities. Under the *Securities Law*, insider trading and market manipulation are prohibited and subject to both fines and imprisonment. Current levels of disclosure do not allow the ownership structure of Croatian companies to be clearly identified. Information provided is based on estimates by market participants.

SDA was created in April 1997 according to Article 84 of the *Law on the Issuing and Trading of Securities* (adopted in 1995) and Article 177 of the *Company Law* (adopted in 1993). The mandate of the SDA is to operate as the Croatian Central Registry/Depository for all forms of securities and to contribute to the competitiveness of the Croatian capital markets through providing electronic clearing, settlement and depository services. The SDA was fully operational by November 1999 and by March 31, 2001 it had completed registration of about 150 of the most-actively traded companies, which represent close to 100 percent of trading.

Founded in 1996, the CSC is the administrative body responsible for the licensing and monitoring of issuers, intermediaries, investment funds, portfolio managers, brokers and advisors as well as investors. Under the 1995 *Securities Law*, the CSC is empowered to monitor and investigate all securities trading and, as appropriate, refer cases to the commercial courts or the prosecutor-general. CSC is governed by a chairman, two deputy chairmen and three other members, all nominated by the Government of Croatia and appointed by the Croatian Parliament for a term of six years, with the terms of two commissioners expiring every two years. The members of the Commission are prohibited from acting as members of the management, boards of directors, oversight committees or other bodies of issuers of securities. They may not perform any other service or function, which might influence their independence, or diminish their public reputation. The Commission is funded by the state budget. The Commission can initiate investigation of its own accord or upon the notification of third parties. In cases of non-compliance or violation of the Securities Law by market participants, the Commission may give warnings, halt trading, and publicize cases of abuse practices. The Commission can only investigate violations directly related to securities trading. CSC does not have administrative powers to impose fines, but must refer the case to the commercial courts. Violations of the criminal code are referred to the prosecutor-general. Administrative decisions by CSC can be appealed to the administrative court.

In Croatia when establishing a joint-stock company or a limited liability company, a domestic or foreign investor may invest money, goods and rights. A joint-stock company may also be established by a single natural person or legal entity. A company may be established by one or more persons. A foreign natural person is allowed to operate as a sole trader in Croatia provided he, or she, holds a work permit and the condition of reciprocity is met. Before starting to engage in handicrafts, the person is required to obtain a license, which is issued by the respective County office, dependant on where the headquarters of the particular handicraft is located. Preferential crafts are approved by the appropriate Ministry, dependant

on the type of handicraft. Law and rules are clear, so one could estimate that here are no serious corruption related risks.

Although these provisions create the necessary regulatory and institutional preconditions for transparent capital market, the successful counteraction to corruption could be achieved only through their effective practical implementation.

There are also *Law on Public Procurement, Law on Company Registration, Law on Litigation Procedure, Law on Impartiality of Court, Law on Privatization*, which however do not have specially articles regarding the combat against corruption.

In **Macedonia** the acquisition of the property is regulated by the *Law on Ownership and Other Property Rights* (published in the *Official Gazette of the Republic of Macedonia* no 18/01). According to the Law, all domestic and foreign persons, including the State, as well as self-government units, may acquire ownership rights under conditions and method prescribed by the Law. The methods for acquiring the property are the following: acquisition through purchasing contract, inheritance, gift, positive prescription, merge ring, payment of unpaid debts, and other.

Corruption as regards to acquiring property mainly affects the privatization of the former state owned companies. Depending on the size of enterprises and method of selling, the Privatization Agency signs different types of contracts with the new owner after the completion of the privatization process[12] and submits the sale contract to the relevant Court of Registry, which erases the enterprise from the corresponding Registry.

The concession is one of the ways for using the property for a certain period of time. According to the *Law on Concession* a biding procedure is necessary for getting the concession right on the property. The Bid includes the conditions and the manner of utilization of the property, carrying out the concession activities, the period and the amount of the reimbursement. A concessionaire agreement is signed with the best bidder. The concession is obliged to perform the concessionaire activities in accordance with the Concession agreement. The concession is withdrawn if the concessionaire fails to start with the performing of the concession activities in the period set forth in the Agreement. However despite the existing provisions for bidding and the requirements concerning concession agreements the procedure is still not fully transparent. Therefore there is a need for amending the law in order to achieve greater transparency and to prevent corrupt practices.

In *Serbia* the Government proposed a set of five laws with the objective to further regulate financial markets and prevent corruption. These are: *Final Account of the 2000 Budget with Budget Inspection Report, Organic Budget Law, Public Procurement Law, Tobacco Law, and Games of Chance Law*.

Company Legislation and Commercial Bankruptcy

In **Albania** the insolvency procedure is based on the *Law No.8017 (date 25/10/1995) on Bankruptcy Procedures*. The law favors creditors over other sorts of investors. At the moment the creditors of the companies are banks. The arguable risk about such a law is that at a time of financial distress, banks are keen to get their money back as soon as they can and they do not care much about the company business. That definitely leads to unfavorable fire sale valuations at the expense of the other financial claimants of the company. Having said that, it is worth noting that the credit, extended to the corporate sector, accounts for approximately 5% of the country's GDP.

Amendments to the **Bulgarian** *Commercial Code,* in force since October 17, 2000, concern two main areas - company law and commercial bankruptcy law. Harmonization of the company law section with the EC directives on publicity, equity and single member limited liability companies and the adjustment of the legal provisions for joint stock companies will enhance confidence in equity trading, reduce the possibilities for abuse and ensure better transparency and the protection of creditor and third party interests. One of the provisions expected to improve the quality of the administration of justice and to have a distinct anticorruption effect is the new Article 613b. It enables appeals before the Supreme Court of Cassation against all rulings delivered in the course of or putting an end to insolvency proceedings and also prevents local level versions of insolvency case-law and the dis-

[12] Such contracts are the ones for purchasing small or medium sized enterprises, purchasing by public announcement for collecting offers and by direct agreement, sale of enterprises to entities undertaking the managing of the enterprise, transformation of large sized enterprises, transformation by sale of all assets of the enterprise, issuing of shares for additional investment and leasing of enterprise.

pute resolution based on local interests and conjuncture, rather than on law. Thus, the Supreme Court of Cassation would be able to exercise its Constitutional power, viz. to exert the final control for the correct enforcement of the existing legislation.

The amendments to the commercial bankruptcy legislation have not yet brought a real acceleration to bankruptcy procedures and therefore have failed to adequately deter interested parties from seeking resolutions through corrupt means.

A significant new amendment to the section of the *Commercial Code* which deals with re-structuring of companies (mergers, acquisitions, spin-offs, splits and transformations) is now being considered. This amendment comes as a response to the need for harmonization of Bulgarian legislation with EU standards and aims to put an end to the current practice of restructuring in an atmosphere of lack of transparency and acting at the expense of some of the partners involved which should significantly improve the business climate.

It is still necessary to adopt a *Law on Bank Bankruptcy*, developed and discussed since 2000, in order to ensure greater stability and speed in bankruptcy proceedings and to enforce control over the receiver in a bank bankruptcy, which should reduce the possibilities for corruption. Currently two Draft Laws on this matter have been submitted to the Parliament and have been passed on first reading in a plenary session.

In **Macedonia** the insolvency of the company is regulated by the *Bankruptcy Law*, which was enacted in 1997 (published in the *Official Gazette of the Republic of Macedonia* no 55/97) and amended in 2000. Law regulates the goals and reasons for opening the bankruptcy proceeding, the manner of its conduct, management and disposition of the property being subject of bankruptcy estate and settlement of the trustees.

The inability and insolvency of the debtor to pay its debts within 60 days of the date on which they have become due represents the main reason for opening a bankruptcy procedure. The conditions for starting the bankruptcy procedure are also met if the debtor cannot pay its due obligations (such as executive court or administrative decisions, concerning monetary obligations) in the executive procedure or if there is an immediate prospect for unavoidable inability to pay. Trustee can initiate the opening of the bankruptcy procedure within 60 days from the day its claims are due and submit to the court evidence that the debtor is unable to settle its monetary obligations. The Court in its official capacity shall determine all the measures necessary for opening a Bankruptcy Proceeding.

Upon the opening of the Bankruptcy Proceeding the right of the debtor to manage and to dispose of the property that comprises the Bankruptcy Estate (the property of the debtor at the day of the opening of the proceedings and the one to be gained in the course of the proceedings) is transferred to the Bankruptcy Trustee. If it has been confirmed that the debtor has no property, or his property is not sufficient to settle the costs of the proceeding, the Bankruptcy proceedings are not conducted and the company is liquidated. The proceeds from the sale of the real estate in the case of liquidation are used for payment of debts and for settlement of expenses incurred during the Bankruptcy procedure. Any surplus is paid to the founders.

Although the *Bankruptcy Law* has been designed in order to meet the European standards, there is still a lack of transparency, the procedure is long and inefficient, and does not guarantee the trustees to collect their claims. It also allows postponing of the bankruptcy proceeding of the company in case of its insolvency with potential opportunities for abuse of power. The Agency for Blocked Accounts which has been introduced recently, aims to start the bankruptcy proceeding against all companies, which accounts were blocked 45 days. The amendments of the Law are in the Parliamentary procedure.

The adopted laws on mortgage and pledge did not achieve the expectations for efficient payment of the claims and execution of court decisions, although there are some improvements, especially regarding payment of unpaid banking credits. The court procedure is still long and inefficient and may create potential for abuse.

Impartiality of the Court and Speed of the Proceedings. Execution of Judgments

In **Albania**, as described in the *Constitution*, the judicial system is based on the impartiality principle of courts and rigorous implementation of the law. The courts should be impartial in giving justice and support their verdicts exclusively on facts made public during the course of the trial. Even though the law is quite precise, there are a lot of complaints about the impartiality of courts and the speed of proceedings because of corruption of the judiciary officials, political pressures, lack of professionalism in some cases, etc.

The Bailiff Office is attached to the courts of first instance. As a consequence, it is erroneously perceived as part of the judiciary. In fact, the Bailiff Office is expected to execute both judicial decisions and a certain category of administrative decisions (the so-called writs of execution).

The Bailiff Office conducts its business in virtue of Articles 527-617 of the *Code of Civil Procedure.* Parallel to the general notions relevant to the execution of final judicial decisions the Code regulates the execution of seizure on movable and immovable properties (including means of maritime and air transport), credits of debtor and properties that third persons owe to the debtor, financial obligations towards budgetary institutions, sums deposited in bank accounts as well as the execution of obligations to relinquish a definite object or to perform a determined action. Provisions on the means of defense against execution of decisions and the grounds for suspension and cessation of the execution are also envisaged.

As for the execution of administrative writs of executions, the Bailiff Office derives authority directly from the respective special laws. In terms of procedure the Office uses by analogy the procedure specified in the *Code of Civil Procedure* for the judicial decisions. From the point of view of funding, the Office is considered to be part of the judiciary but although its budget is a part of the overall judicial budget it is usually extremely meager which create conditions favorable to corruption.

Judges at all levels of the judicial system in **Bosnia and Herzegovina** have been subject to political appointments. This has caused severe partiality and bias with a high degree of political influence over their rulings. At the Peace Implementation Council (PIC)[13] held in March in Brussels, it had been decided that all judges at all levels of the courts are to be temporarily suspended and the new recruitment process is to follow shortly. This process has commenced in April 2002 and at present all judges are applying for jobs with the courts. Those with a proven record of partiality of any sort will be closely looked at and possibly not re-employed as a result of this. The entire process is managed by the OHR and the previous action of hot-lines for collection of complaints against the judges will serve as the database for the qualification assessment. That activity, however, was run in 1999-2001 and resulted in a number of specific complaints of the general public and entrepreneurs against named judges at local and regional courts primarily.

According to opinions expressed by business managers who were interviewed in the enterprise survey, slowness of the courts is the most problematic obstacle to doing business in BiH. It was selected by 87 percent of respondents and ranks above all other 27 problems listed as negative characteristics of the business environment.[14]

In **Bulgaria** the *Code of Civil Procedure* was amended in 1999. The new provisions guarantee the impartiality of the court, reduce the opportunities to postpone the hearings, introduce summary proceedings, and limit the insolvency proceedings to two court instances. These amendments, however, have not brought about any tangible improvement of court proceedings. Further amendments will be needed along these lines in order to eradicate any chances of protracting the procedure on purpose or abusing procedural rights, as all this generates corruption.

The execution of judgments is the part of civil procedure, which concludes the process of civil litigation but has been least reformed. The clumsy and inefficient, frequently corrupted, execution proceedings negate all efforts to improve the administration of justice and prevent corruption. Legislative amendments are required in order to minimize the possibilities for endless delays in the enforcement proceedings and supply creditors with better guarantees.

A *Draft Law on Amendments to the Code of Civil Procedure* has been recently submitted to the National Assembly and its adoption on first reading in a plenary session is forthcoming. The amendments proposed are aimed at introducing simpler and speedier court procedures, especially by improving the cassation proceedings. For instance, the possibility provided for the cassation instance to decide on the merit and the transformation of the possibility for returning the case for reexamination from a general principle into an exception will make civil proceedings speedier and more effective and will considerably limit the opportunities for corrupt practices. The proposed new foreclosure procedures, including the possibility for foreclosure of company shares, materialized and dematerialized securities, unpicked

[13] Political steering group that observes progress of peace and particularly DPA implementation in BiH that meets regularly and decides on the focal areas for the IC/s involvements in the year to come. It is the highest-level decision making body outside of the country's authorities and bears the ultimate responsibility for the IC's policies towards BiH.

[14] World Bank, Diagnostic Surveys of Corruption, p. 40, http://www1.worldbank.org/publicsector/anticorrupt/Bosnianticorruption.pdf

plants, would also have anti-corruption impact. Parallel to this a working group to the Ministry of Justice is developing a concept paper for introducing private bailiffs to operate parallel to the state, which is also aimed at speeding up foreclosure proceedings and limiting corruption.

In October 2001 a *Center for Out-of-Court Legal Dispute Resolution* was established with the Union of Bulgarian Jurists and Rules on the initiation and performance of out-of-court legal dispute resolution was adopted. This is the first step towards the introduction of procedures for alternative out-of-court legal dispute resolution. Their practical implementation is expected to narrow the possibilities for corruption, ensure effectiveness and rapidness in the resolution of disputes, and relief the judicial system's work.

Impartiality of the court in **Macedonia** is one of the basic rules of civil procedure and court system generally. Courts and judges are obliged by the *Constitution* and laws to have impartial and fair attitude towards parties in the procedure. *Civil Procedure Law* contains a lot of provisions that should make this general rule applicable in practice: public procedure, equal access for the parties to all evidences the other part has proposed, obligation for the judge to warn ignorant party about its rights in the procedure, right of appeal, etc. Execution of judgments falls under the competence of one of the sections of the basic courts. It very often is the most difficult part of the civil procedure because of the problems that can appear from the judgment itself or by the party who use all possible legal and non-legal measures to avoid the execution. In practice this part of civil procedure is especially problematic.

The procedure of execution of judgments is proscribed in a separate Code (*Code for Execution Procedure*), which is very long and complicated, with lots of procedural activities and lots of court decisions. Party, who won the case in procedure several years long, will need another several years to execute the judgment. This can be the main reason for parties to try to reach the conclusion of the procedure through corruption. Either the debtor or the creditor may be tempted to offer bribe to official person from court to help them. It is important that in this procedure very active and crucial role after judges have court clerks. The court clerks are dealing with practical execution on the spot, and have a power to conduct the practical execution.

Some changes were made in the *Code for Execution Procedure* in the last few years, but that was not enough to reach an effective and fast execution procedure as an efficient ending of civil procedure.

The compensation for damage when a public official has been bribed during the public procurement procedure is another area connected with this kind of procedure and considered very important in the fight against corruption. A situation of particular relevance is also when an employee of the bribe-giving company bribes an employee or an officer from another company. In such cases, compensation may be asked for by the state or by the local government, which may claim to be the victim of the offence, or by competitors who were not given the contract.

An important issue, which has to be solved, is the problem of the validity of a contract concluded through obtaining a bribe: whether the main contract is null and void in itself, or it is at the discretion of the Government or the company to void it.

Macedonian theory and practice have no answer to all these questions related to corruption and civil procedure. Until now no civil cases in Macedonian courts have reached decisions on these topics.

Registry Keeping and Registration Proceedings

In **Albania** the Law No. 7632, of November 4, 1992, defines the procedures and rules to be followed in order to register a company. The Court keeps the commercial register. Any person may consult the register without incurring any expenses. Also, anyone may get (against payment) copies of the registration and appropriate documentation. According to the Law companies are registered with the court if their statute is in full accordance with law provisions and all required documentation is completed.

In **Bosnia and Herzegovina** the procedures of company registration is one of the most complex of all countries in the region. Consequently, the costs of establishing companies are high, which does not make BiH attractive area for foreign investment. In future, efforts will be made to streamline procedures and in that sense, a series of measures will be taken. One of the most efficient ways is introduction of a single identification number and establishment of a single registry of companies, as well as a single form for company registration in the whole country, which is forecasted in the next 18 month period. In particular, attention will be paid to harmonization of regulation on registration of national and interna-

tional companies, and resolution of the problems related to use of land.

Company registration at present is within the domain of regional/cantonal courts and each of them keeps a separate company registration database. There had until recently been no efforts either to combine those books (although they are public) at any level, or to introduce a computerized system to make the process more efficient. Therefore the process is not so much burdened by forged data or administrative corruption in the process steps, as much as it is in its duration, which is inevitably followed by the existence of bribes that make the process "more efficient" and thus cheaper for some companies.

Survey data[15] indicates that corruption is positive related to company registry process. Every month businesses pay bribes in the form of gifts, tips and money to representatives of public officials in amounts equal to 18 percent of expenses of the average firm. The average "standard rate" for bribes that businesses report paying for several services including connection to utilities, obtaining licenses and permits, dealing with courts and customs and other bodies equals 361 KM (approximate EUR 180).

Company registration in BiH is usually done by the owner of the company or by an appointed company's employee. Only 18 percent of respondents reported that they had used a third party to handle the process of business registration. It is worth mentioning that none of the newly-created enterprises (those founded in 1999-2000) used a third party. At the same time, public enterprises used a third party very often – 40 percent of the public firms who are were involved in WB survey reported so. Another group of firms that used this method of company registration are enterprises founded before 1992. Since 72 percent of public enterprises were founded before 1992, the prevalent use of third-party facilitators among older firms is not surprising. Why do companies use third parties for company registration? Mostly because the managers want to make sure that no procedural mistakes are made (59 percents of respondents), sometimes because they want to save time (23 percent), sometimes the reason is that the third party has connections – "knows the right people" (18 percent). Use of third parties is also known to help hide corruption – the bribe in this case might be expensed as a fee for a business service provided by the third party.[16]

It is of utmost importance as a matter of fostering transparency in this process, to establish a single registry of companies, for the purpose of reducing bureaucracy, increasing efficiency and transparency in operations of both Entities.

Non-governmental organizations are subject to the *Law on Citizens Associations and Foundations,* which has been changed in early 2002 in both RS and BiH. The new RS law as well as the umbrella State law allows for a much more simple registration of non-governmental organizations, citizen associations and well as parties that no longer requires more than thirty signatories but minimum of three instead. The RS register remains with the regional courts and the BiH registry is with the Ministry of Civic Affairs and Communications. The new version of the law, that has been in existence in FBiH since 2001 also allows for other associations to group together and e.g. form confederations of associations. The BiH Law will register those subjects that want to operate at the country-wide level and refuse to register solely at the Entity level. Nevertheless, both Entity laws allow for the country-wide operations of any citizens associations and are not restrictive in any manner. This is why the BiH Law is often seen as a political step, rather than changing anything in practice, following the harmonization of the two Entity laws and their simplification.

The property registry is still based on the former Austro-Hungarian system of Cadastre that was introduced before 1914. According to this system, the property books are kept with the municipal authorities, while urban and construction planning happens in the relevant government agencies. There are plans to start replacing the old Cadastre system with a brand new computerized database, but this process is likely to take ten years or more and the launch of it is scheduled for the late 2002.

According to the current state of the registers in **Bulgaria** private legal persons, except for the political parties, are registered with the District Courts in 28 separate registers located throughout the country. Property registration is done in a similar way. Property records are kept by about 110 Regional Courts and are still paper-based.

[15] World Bank Anti-Corruption Survey, p. 52
http://www1.worldbank.org/publicsector/anticorrupt/Bosnianticorruption.pdf

[16] World Bank ibid., pp. 52-53
http://www1.worldbank.org/publicsector/anticorrupt/Bosnianticorruption.pdf

Pilot projects are being carried out for the introduction of electronic information systems in some of the courts, although these information systems have no legal weight. Except for the Central Pledges Register at the Ministry of Justice, established in 1997, most of the other registries are currently decentralized and paper based which causes serious problems of reliability of information and its physical and legal security. The available data shows numerous cases of fraud, abuse and corruption.

As far as property law is concerned, in 1998 a project *Establishment of Cadastre and Property Registry in Bulgaria* was launched by the Bulgarian Government with the support of the World Bank and a *Law on the Cadastre and the Property Registry* was adopted, in force since January 1, 2001. This instrument is expected to be a major step in the transition from the "owner-based" to an "estate-based" system of real estate registration. Changes in the system of real estate registration, a sphere marked by abuse, fraud and corruption, are also in progress. Introducing these changes takes a long time but the impact, including availability of complete and precise information on property and pending liabilities upon it, will have lasting anticorruption effects in the field of real estate transactions.

A special working group to the Ministry of Justice chaired by the Deputy Minister of Justice has developed a set of recommendations for improving the legal framework of property registration including amendments to the *Law on the Cadastre and the Property Registry* and adoption of the respective secondary legislation for its implementation. The proposal is aimed at facilitating the process of reforming the property registration in Bulgaria and the successful introduction of the Cadastre and the Property Registry in the country.

Special attention should also be paid to the idea, developed by experts to the Law Program of the Center for the Study of Democracy within the framework of *Coalition 2000* of replacing the court registration of not-for-profit organizations with registration in a newly created Central Electronic Register for Not-for-Profit Organizations at the Ministry of Justice, the establishment of which could serve as a first step towards the introduction of a Central Electronic Register for Persons and Property. The transition to such a register will have far-reaching anti-corruption effects, especially with regard to the present dismal state of the country's registers. The business community also evaluates the existing registration system as ineffective and sees it as an obstacle to growth of business. It has even proposed relieving the courts of the responsibility of keeping the commercial registers in order to make them function better.[17]

According to the *Coalition 2000* proposal the Central Electronic Register for Persons and Property should include registration data on all private legal persons and state enterprises (except for political parties and professional organizations). First it should be introduced for the not-for-profit legal entities since the philosophy thereof has already been laid out in a concept paper. In a medium-term perspective this Register should include commercial legal persons and merge with the Central Pledges Register, while in a long-term perspective, after the establishment of a national electronic cadastre and its incorporation into a uniform national database, the Register should be merged with the property registers.

The implementation of the proposal for a Central Electronic Register for Persons and Property will allow both registration and obtaining of information online by electronic means. This will make it possible to quickly publish information about changes in circumstances through filings and the current situation of the Register can be checked in real time, i.e. immediately after the conclusion of a transaction. The Register should be public and everyone should be able to obtain information and receive a certificate verifying the necessary information. A denial of a filing should be subject to appeal before the Minister of Justice following an administrative procedure; a denial by the Minister should be subject to appeal following the procedure under the *Law on the Supreme Administrative Court* which will minimize the unregulated practices accompanying registration and obtaining information.

All companies in **Croatia** are required to register in the Court Register of the respective Commercial Court, dependant on the location of the company's headquarters. When establishing a joint-stock company or a limited liability company, a domestic or foreign investor may invest money, goods and rights.

[17] Bulgarian International Business Association (BIBA) – White Paper on Foreign Investment'2001 http://www.biba.bg/docs/White%20Paper%202001%20Engl.pdf

An enterprise register is maintained by the eight regional commercial courts and covers over 120,000 enterprises, including partnerships and sole proprietorships. The commercial court registers include the names of the company's members of the management and supervisory boards, the company's statutes and information regarding the total share capital of the company. The register also includes the names of the company's founders but not the names of the current major shareholders. Public information is not fully centralized. To obtain copies of a company's statutes one must visit the regional court register in person. Provision for online access is being discussed by the Ministry of Justice, which is responsible for the operation of the Commercial Register.

Political parties are required to be registered in the Ministry of Justice, Administration and Local Self-Government.

Non-governmental organizations are required to be registered in the Ministry of Justice, Administration and Local Self-Government.

Property registry is required to be done at Municipality courts. According to the World Bank estimation Croatia is included in a group of transitional countries (with Estonia and Poland) with quite decent state protection of the security of property and contract rights (World Bank, 2002). Although, there is a (quite good) *Law about Cadastre System Record Ownership*, in reality situation with Offices of cadastre system record ownership is very bad and one of the most neuralgic parts in Croatian judiciary.

In **Macedonia** according to the *Trade Company Law*, before starting their business activities the companies are required to be registered in the Trade Registry. All trade companies and affiliates have an obligation to be registered in the Register. The Trade Register is a public book. There are three courts in Macedonia authorized for company registration in the Trade Register: the Basic Court I, in Skopje, the Basic Court in Bitola and the Basic Court in Stip. The authorized person from the company submits an application for registration of the company and changes in the Trade Register. The Law describes the necessary documentation and procedure for registration.

The *Law on Political Parties* stipulates that a political party may start with its activities after the registration in the Register of Political Parties. The Appeal Court in Skopje is authorized for keeping the Court register of political parties. The Minister of Justice proscribes the blank form and method of keeping of the Court register. The political party is obliged within 30 days from the day of its establishing to submit an application for enrollment in the court register, accompanied with its Program, the Article of Agreement and court decision for establishment of a political party.

According to the *Law on Citizens Associations and Foundations*, the citizens associations and foundations are required to be registered in the Register kept in the basic court, depending on where their headquarter is located. The blank form and procedure for registration are proscribed by the Minister of Justice. The application for registration, along with the program for its activities, the names of authorized persons for representing the citizens association or foundation are submitted to the court, within 30 days from the day of their establishing.

Upon the application, the court is obliged to bring a decision for enrollment of the association or foundation in the register. If the court finds out that the required elements and criteria are not met, or that the program and its activities are not in compliance with the law, it refuses the registration.

The *Cadastre Law* requires the physical and legal persons to register their real estate in the Cadastre register, depending on the location where the property is located. The registration is done under the relevant document issued by the competent bodies. Upon the submission of the documentation, which proves the ownership, the Cadastre registers the real estate in the Register.

The legislation provides for transparent procedure and proscribes the required documentation, leaving narrow possibilities for discretion right of the authorities dealing with the registration. However some possibilities for corruption still exist especially in relation to the Property Register.

In **Serbia** company registration is regulated by the federal *Company Law* (adopted in 1996 and amended in 1996, 1997, 1998 and 1999). Company or enterprise may be established in the form of Joint Stock Company, Limited Liability Company, Limited Partnership and General Partnership. A company or an enterprise is incorporated by Decision on Incorporation (one founder) or a Memorandum of Association (two or more founders). These documents are to be in written form, signed and notarized. Depending on the intended business activities the company or the enterprise may need some approvals by the respective inspections such as the Market

Inspection, the Sanitary Inspection, the Labor Inspection, and the Environmental Inspection. The incorporation of a company or an enterprise follows a Decree of Incorporation issued by the competent Commercial court's Registry Department. After the Decree has been granted, an official note of incorporation is deposited with the Federal Bureau of Statistics. For a company engaged in foreign trade an official note is also deposited with the Federal Customs Bureau. Finally, a company or an enterprise has to open an account with the Public Accounting Service, as well as an account with a commercial bank of its choice.

All registers are kept in the Regional Commercial Courts, which are 16, in major cities of the provinces. System is not centralized, and you cannot find all the relevant data about all companies at one place. The main disadvantage is that the software package for such an operation has been prepared but there are still not enough resources for the appropriate hardware. Currently there are no detailed databases and all registries are kept in files. This means that for relevant details file should be physically opened.

Company Law obliges all companies to be registered. After fifty years of controlled economy, this law is aimed at harmonizing standards with the standards of the EU. Unlike before, the law recognizes SA organizing form and limited responsibility.

Since the adoption of the *Law on Foreign Investment* in March 2002 foreigners go through almost the same procedure for registering the company. They should only submit proofs (certified copies) that they have company operating in another country. They have the right to register for everything apart from some segments of the army industry, for which they need consent from a Defense Ministry. Before adopting this law, foreigners needed consent from the Federal Ministry of Economic Relations in order to establish a company.

Inscription of companies in a register is described by the *Law on Inscription Procedures in Court Register* (adopted in 1994) and *Decree on Inscription in Court Register* (adopted in 1997 and amended in 1997) which in annex also offer samples for the registry form.

According to the *Decree on Inscription in Court Register* for establishment of a stock asset company one must enclose a set of documents such as a contract on establishment of the company with certified signatures of the founders, a statute, a bank report on existent money deposits on temporarily accounts, etc.

There are approximately 100,000 entities entered in court register so far, and approximately 60,000 of them are companies. Others are non-profit institutions such as hospitals, schools etc.

Common frauds that involve court registry have to do with the forgery of signatures of authorized persons (judges), or disposal of forged identification documents for establishing a company, popularly called phantom companies. The existence of such kind of companies is the major problem for the financial police. The government is planning to strengthen the procedure for establishing companies, but without increasing bureaucracy at the same time.

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The legal preconditions ought, above all, to foster a social and political environment unfavorable to corruption. Along with the general preventive and stabilizing effect, they also ought to lead to a clear regulation of the liabilities and sanctions for the perpetration of acts of corruption.

Despite the different approaches followed by the individual countries in the region they are all directed towards further developing the legal basis for anti-corruption and its adaptation to the various and flexible forms of corrupt behavior. These efforts are facilitated by the common objective to comply the national legislations with the international and European standards and instruments thus responding to the process of internationalization of the phenomenon of corruption.

IV. INSTITUTIONAL PREREQUISITES FOR ANTI-CORRUPTION

Anti-corruption legislation and regulatory instruments alone are not sufficient for the successful fight against corruption since their effective implementation requires certain institutional prerequisites. Creating effective institutional mechanisms for preventing and curbing corruption in the political system and civil society has been the major issue on the anti-corruption agenda in the Southeast European countries. This chapter offers an overview and assessment of the measures undertaken in the following areas:

- Public Administration and Civil Service Reform
- Administrative Services
- Specialized Control over the Work of Administration (National Audit Institution, Ombudsman Institution, Other Institutions with Controlling and Monitoring Functions)
- Law Enforcement Agencies
- Legislature
- Political Parties

4.1. Public Administration Reform. Level of Transparency and Accountability of Administration. Status of Civil Servants.

The reform of public administration in general and the creation of an effective legislative framework and institutional environment for its transparent operation in particular are of major importance because discretionary exercise of administrative authority creates the greatest opportunities for corruption.

The fundamental goal of the administrative reform is to make transparency and accountability essential characteristics of the administration. Thus, citizens would have a larger and better-regulated access to public services, while the risks of abuse of power and discretion by the civil servants would be restricted. A brief description of the level of transparency and accountability of administration in the countries observed is discussed below.

The assessment of corruption in SEE countries is based on a comparison between the available data on corruption and the observed outcomes of anti-corruption efforts of the institutional and the general regulatory mechanisms.

Laws and Regulations on Administration and Civil Servants. Practical Aspects

The process of developing regulatory framework for the administration and civil service in SEE countries started in the mid of 90s.

In **Albania** the *Civil Service Act* was adopted in 1996. However, it soon became clear that the Albanian political class was not ready to give up its privilege of distributing favors, in the form of public offices, to political supporters. Since 1997, the situation has slightly improved. Many of the problems that affected the civil service in the past still exist, and in some cases, the situation has even deteriorated. Albanian civil servants are still very poorly paid despite several salary increases over the last 3 years, and their salaries have continuously fallen relative to the private sector.

Reform of the civil service became a top priority of government reform projects with the 1998 Governmental Anti-Corruption Strategy. The *Law on the Status of the Civil Servant* (No.8549, dated November 11, 1999) lays the foundation for a transparent system of recruitment in the civil service, with meritocracy and job security as its primary ingredients. It provides for a sustainable, professional, and efficient civil service based on a balanced set of rights and duties that enhance the performance of the employees. However, it is still difficult for these legal provisions to be implemented.

In **BiH** the limited efforts of the administration to act as an efficient service provider for the taxpayers, had limited success. Accountability mechanisms are virtually non-existent, yet some improvements are being prepared. Following the example of countries, which have already adopted the related legislation, BiH is now preparing the introduction of the new codes of conduct and laws on the prevention of the conflict of interests.[18]

[18] According to Diagnostic Surveys of Corruption conducted by the World Bank in September 2000, 75% of respondents (among public officials) think that at least some of their colleagues run their own businesses on the side. Customs are at the top of the list – almost 90% of respondents who work at customs think that these practices exist there. (WB, Diagnostic Surveys of Corruption, p.3), http://www1.worldbank.org/publicsector/anticorrupt/Bosnianticorruption.pdf

Table 5: Spread of corruption in Albania

	2001	2002
Customs	8.8	9.0
Tax offices	8.4	8.6
Government	8.1	8.4
Judiciary	8.5	8.3
Industry line ministries	7.6	8.1
Municipal government	7.5	7.8
Municipal administration	7.5	7.7
Police	7.2	7.6
Agency for Foreign Investment	6.0	7.6
Privatization Agency	7.6	7.3
Audit Office	7.2	7.3
Securities and Stock Exchanges Commission	6.6	7.1
Parliament	7.4	7.1
National Telecommunication Company	6.9	6.6
Commission for the Protection of Competition	-	6.0
Presidency	6.1	5.6
National Bank	5.6	5.6
Army	5.9	5.3
National Statistical Institute	4.3	4.5
Committee on Energy	7.2	-

Source: SELDI Corruption Monitoring System. Scores close to 1 correspond to low spread of corruption, those close to 10 to highest degree of proliferation.

Table 6: Spread of corruption in Bosnia and Herzegovina

	2001	2002
Customs	7.88	7.81
Tax offices	7.66	7.89
Municipal government	7.56	7.75
Privatization Agency	7.36	7.66
Municipal administration	7.32	7.57
Government	7.78	7.56
Police	6.96	7.47
Industry line ministries	7.14	7.14
Parliament	7.32	7.12
Judiciary	6.74	7.11
Presidency	7.18	7.03
Audit Office	7.06	6.88
National Telecommunication Company	6.28	6.57
Securities and Stock Exchanges Commission	6.70	6.52
Commission for the Protection of Competition	6.84	6.46
Committee on Energy	6.30	6.36
Agency for Foreign Investment	6.46	6.33
National Bank	6.44	6.09
Army	4.78	5.21
National Statistical Institute	5.36	5.04

Source: SELDI Corruption Monitoring System. Scores close to 1 correspond to low spread of corruption, those close to 10 to highest degree of proliferation.

In addition, a more efficient system of public revenue management will be established in order to avoid excessive spending, and to create a stable system of financing of the public administration. It will be necessary to strengthen confidence of the general public in the public institutions.

The principle pieces of legislation that are in process of adoption by the Parliamentary Assembly of BiH are: the *Law on State Service,* the *Law on Civil Service* and the *Laws on Prevention of Corruption.* The aim of these draft laws is to establish an efficient control of public administration.

Another set of laws presented by the Federal and RS Ministries of Justice is a broader *Anti-Corruption Act*. It partly deals with the prevention of the conflict of interest of civil servants, but also many other areas, which entangle the public administration. This Act has been sent for the third reading in the RS Parliament and is currently being revised by the Ministry of Justice. The main issue that prevents its adoption is where the anti-corruption agency is to be located. Some MPs prefer seeing it as a separate institution with extended authorities, while the others favor strengthening the existing institutions and allocating a number of their employees to be at the anti-corruption team's disposal whenever applicable. However, this technical issue halted the adoption of the Act for an unrealistically long period of time, which may suggest that there is a hidden agenda and that certain political parties and individuals prefer not seeing it adopted.

The same Act has been moving even slower in FBiH due to its extensive internal decision-making structures and is not forecasted for adoption in the current pre-election season of 2002.

The legislation to regulate the public administration's organization and its functions was adopted in **Bulgaria** from the end of 1998 until 2000. The analysis of the data on the spread of corruption at the background of the new regulatory framework allows drawing conclusions on the new legislation efficiency and its impact on corrupt practices as well as the need for further regulatory changes to be introduced.

The *Law on the Administration*, in force since December 6, 1998, laid the foundations for the introduction of a uniform organizational model and common rules of internal organization of the executive bodies. On the basis of this Law, the transformation of all levels of administration (central, district and municipal) was completed in 2001. The *Rules of Organization and Procedure* of these administrations, most of which were adopted in 2000, as well as their subsequent amendments outlined their specific functions, tasks, and responsibilities.

Despite the promulgation of the *Rules of Organization and Procedure* in the State Gazette, the large number of administrative bodies (110 only in the central administration) and their variety (agencies, commissions, inspections, offices, centres, etc.) makes understanding their dynamics difficult for both experts and ordinary citizens. The *Register of the Administrative Structures and the Acts of the Administrative Bodies*, set up and maintained on the Government's website in the Internet, helps to overcome some of these difficulties by ensuring greater openness of the work of the administration and providing information on the status, structure and responsibilities of the individual units in the administration. An important step toward making this Register work better could be the introduction of a feedback mechanism serving both its users and persons affected by administrative action.

Rules of transparency of governance should provide opportunities to the citizens for informed participation through access to the information stored by public institutions. The legal prerequisites for accountability, accessibility and transparency in the activities of the administration, however, have not yet been created. The current *Law on Access to Public Information* has been in force since the summer of 2000. Its implementation record shows that in spite of the numerous requests for access to public information submitted to different branches of the executive, the numbers of denials is high. Access to information is restricted primarily to journalists, non-governmental organizations and ordinary citizens.

Table 7: Spread of corruption in Bulgaria

	2001	2002
Customs	8.90	8.95
Privatization Agency	8.06	8.57
Judiciary	7.60	8.21
Agency for Foreign Investment	7.54	7.75
Tax offices	7.54	7.72
Industry line ministries	7.50	7.34
Police	7.14	7.22
Parliament	7.42	7.18
Committee on Energy	7.00	7.08
Municipal government	6.94	7.01
Commission for the Protection of Competition	6.54	7.00
Government	7.44	6.87
Municipal administration	6.54	6.73
Securities and Stock Exchanges Commission	6.46	6.73
National Telecommunication Company	6.60	6.63
Audit Office	5.98	6.07
National Bank	5.72	5.49
Army	4.98	5.13
National Statistical Institute	5.02	4.68
Presidency	4.52	4.63

Source: SELDI Corruption Monitoring System. Scores close to 1 correspond to low spread of corruption, those close to 10 to highest degree of proliferation.

The process of building up a professional civil service, based on legality, loyalty, responsibility, stability, political neutrality and hierarchical subordination, started with the adoption of the Law on Civil Servants, in force since August 28, 1999, and continued with the adoption of secondary legislation on the status of civil servants. As a follow-up, the status of civil servants was accorded to the employees of the Council of Ministers, all the ministries, the other central government agencies, the district and the municipal administration. A necessary next step in the process of consolidation of a responsi-

ble civil service is to gradually extend the civil servant status to people holding expert positions in the general administration through broadening the scope of applicability of the *Law on Civil Servants* and developing the internal control against corruption.

The offences, committed in the course of the implementation and consolidation of the civil servant's status, show a lack of constant control and timely measures. Many of the legal solutions adopted in this field are insufficient or inapplicable; they do not contribute to preventing or punishing for corrupt practices. This conclusion is valid for the disciplinary councils and the powers and operation of the State Administrative Commission (SAC):

- The disciplinary councils should be established by every branch of the administration and consist of five permanent members and two substitutes. In practice, however, some administrative bodies have fewer than seven civil servants and as a result, the appointing authorities cannot lawfully impose the penalties. This problem can only be overcome through amending the *Law on Civil Servants*.

- The State Administrative Commission should exercise control over compliance with the civil servant status. Nevertheless, the activities of the Commission so far indicate that its control is performed only in one direction and does not extend to cases in which the appointing authorities themselves are operating in violation of the civil service legislation. A new legal framework for the activities of the State Administrative Commission is necessary in order to provide it with powers to exercise effective overall control on compliance with the civil servant status. These powers should include the right to intervene in cases of corruption, especially when instances of corruption are discovered, not only by giving mandatory prescriptions to the appropriate authorities but also by monitoring their implementation, issuing penal provisions, initiating changes in administrative acts already issued, etc. The introduction of units with similar functions at the level of municipal administration is also necessary. Specialized units in the branches of the administration in order to exercise internal control over their activities and prevent corrupt practices by civil servants as well as carry out appropriate internal procedures for investigation of administrative abuse and corruption.

In **Croatia** according to the *Law on Civil Servants and Employees* the duties of state administration in state government bodies are performed by civil servants which are appointed according to the public announcement, if it is not differently regulated by the law. Auxiliary and technical duties in state government bodies are performed by government employees. The new civil service legislation aimed at establishing a more open and equitable system of government hiring of officials and at promoting the integrity of public officials has been adopted. However, like in other transitional countries, civil service legislation remains insufficient and institutions for management and control of the civil service will need to be strengthened. Since issues of corruption affect the citizens mostly on the local level of government, measures for improvement of

Table 8: Spread of corruption in Croatia

	2001	2002
Privatization Agency	7.70	7.30
Customs	6.90	7.07
Police	6.98	7.05
Judiciary	6.66	7.00
Municipal government	7.10	6.95
Tax offices	6.74	6.93
Municipal administration	6.80	6.80
Committee on Energy	6.86	6.51
Industry line ministries	6.94	6.48
Commission for the Protection of Competition	6.42	6.27
Parliament	5.92	6.09
Government	6.28	6.04
National Telecommunication Company	6.72	5.96
Audit Office	6.26	5.94
Securities and Stock Exchanges Commission	6.46	5.85
Army	5.98	5.68
National Bank	6.02	5.13
Presidency	4.66	4.20
National Statistical Institute	4.58	4.11
Agency for Foreign Investment	6.84	-

Source: SELDI Corruption Monitoring System. Scores close to 1 correspond to low spread of corruption, those close to 10 to highest degree of proliferation.

local government functioning have to be undertaken.

The preparations for public administration reform in **Macedonia** have started several years ago with technical assistant of PHARE program and are financed by the World Bank. The *Law on State Servants* and the *Law on the Government of the Republic of Macedonia* were enacted by the Parliament on July 20, 2000 (in force since July 28), while the *Law on Organization of State Bodies* was enacted on July 21, 2000 (in force since July 29, 2000).

Table 9: Spread of corruption in Macedonia

	2001	2002
Customs	8.80	8.84
Industry line ministries	7.82	8.76
Government	8.06	8.58
Commission for the Protection of Competition	-	8.25
Privatization Agency	8.08	8.24
Tax offices	7.72	8.22
Parliament	7.84	8.18
Agency for Foreign Investment	7.86	8.02
Judiciary	7.38	7.86
Audit Office	-	7.82
Securities and Stock Exchanges Commission	-	7.59
Police	7.12	7.44
Municipal government	6.94	7.11
Committee on Energy	-	7.03
Municipal administration	6.50	6.65
National Telecommunication Company	6.28	6.52
Presidency	4.72	5.72
National Bank	5.92	5.68
Army	4.40	5.67
National Statistical Institute	4.38	4.59

Source: SELDI Corruption Monitoring System. Scores close to 1 correspond to low spread of corruption, those close to 10 to highest degree of proliferation.

The Law on *State Servants* is setting up the uniform classification of positions in public administration and same level of salaries for the same positions. Under the Law, an Agency for State Servants has been established. The Agency proposes a new organization of the public administration, exercises a supervision on fulfillment of unified obligations, coordinates the training and education of state servants, develops a policy regarding an employment, selects and evaluates the staff, and prepares by-laws to ensure its implementation. The new organization and uniform classification has already been completed in all ministries and other state organs. The crucial objective of the administration reform was to bring the legislation in line with European standards for professionalism and de-politicization of the state servants, (except the State Secretary, Deputy Minister and Minister). The appointment of skilled, non-politicized, professional public servants, should create conditions for efficient, modern and uncorrupted administration, competent to respond to the citizens' needs. However, the Law does not contain any provision which will protect state servant from being fired or removed on a lower position. In practice, this has happened to hundreds of servants, without any reasons or criteria. In the same time a number of inexperienced persons have been appointed on high positions without fulfillment of the criteria proscribed by the Law and other regulations.

The *Law on Local Self-management* adopted by the Parliament on January 29, 2002, stipulates a decentralization of the power to the local governments in the following fields: urban planning and issuing licenses for constructions, environmental protection, planning of the municipal development, support of small and medium enterprises, communal activities, culture, sport, social and health protection, child protection, fire protection and the like. The decentralization of the power should improve the efficiency of the public administration and narrow the possibilities for corruption.

Serbia has asymmetric administrative system defined by the Constitution, laws, and international agreement. The Constitution defines Serbia as integral territory with two autonomous provinces – Vojvodina and Kosovo. After the NATO intervention, greater autonomy was granted to Kosovo, including its own constitutional frame, parliament, government, and separate elections. Serbia has only proclaimed sovereignty, but neither formal nor informal authority over Kosovo. Vojvodina's autonomy was also increased by the set of laws adopted in December 2001. Vojvodina now has its own parliament and

executive body, but with much less scope of competence than it is the case in Kosovo.

Basic local administration unit is municipality (there are 189 in Serbia). Municipalities execute power delegated from the government, perform communal activities, and some of the social concerns including culture, health care, education, tourism, environment etc. City of Belgrade, which is the capital of the state, is the separate territorial unit, wider than municipality, with somewhat wider competence.

Table 10: Spread of corruption in Serbia

	2001	2002
Customs	8.68	8.52
Police	8.08	7.88
Privatization Agency	7.46	7.70
Judiciary	7.78	7.57
Tax offices	7.88	7.57
Agency for Foreign Investment	-	7.51
Committee on Energy	6.80	7.43
Industry line ministries	7.76	7.40
Municipal government	7.38	7.22
Municipal administration	7.24	6.91
National Telecommunication Company	6.26	6.85
Commission for the Protection of Competition	-	6.79
Securities and Stock Exchanges Commission	-	6.39
Government	7.32	6.31
Parliament	7.04	6.27
Audit Office	6.26	5.92
Presidency	7.68	5.79
National Bank	6.58	5.77
Army	5.42	4.85
National Statistical Institute	5.46	4.68

Source: SELDI Corruption Monitoring System. Scores close to 1 correspond to low spread of corruption, those close to 10 to highest degree of proliferation.

The *Law on the State Administration* was adopted in 1992 and was amended several times till 1999. Under this law, state administrative organs transact business on the basis on the Constitution and the law. Authorized personnel within the authority of the state administrative organs enforce regulations, assess evidence on the basis of established facts, issue enactments, and perform other administrative tasks and measures. Individual enactments, measures and activities of the state administrative organs are based on laws or other regulations adopted on the basis of laws. Ministers cannot perform any other public, professional or other activities incompatible with their post. The same goes for other senior officials appointed by the government, except when the Government grants them authority. Employees of the state authorities and appointed officials have a duty to perform their jobs conscientiously and fairly, and not to be guided by their political convictions or express such views and advocate them. The establishment of political parties and other political organizations, or their internal forms, in the state of administrative organs is prohibited. This rule is violated in practice, and politicians often exert influence on the work of the administration, by either speeding up or slowing down the adoption of certain decisions and their performance, or by not allowing decisions to be made simply because they are not in their interest.

The operation of the state administration is funded from the budget. State administrative organs, enterprises and other organizations are legally bound to enable the public unimpeded realization of their rights and obligations, to provide all necessary data and information, to render legal assistance, to cooperate with the public, to respect personality and protect the reputation of the civil service.

State administrative organs are legally bound to evaluate petitions, complaints and suggestions submitted by the public, to act according to them and to inform public about outcomes. The grading of senior officials managing the state administrative organs (ministers and their officials) is defined in an identical manner as in the federal administrative organs.

The *Law on Local Administration*, which regulates local administration, was adopted in February 2002. Local administration is exercised in cities and municipalities. Local administrative organs have no administrative power except in cases where they have been granted such power by law. All sessions of municipal councils are public, except in cases defined by statuses. Statutes usually regulate meetings closed to the public in a

war condition, an immediate threat of war and a state of emergency.

Although new laws or law amendments covering the state administration and public services have been adopted, regulations and enactments are still burdened with hierarchical relations, leaving very little room for creativity in the work of personnel employed in the state administration and public services. Concrete questions regarding the position of civil servants and senior official are regulated by secondary legislation of the National Assembly and the Government.

The current situation in Serbia concerning existing legislation and enactments is conducive to arbitrary conduct and irresponsibility, both in the state administrative organs and public services performing activities of the public and organizations (public transport, health, education, social insurance etc.). These are still areas often marked by corrupt practices.

Rules on Financial and Property Disclosure of Senior Officials

An important factor in preventing corruption is the existence/establishment of rules on financial and property disclosure of senior officials as well as the introduction of sanctions for violations of the established rules

In **Albania** the Parliament passed the *Law on Assets Disclosure for Civil Servants and Senior Officials* (No.7903, dated March 8, 1995), which provides the regulatory basis for the investigation of assets owned by public officials. The following categories of assets require disclosure under the law: immovable properties; shares and vouchers; cash or objects worth over 1 million Leks, as well as other movable properties. Property belonging to the immediate family of the functionaries mentioned above is also to be disclosed. The law states that the authority to supervise the attestation of the declarations by the aforementioned organizations vests with the High State Audit. Failure to meet the requirements of the law to report on assets constitutes an administrative misdemeanor and is punishable with a fine of 1,000 - 50,000 Leks for failing to submit the report in a timely fashion, as well as a fine of 500,000-1,000,000 Leks or prohibition to practice in the respective profession in the case of intentionally false declarations.

Despite widespread allegations and reliable statistical evidence concerning corruption among public officials, verification of declared assets has not led to prosecution against allegedly corrupt officials. The prosecution service has also failed to base its cases on the data provided by the declared assets. No data are electronically recorded and no software has been devised to regulate data entry and use. Apart from serious problems with accessibility, the biggest problem with regard to the declaration of assets legislation is that nobody feels responsible for the implementation of the legislation and collection of the data. Hence, there is a strong need for an agency whose primary task would be the implementation and maintenance of a database with information on assets.

In **BiH** initial steps were undertaken by the Organization for Security and Cooperation in Europe (OSCE) that has been organizing the general and local elections in the country ever since the signing of Dayton Peace Agreement (DPA). In 1999 revision of the provisional elections law it was envisaged that all individuals running for a public office must disclose their property and financial status. In the elections of 2000, the citizens of BiH were allowed for the first time to see these documents filled out personally by the political candidates. The same provisions will now be built into the permanent election laws that will be governing all elections at various levels from the autumn of 2002 onwards. This law is waiting the successful ending of the on-going constitutional amendments discussion that is the most significant single constitutional affair since the adoption of the DPA. The same provisions are also stipulated in the not yet adopted in RS *Anti-Corruption Act*.

In **Bulgaria** the *Law on Property Disclosure by Persons Occupying Senior Positions in the State* is in force since May 13, 2000. It has introduced both rules on financial and property standing and provided for their practical implementation, thus playing a role of prevention of corruption at the highest levels of political power. According to its provisions such persons are required to declare their property on an annual basis, as of May 31 every year. They should declare not only their own income and property acquired during the respective previous year but also the income of their spouses and children under 18 years of age.

The Law has also defined the group of persons entitled to have access to the data contained in that register and laid down the procedure for getting such access. At the same time the Law in its current formulation does not represent a sufficient guarantee against conflict of interest and corrupt practices in the activities of senior civil servants from the three branches of state power.

Though this particular Law contains primarily what could be labeled “wishful” provisions, the disclosure of compliance or failure to comply with the rules is expected to entail strong moral effects. These expectations have already been met in the first months after the Law had come into effect: even the mere disclosure of the names of persons who failed to declare their income on time has brought about a public response that could be regarded as a deterrent to corruption. Nevertheless, the need to monitor the enforcement of the Law, and sanction those who have encroached on it, still exists.

In **Macedonia**, the laws regulating the public administration do not require from the senior officials and civil servants, including deputies, to disclose their property or its origin. Such provisions have been included in the *Anti-corruption Law*. A *Draft Law on recording the property of state officials* had to be developed on request of the Council for fighting corruption.

In **Serbia** there is no formal obligation for the government officials to disclose their property. At the time of the election of the current Government of Serbia (January 2001), the prime minister and some of the ministers informed the public about their personal property – real estate and funds. However, it is impossible to verify these data, as there is no legal obligation to record property. Although opposition at the time, Democratic Party (DS) filed a *Draft Law on Obligatory Recording of Property Owned by the State Officials* in 1994, no such law has been proposed since the promotion of the current government, which includes DS representatives.

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The rules on the financial and property standing of persons occupying senior positions in public authorities has undergone a substantial legislative development. Their practical implementation would be of key importance for curbing corruption practices at the highest level of political power although in some SEE countries there is still no adequate regulation.

In most SEE countries, more effective rules on possible conflict of interests linked to internal rules need to be established, as well as sanctions for violations of the established rules to be introduced. The rules on financial and property standing also need further elaboration to include broader powers for the controlling authorities and the sanctions they can impose, more precise legal regulation of the categories of people bound by the law, appropriate access to the register and protection of personal data.

Ethical Norms and Mechanisms

In combination with the adopted laws, the *Codes of ethics and behavior* should play the role of a mechanism, which prevents the conflict of interests and reinforces the internal control.

In **Albania** the department of Public Administration has launched a series of activities aimed at the adoption of a *Code of Ethics* and the training of public officials on the *Code of Administrative Procedures.* That will make possible to qualitatively increase the extent of responsibility and accountability of the administration in the eyes of the public.

A common view is that in many countries in the region, including **BiH**, the public is resigned to corruption as a stable cultural phenomenon that can only be reduced when a range of policy and institutional reforms is successfully implemented over a long period of time. The WB survey data show that 73 percent of the general public respondents and 71 percent of public officials agree with the statement that in BiH “corruption is a part of culture and mentality”. With this respect the ethical norms and mechanisms have to play a very significant role. At the Entity and/or Cantonal level in BiH certain rules are possible, but these were not compulsory for adoption and thus not many institutions have adopted them as yet. Following the adoption of the conflict of interest prevention acts, ever more internal rules are expected for adoption by the institutions and agencies.

In a form of manuals, instructions for interaction with the public exist for certain agencies, such as inspectorates, while the overall civil service is only governed by the *Law on Public Institutions* and the *Law on Government* (in both Entities) that are rather thin on this side.

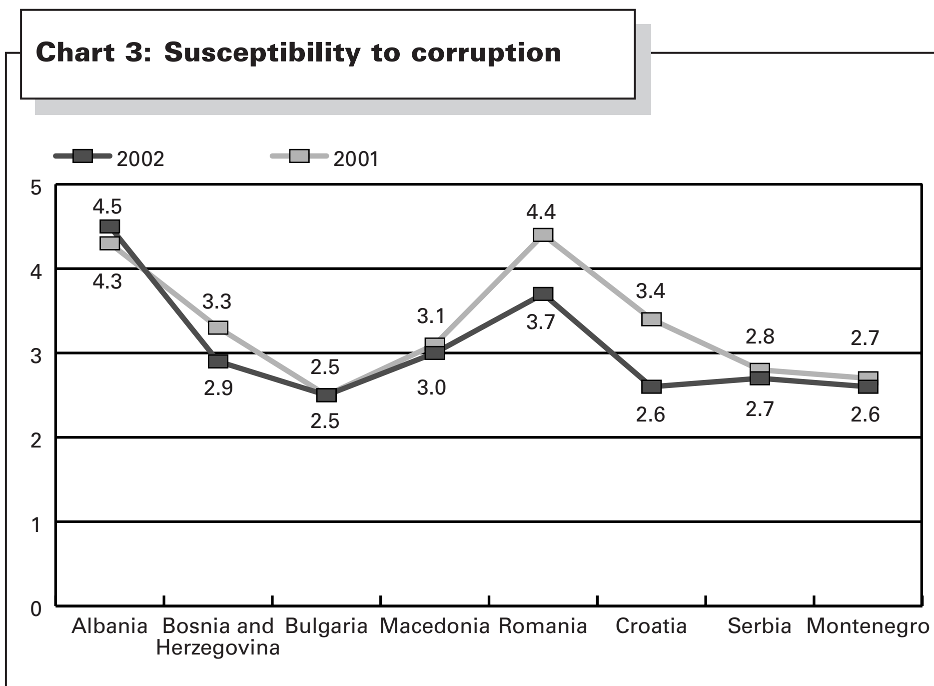
In **Bulgaria** the *Code of Conduct for Civil Servants*, approved by the Minister of State Administration on December 29, 2000, outlines the fundamental principles and rules of ethical behavior for civil servants in their interaction with citizens, in the course of performing their professional duties and in their private and public lives. Nevertheless, these principles and rules need to have a better expressed anti-corruption content through clear rules on civil servants’ loyalty and conflict of interests, obligations on granting access to public information, etc. In addition fur-

ther clarification should be brought to the regulation of professional ethics monitoring mechanisms and their importance for career advancement, increased internal control and strict linkage of the preservation of the civil servant status to the performance of duties.

In its current version the Code still does not create sufficient conditions for a decrease in administrative discretion or for creating a higher degree of transparency and accountability in its work.

The *Code of Ethics for Public Servants* in **Macedonia** was adopted in December 2001. The Code defines the public servants' behavior in their professional and private life. According to the Code, the state servants may not use the advantages arising from their status or officially acquired information for personal interest. They are obliged to avoid any conflict of interest, or situations, which may create a suspicion for conflict of interest. The state servants are not allowed to represent or express their political beliefs while performing their duty, or any political activities, which may undermine the public confidence in their capability for doing their duty. The state servants are not allowed to express or emphasize their political affiliation in relations with citizens or legal persons, or other civil servants. They are not allowed to make any pressure on other state servants to join some political party. The state servant must avoid the conflict of his/her personal financial interest with his position and status of civil servant, and avoid activities and behavior in the private life, which may decrease the public confidence in the public administration. Since the Code of Ethics has been adopted only recently, there are no evaluations yet of the results from its implementation. However, having in mind the widespread public belief in corruption of civil servants, the improvement of such situation cannot be expected in the near future, unless the radical measures are taken very soon.

Chart 3: Susceptibility to corruption



Source: SELDI Corruption Monitoring System.

Republic of Serbia still does not have a *Code of Ethics for Civic Servants*, but it is expected that such document will be adopted in the near future. However, Article 25 of the *Labor Law in State Services,* adopted in 1991 and amended several times till 2002, obliges public servants to preserve the esteem of an institution they work for while performing their duties.

* * *

Adequate ethical norms and internal mechanisms for control and prevention of corruption within the administrative institutions need to be introduced. The already created ones have to be further developed and implemented. The following documents provide a good basis for their further development: Recommendation N. R (2000) 10 of the Committee of Ministers of the Council of Europe on Codes of Conduct for Public Officials, adopted by the Committee of Ministers at its 106th session on May 11, 2000, and the Model Code of Conduct for Public Officials, attached as Appendix to the Recommendation as well as the Code of Good Administrative Behavior, adopted by the European Parliament on September 6, 2001, based on the practice of the Court of Justice of the European Community and the administration-related national legislation of the member states.

It is also recommended that specialized units in the branches of the administration are created in order to exercise internal control over their activities and prevent corrupt practices by civil servants as well as carry out appropriate internal

procedures for investigation of administrative abuse and corruption.

Status of Civil Servants Guarantees for Political Independence

The process of application of the legal framework for the public administration's new organizational model and the introduction of the civil servant status raised several issues. In many SEE countries there is a lack of clear boundary between political appointments and those based on promotion.

The legal regulation of the status of civil servants, their recruitment, rights, duties and liabilities is among the measures which contribute to the more effective counteraction of the internal factors fostering corruption and facilitate the creation of a favorable institutional environment for preventing corruption.

In **Albania** the *Law on the Status of the Civil Servant* (No.8549), in force since November 1999, declares the principles of professionalism, independence and integrity, political impartiality, transparency, public service, career continuity, and legality to be the guiding lights in the performance of the public function. The Council of Ministers has established the Department of the Public Administration (DOPA), which is the real authority on civil service issues. It formulates programs and policies, and drafts all implementing legislation the Council of Ministers is supposed to adopt.

The *Civil Service Act* has been pushed quite successfully by DOPA. As far as central government agencies are concerned, recruitment procedures have increasingly been conducted according to the pattern envisaged by the law. Also, a database on public administration employees is being set up. The database is expected to provide officials with a clear view as to the geography of human resources and will enable them to make the best allocations possible. Thus the legal basis for strengthening the civil servants' status has been introduced but, the institutional prerequisites for anti-corruption are still in process of establishment.

A more competitive recruitment process is anticipated with the adoption in **BiH** of legislation on the prevention of the conflict of interests. Currently no such mechanisms are in place.

In **Bulgaria** the problem for defining political appointments and civil servant promotion was partially solved by the *Law on Amending the Law on Administration,* adopted on November 7, 2001, in force since November 23, 2001. It mandates strict implementation of the provisions, which govern these two types of appointments. It is expected to strictly apply the rules regulating these two types of appointments, observe transparency of the process and exercise control over compliance in order to move progressively toward a state administration model resistant to excessive political appointments and dismissals, and to overcome political dependence and pressures over the activities of civil servants.

The Code adopted in **Macedonia** defines independence of the state servants in performing their duty and making decisions. According to the Law, the need for a new employment has to be publicly announced by the Agency. The Commission has to be established for performing a procedure of recruitment. The candidates have to pass an exam in the Agency, which prepares the list of the best candidates. Senior official from the state body (the State Secretary or General Secretary) performs the selection of the candidates. The Agency is authorized to adopt by-laws, which determine the key issues such as criteria, standards, and a procedure for employment and selection of the state servants. However, in spite of such criteria and procedure, the practical implementation of these rules is quite different. There are serious indications for abuse of power during recruitment procedure and avoidance of prescribed criteria. The total politicization of the public administration in the last several years does not guarantee efficient, skilled, competent,experienced and professional administration, according to the European standards and criteria.

The *Law on Employment in the State Authorities* of the **Republic of Serbia**, effective since 1991, regulates status of civil servants. Article 4 states: "Employed in state organs can neither be guided by their political convictions, nor express them, nor advocate them. Persons employed and appointed to the state organs cannot be members of the organs of political parties." That is, membership in political party is implicitly allowed. There are no other guaranties for political independence of the civil servants.

Job Security (Hiring and Firing of Civil Servants)

In **Albania** the *Law on the Status of the Civil Servant (No.8549)* satisfactorily regulates the issue of recruitment. Article 12 of the law provides a list of general requirements to be met by candidates in order to become civil servants.

Those who meet the conditions, go through the selection process. After the exam (both written and oral), the final decision is made.

However, job security is precarious and careers are built on grounds other than meritocracy. These and other factors have made Albanian civil service very prone to corruption.[19] Perhaps the most conspicuous failure of the civil service reforms has been the fact that local government departments and agencies have totally ignored the law. As a consequence, recruitment, promotion and layoffs have been conducted illegally and arbitrarily.

The Albanian *Civil Service Act* is proving to be an important tool in the hands of policy makers and administrators in their efforts to make the public function more efficient and transparent. Clearly, this process is capable of significantly reducing corrupt practices in the civil service.

Government officials sustain that numerous administrative measures have been taken against corrupted individuals. During the last 6 years a number of customs officers, policemen, and other officials of the state administration have been dismissed on charges of corruption and abuse of power. However, in none of these cases legal proceedings took place. Since some of the officials that have been dismissed on charges of financial abuses have close ties with people in the upper decision making levels of the state administration, they have been appointed in parallel state structures, regaining immunity before any legal proceedings.

This has become a hot issue for the reformist governments of **BiH** that took office in 2001, as they inherited complex administrative mechanisms that were mostly hired on a political affiliation merit, or through connections. The existing legislation regulating firing and hiring of public administration is extremely restrictive and in almost two years of holding that office, the new governments have managed to fire and competitively hire only a handful of employees, nowhere near the realistically required figures to alleviate conflict of interest from the administration. The adoption of the new legislation should be of great benefit in that respect.

In **Bulgaria** the transition to systematic monitoring and management of the human resources in the civil service should be carried out as a follow up of the *Ordinance on the Civil Servants Register*, issued by the Minister of State Administration, in force since February 15, 2001. The application of the civil servant status will be further facilitated by improving the provisions on ranks included in the *Ordinance on the Implementation of the Uniform Classification of Positions in Administration*, issued in 2000. Despite the adopted legal provisions, the selection of civil servants is still not based on distinct criteria for evaluation of their professional knowledge and skills, which should serve as a basis for their appointment and promotion.

Under the Law, the state servants in **Macedonia** can be fired if they are found guilty of criminal act, if their work was evaluated as inefficient, or if they refuse to be transferred on a different position.

The *Law on Employment in the State Authorities* of the **Republic of Serbia** lists the principles defining employment procedures, job allocation, professional duties, occupations, pay scales, and salary calculation, etc. There are clearly defined rules that regulate advancement in the office, acquiring titles, posts, organizational issues. There are certain conditions concerning working experience and qualifications that have to be met in order to acquire higher posts. Salaries are determined by salary groups, according to posts and length of occupation.

Every citizen of Federation of Republic of Yugoslavia, who is at least 18 years old, fits general health conditions, prescribed qualification for the certain post, and has not been convicted to more than six months of imprisonment can be employed in the state administration. Foreign citizens cannot be employed in the state organs. Hiring procedure begins with public announcement, but final decision on hiring is taken by the head of the personnel within the state body.

The Law provides discipline responsibility of the civil servants for breaking working liabilities, inefficiency, indolence, misuses, or breaking codes. Every employee can propose discipline trial, but only higher officers can initiate the process. Final verdict is on the highest officer in the referred state organ.

In practice, little progress was made towards establishing the necessary criteria for employment and promotion according to a merit system, even after October 5. The hiring procedure is largely disregarded in practice, because there are no mechanisms that prevent discretionary power of the state body officials. In most cases,

[19] According to corruption surveys, civil servants are perceived as highly corrupt. The civil administration, both local and central, was perceived as the third most corrupt organization after customs/tax authorities and the judiciary. WB Reports on Corruption, 1998 and 2000.

announcements made are nothing more than formalities.

There is no explicit provision in the Law that regulates suspension in the state administrative bodies. There are no major restrictions on employment possibilities following termination of service in the public sector. The only provision in the Law regarding this states that higher officials can change the positions of employees, and employee who does not accept new post gets fired.

Changes in the *Labor Law in State Services*, adopted in July 2002, considerably liberalized this important issue (dismissal of civil servants from work). Article 64a sets down cases, in which public servants can be dismissed:

- If it is proven that the public servant was hired without a proper legal procedure within a period of one year after the hiring
- If he/she does not show the required results during the probation period
- If he/she refuses to work on a working position he/she was posted on
- As a consequence of loosing a title and if no suitable working position to which he/she can be transferred is available
- If he/she is absent from work in a period of 15 days without a proper excuse
- If he/she receives a status of non-deployed after restructuring of an organization

Nepotism/Cronyism, Gifts/Hospitality – Legal Provisions and Practice

The prevention of the conflict of interest is very important for combating corruption. However in most SEE countries there is still no clear and detailed regulation.

In **Albania** the depth of corruption, even in the highest levels of state administration and governance, has distorted developmental policies, resulting in high unemployment and economic stagnation in many production sectors, as well as in high level of pollution of the environment and chaotic urbanization. The first to suffer is free and honest competition since entrepreneurs have to adopt these practices in order to ensure survival of their business. In recent years very few small enterprises and business have been created. This has happened in spite of the fact that Albanian legislature has been improved. There is almost a decade of experience in dealing with business, consumption has increased and labor force has become cheaper. The corrupt business environment has forced entrepreneurs to apply a system of fixed formal and informal practices in their businesses, rather than sit and wait for the state to put an end to unfair competition and informal economic activity. Such a business environment is also very unattractive for foreign investors, and in fact foreign investment in Albania has fallen significantly.

In **BiH** no provisions to prevent nepotism are in place yet, despite the fact that it is exceptionally widespread.[20] The vicious circle of nepotism continues to fill space in the newspapers and talk shows on the national media. Using one's position in the public office to protect interests of entrepreneurs with whom officials have political or other connections – another indication of economic conflict of interest – is perceived as a widespread problem by more than 50 percent of the public officials interviewed.

The *Prevention of the Conflict of Interest Law* regulates the position of all civil servants and political representatives, in respect of their function in the public institutions and introduces clear rules on the conflict of interest between a public office and any private sector interest. At the BiH level a draft law was passed. In the Entities, the preparations are entering the final stage (the segment regulating this law may be built into a broader law on civil service, which may make some of the mentioned legislation obsolete). That law is to be coordinated by the Ministry of Civil Affairs and Communications, as well as the Federal and RS Ministries of Justice and fully adopted by the end of 2002.

Hospitality and gifts are more often seen as a "sign of good will" than a bribe and are commonly practiced, both on the giving as well as on

[20] The following outcomes of BiH anti-corruption diagnostic indicate that state capture and conflict of interest are major problems in BiH: Enterprises managers interviewed consider policy and regulatory aspects of state capture ("sale of votes to private interests", "monopolies") the biggest problem for businesses. Out of 27 problems that the business environment can create for an enterprise, most of the respondents chose "monopolies" as the most serious obstacle. "Sale of Parliamentary votes and governmental decrees to private interests", which describes policy aspect of state capture, was also ranked among the most serious obstacles for business. Half of the respondents in the public survey said that accepting bribes for influencing the content of laws and other obligatory decisions – the most direct indication of state capture – is a widespread practice at the State, Entity and Local government levels. (WB, ibid.3)

the taking side.[21] Again, no legal provisions regulate this area or sanction either side.

In **Macedonia** there are no provisions which prohibit nepotism/cronyism. This is one of the reasons that the nepotism is highly present in the public administration. The family members of politicians or senior officials have been recruited in different ministries or public enterprises, or even in the same organ. Such situation creates a high possibility for corruption, because of their internal family connection and mutual trust.

There is no legislation regulating acceptance of gifts and provision of presents and services to civil servants in **Serbia**. There are no services keeping registers to that effect. Restrictions can be defined by service regulations, in connection with employment, which had the character of a state or official secret. There is no single organ resolving public complaints about the work of the administrative organs, public services and their staff. No regulations exist which define the existence of such an organ.

4.2. Administrative Services. Responsibility of the State for Damages Caused by Public Officials

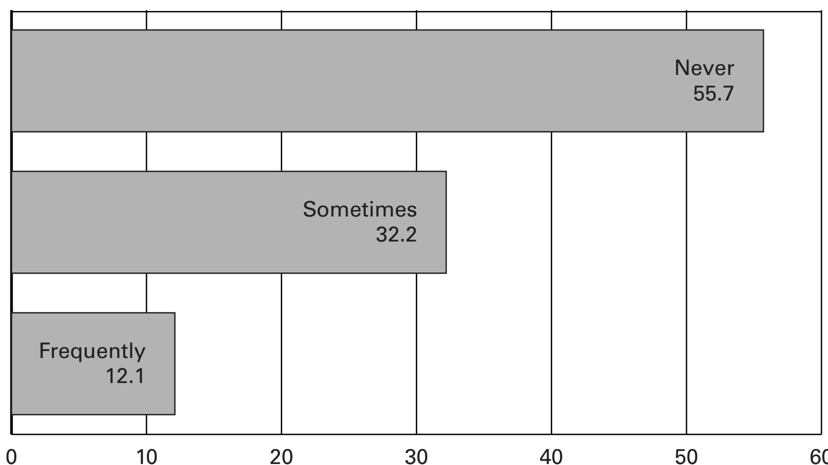
In **BiH**, this is regulated by the not yet adopted RS *Anti-Corruption Act* and partly by the *Conflict of Interests Prevention Law.* Any disclosure of information of privileged sort is considered a criminal activity and the sanctions are designed according to the mentioned laws.

The introduction in **Bulgaria** of an effective organizational model for the administration as a necessary prerequisite for the improvement of administrative service of the citizens and for prevention of the corruption, discretionary exercise and abuse of administrative power started with measures for opening the administration to the citizens and improving the quality of administrative service.

In order to open the administration to the citizens and more effectively Implement the *Law on Administrative Services* for Natural and Legal Persons the following measures have been undertaken: preparation of billboards with information about the type of services, fees, necessary documents, specific administrative unit performing the service and data on its managers and experts; provisions *ex officio* of forms and samples; publications of brochures; introduction of badges for the employees of different administrations in order to eliminate their anonymity and initiate responsibility in cases if poor or unscrupulous performance of duties and so on.

The organization of administrative services through a "one stop shop" aims at facilitating citizens' access, improving the quality and efficiency of the administration's work and eliminating the direct contact between applicants for services and service providers, thus decreasing the probability of illegal interactions between the two parties and limiting the opportunities for corruption. These purposes have not been attained yet not only because the "one stop shop" project is still in its early stages of implementation. It is the novel approach which does not come easy, the flaws in the internal regulation of

Chart 4: Frequency of additional payments (sponsorships, etc.) and/or payment of bribes in order to obtain public services (e.g. telephone, power supply, etc.) in Bulgaria (%)



Source: Global Competitiveness Survey, Vitosha Research and Center for Economic Development (surveys of 119 companies, February 2001)

[21] According to WB Diagnostic Surveys of Corruption (p.5), as many as 27 percent of public officials admitted that in the past two years they had been offered a small present by a client for services provided, and 36 percent of public officials said that in the past two years they had been offered either money, or an expensive present, or a counter-service.

the administration, the insufficient qualification of the civil servants and the slow automatization of services and introduction of new information and management technologies all account for the delay.

The administrative service reform is still at the stage of deciding upon its organizational model. The delay in the process of creating uniform internal rules on the operation and the interaction among the units of the respective branches of the administration negatively affects the process of creating an administrative service environment free of corruption. Often internal rules are provided not in a single regulatory act but in multiple ones, both of internal organization (orders, instructions and rule of procedure) and legislative. Few administrations have uniform internal rules adopted and approved by their secretary general.

Issues still remaining to be solved are those concerning the deadlines and procedures for provisions of administrative services as well as the unification of currently existing procedures for dealing with applications for services and complains about the activities of the administration as the current regulations are included in various laws and contain different deadlines and appeal procedures. The solution of these issues would create legal guarantees of citizens' rights in their interaction with the administration, greater transparency and more effective control over the activities of the administration, limits over obtaining administrative services through unlawful practices.

It has become evident that the poor quality of administrative services is often due to insufficient financial resources: most of the units of the administration still lack not only computers and the necessary software, but even simple document-processing applications. This can practically block not only the coordination of application for services submitted to different branches of the administration but also the application of principles of openness of the administration, efficiency of its activities and accessibility of its services in the long run. In such environment corruption rates at all levels remain relatively high.

The Bulgarian Constitution in Article 2 adopts the principle that the State bears responsibility for damages caused by illegal acts and actions of state bodies and officials.

Detailed regulations on this matter are contained in the *State Liability Act for Damages Inflicted on Citizens*, in force since January 1, 1989, and subsequently amended several times. The Law concerns two groups of state bodies who can be made accountable for damages under this act - the administrative and the law-enforcement bodies.

The state is liable for damages inflicted on citizens by illegal acts and acts of omission or commission of state bodies and officials while exercising the functions of administration activities. When damages have occurred due to an illegal act of an administrative body, compensation can be sought only after the illegal act is annulled according to the set of rules stipulated in the law. This includes administrative appeal before a higher administrative body, judicial appeal, as well as attacking the act with the help of extraordinary measures for control of administrative acts already in force. When damages have occurred as a result of a void act of the administration, the nullity is declared by the court before which a claim is presented for compensation without a preliminary reversal of the act in question. A void act is one whose imperfections are so serious that it cannot give rise to legal implications. When damages have occurred from illegal acts of omission or commission of the administration, compensation can be sought directly by a claim before a court. On its part, the court has to deliver a judgment on the legitimacy of the act of omission or commission. The state is also liable for damages inflicted on citizens by courts and tribunals.

The Law fixes the amount of compensation owed by the state according to the set of rules stipulated in it. The compensation includes material as well as non-material damages that are a direct consequence of the damage regardless of whether the official has acted contradicting the law or not.

The existing legal regulation does not facilitate substantially the citizens in their quest for legal defense of these violated rights. The majority of the citizens are not acquainted with the procedure in which they can retain the liability of the State and to safeguard their rights. The existing legal provision is not sufficiently effective because the institution that has violated the rights of citizens has to explain to the citizens their rights and procedures.

According to Article 13 of the adopted in **Croatia** *Law on Organization of Government Administration,* in force since 1993, damages done to citizens, legal entities or other entity caused by illegal or reckless performance of government bodies, bodies of local government and self-govern-

ment, or legal entities that have public authorities given by state bodies, will be covered by the Republic of Croatia.

The *Law on Civil Servants* in **Macedonia** provides a responsibility of the public officials for damages caused during exercising their duties. There is also an obligation of the state organ to reimburse the damage caused to third party by the public officials. Minister or other functionary may fully or partly free public officials of the responsibility to reimburse the damage if it is not done intentionally or if payment of the damage will jeopardize the existence of public officials. The Central Register of state servants, as an obligation deriving from the *Law on State Servants* should be established. The preparation for this register is underway.

Republic of Serbia takes no responsibility for damages done by its officials. Article 54 and 55 of the *Labor Law in State Services* claim that public servant himself is responsible for the damages made intentionally or due to a careless behavior to a state institution, legal entity or a citizen. Special committee, headed by a chief of the institution, determines the damage and circumstances in which it occurred. If it is estimated that a public servant cannot cover the damage, he/she can be partially absolved from compensation of the damage. This provision does not offer proper protection to citizens and legal entities when dealing with state organizations, especially because of high discretion rights the head of the committee has on judging the amount of damage and the related circumstances.

* * *

The introduction of new information and management technologies in the state administration is a necessary condition for increasing its efficiency and improving the quality of administrative services as well as for limiting the causes and opportunities for corruption. Indeed, the rapidness and quality of services performed by the administration are among the most important factors shaping the citizens' attitude towards both the local authorities and the central government.

It is recommended to improve legal provisions and procedures regarding state liability for damages inflicted on citizens as well as to start working on a favorable environment for a gradual privatization of administrative services as a means to decrease bureaucratic routine and corruption and improve the speed and quality of service provision.

4.3. Specialized Control over the Work of Administration (National Audit Institution, Ombudsman Type Institution, Other Institutions with Controlling and Monitoring Functions)

The introduction of effective mechanisms of control over the work of the administration is an integral part of the anti-corruption reform in the public administration. Issues of particular importance include greater role for the National Audit Office as an institution which exercises overall external control over the budget, more effective role of the authorities for state internal financial control, specialized customs and tax control, the Financial Intelligence Bureau and establishment of new mechanisms and instruments of control, thus contributing to the improvement of control over the management and the use of public funds, increase of transparency and prevention of corrupt practices.

National Audit Institution

The High State Audit in **Albania** has a key role to play in the fight against corruption. By its very definition, the High State Audit acts on behalf of the taxpayers in order to make sure that the Government properly uses the taxpayers' money.

The High State Audit was re-established in 1992 based on the concepts of modern constitutional theory (it became an external audit institution elected by the Parliament). The 1992 law was later replaced by *Law on the State Supreme Audit Institution* (No. 8270, dated December 7, 1997). The new Constitution of 1998 baptised the High State Audit as the High State Control. In the new constitution, the Audit Institution is defined as the highest body of economic financial control for public property and funds. The term of office for the Institution's president is seven years (appointed by the Parliament upon a proposal of the President of the Republic), with the right of re-election. The head of the High State Control has the immunity of a member of the High Court. It reports directly to the Parliament on the implementation of the state budget, gives its opinion on the Council of Ministers' report about the expenses of the previous financial year before it is approved by the Parliament, and provides information about the results of controls at any time this is requested by the Parliament. However, the Constitution does not guarantee the independence of the High State Audit.

Based on constitutional and legal provisions, the High State Audit monitors and identifies every

phenomena, problem or activity that is against the law and regulations dealing with state budget. Each year the High State Audit presents to the Parliament its judgment on the Council of Ministers for the realized budget together with results and evaluation for its administration during the fiscal year. It conducts an analytical audit program that is focused on:

- Ministry of Finance, as an institution that drafts and implements the budget;
- The ministries and governmental institutions that are the main users of governmental funds;
- Large governmental companies or enterprises;
- Local governmental agencies.

The High State Audit presents to the Parliament the following:

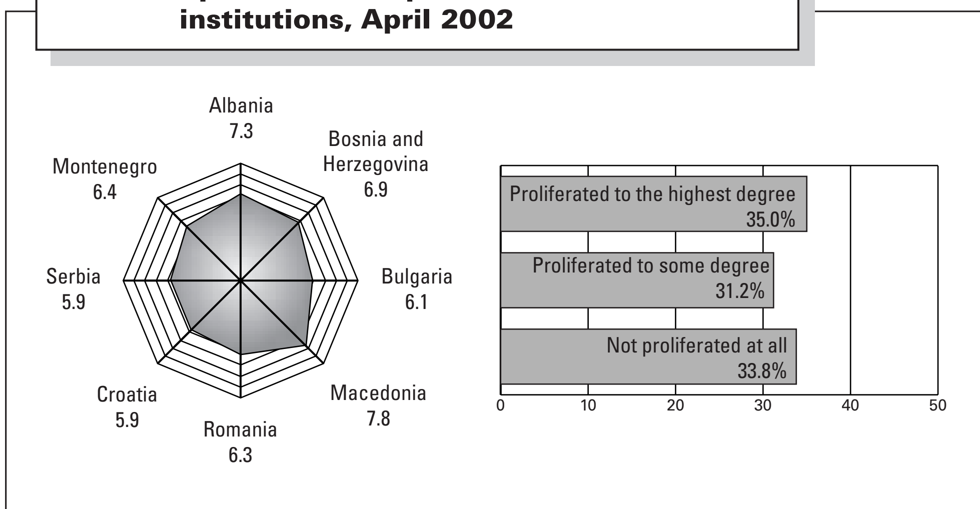
- A report on the implementation of the state budget;
- An opinion on the Council of Ministers' report about the expenses of the previous financial year before it is approved by the Parliament;

Information about the results of controls could be requested by the Parliament at any time.

The present legislation does not provide enough procedural detail with regard to investigation, the procurement of expertise, conflicts of interest, etc. The biggest controversy concerning state audit was prompted by the Government *Decree on the Financial Control* (No. 217, dated May 5, 2000), which established the Financial Control Departments at the Offices of the Prefects and gave such departments the competencies to audit the financial activities of the local government bodies as well as of the economic facilities that are managed by the local government. It is not difficult to discern several problems of principle in such an arrangement. Arguably, providing the prefects (whose line of accountability finishes with the cabinet) with auditing powers over the local government could dilute the overall Parliamentary control over the Audit Institution. Secondly, the aforementioned arrangement may by-pass the barriers that are set up to protect the autonomy of local government from improper interference by central government institutions.

Laws on Supreme Audit Institutions were passed by the State and the Entity parliaments in **BiH** in early 1999 and the Supreme Auditors formally appointed in 2000. Their initial reports were presented to the respective parliaments in April/May 2001 and it is only since early 2002 that the prosecution and judiciary are gradually reacting to those alarming findings. This is the first time Supreme Audit Institutions (SAI) are introduced in this country and an extensive preparation preceded the appointment and the operations of the SAIs in order to ensure their independence and proper institutional arrangements, including a parliament support in undertaking SAI activities. The international community orchestrated much of the preparatory work, namely the Office of the High Representatives, with the technical assistance provided by the Swedish government and their respective SAI. Staff of the Audit Office was appointed in accordance with the Rules of Service agreed between the Auditor General and the Council of Ministers, which must not be less advantageous then the ones

Chart 5: Spread of corruption in the national audit institutions, April 2002



Source: SELDI Corruption Monitoring System.

provided for the government servants of Bosnia and Herzegovina.

The Auditor General and his/her deputies are appointed by the Presidency acting only in accordance with the advice of both Houses of the Parliamentary Assembly of Bosnia and Herzegovina.

The Presidency may remove the Auditor General and his/her deputies from the office only if each House of Parliament passes a motion asking for removal of the Auditor General on the grounds of misbehavior or if the quality of audit work fails to meet the standards determined in accordance with this Law.[22]

Criteria for appointment and removal of Co-ordination Committee members was formed in accordance with the *Law on Audit of Financial Operations of BiH Institutions*, *Law on Budget Audit on BiH Federation* and *Law on RS Public Sector Audit*,[23] as well as with the *Lima Declaration on Guidelines of Auditing Prospects Principles* and the *Rules for the BiH SAI Legal Powers of Enforcement.*

The first reports of the BiH Supreme Audit Office were sent to the Parliamentary Assembly for analysis in July. The reports audited three Bosnian Ministries for the financial year 2000: the Ministry of Foreign Affairs, the Ministry for Civil Affairs and Communications and the Ministry of Foreign Trade and Economic Relations. With the assistance of the Parliamentary Support Project (part of the OSCE Mission to Bosnia and Herzegovina), the relevant parliamentary committees in the legislative reported on the findings of the audit office in September, reaching a consensus across parliamentary lines on recommendations for reform of relevant ministries.

The finance and budget committees' scrutiny of the first audit reports marked some significant improvements in parliament's functioning and of the politically undermined parliamentary committee system, in particular. For example, committee hearings were held with the relevant ministries to follow up on the audit office's findings, which pointed to mismanagement, lack of internal control, and misuse of budget in the previous financial year. Although there was reluctance on the part of the new government ministers, appointed in the spring of 2001, to be held accountable in the parliament, deputy ministers attended the hearings, responding to written and oral questions. The finance and budget committees of both Houses issued joint recommendation for the reform of practices in the ministries, marking a degree of cross-party consensus rarely achieved in the volatile Bosnian political system.

The control powers of the National Audit Office are of great importance for combating corruption in **Bulgaria**. The new *Law on the National Audit Office,* in force since December 22, 2001, laid out a more elaborate system of anti-corruption measures (many of these measures have been recommended by *Coalition 2000)* including the following elements:

- Expansion of the scope of the National Audit Office's activities: the budget of the State Social Insurance and the National Health Insurance Company and the financial resources from funds and programs coming from the European Union, including their management and end users.

- Informing in advance the Minister of Finance or another relevant authority when in the course of an audit either unlawful collecting or spending of budgetary or other public funds or damages to the audited property has been established.

- Public announcement of the results of completed audits, which no longer represent a legally protected secret.

- Legal regulation of the cooperation between the National Audit Office, the state internal financial control authorities, the tax and the customs administration, the authorities for compulsory collection of state receivables as well as the financial intelligence authorities and the Judiciary; the forms of cooperation have to be specified by joint agreements.

- More precise provisions on reporting to the National Assembly and follow up on the National Audit Office's recommendations.

The implementation of the newly adopted measures will contribute to the improvement of control over the management and the use of public funds in the country, including the resources provided by the pre-accession funds, as well as increase its

[22] Law on the Auditing of Financial Operations of the Institutions of Bosnia and Herzegovina. *Official Gazette of Bosnia and Herzegovina* – No. 17/99, October 1999. (http://www.revizija.gov.ba/bs/intosai/audit-stand.asp)

[23] Web site: http://www.saifbih.ba/bs/regulativa/stand-reviz.asp

transparency, prevent or uncover corrupt practices in cooperation with other specialized control institutions.

The National Audit Office also plays an important role for the successful implementation of the *Law on Property Disclosure by Persons Occupying Senior Position in the State*, in force since May 13, 2000, in relation to the public register established with the Chair of the National Audit Office. Anti-corruption dimensions of this role are obvious and have to be developed.

In **Croatia** pursuant to *State Audit Act* (SAA), in force since 1993, amended in 1995, 1999 and 2001, the State Audit Office (SAO) performs audits of state expenditure, financial statements and financial transactions of government units, local self-government and administrative units, legal entities that are partially or wholly financed from the budget, legal entities in which the state is majority shareholder, and the National Bank of Croatia.

The audits consist of examinations of legality and efficiency of spending of public funds in individual branches and accomplishment of certain programs in compliance with the audit standards of the International Organization of Supreme Audit Institutions (INTOSAI).

The Croatian State Audit Office (SAO) complies with the most important condition: that the Office is an independent institution and that it is responsible only to the Parliament and not to the Government. SAO has obligation to make an annual report of its audit work to the House of Representatives of Croatian State Parliament. According to Article 12 of SAA the State Audit Office is run by the Auditor General. The Auditor General is appointed by the House of Representatives of the Croatian State Parliament (*Sabor*) for the term of 8 years and he/she can be re-appointed. The tenure of actual Auditor General is to be assumed as per its original appointment. The Auditor General can be dismissed before expire of the tenure: upon his/her own requests, when appointed to the other position with his/her consent, if permanently looses the capability to carry out the duty, and if found guilty for a crime which makes him/her unworthy to carry out the duty of Auditor General.

SAO Auditing Reports should be discussed in the Croatian State Parliament. The report must be submitted to the House of Representatives of the Croatian State Parliament not later than five months following the expiry of the date for submission of annual financial statements. Croatian State Parliament accepts the Decision about realization of SAO findings.[24]

SAO was set up to supervise and control the Budget and budgetary beneficiaries. It regularly publishes reports about audits it has done and appends them to parliamentary Budget debates. Although of very high quality, the findings of the audits to date about shortcomings in the budgetary process have not been adequately applied in practice.

The *Code of Professional Ethics* has been authorized by the Auditor General in compliance with the *Code of Ethics* of INTOSAI.

SAO organizes meetings with and was visited by representatives of OECD and World Bank, regarding the Stability Pact Anti-corruption Initiative (SPAI) and monitoring the improvements of auditing system in the Republic of Croatia.

It is unfavorable that according to Article 8 of the *Decree on changes and amendments to the Decree about Titles and Salaries of Public Servants and State Employees*, issued in 2001, employees in SAO have the same incomes as other state employees or public servants. The new regulation put out of order the special rule that regulated salaries of employees in SAO. That could have unfavorable effect in motivating the best and most experienced staff from Office to move to other services or private auditing firms.

Simultaneously, according to Article 3 of the *Decision about Amendments of the Law on State Audit Act* of 2001 SAO also got very broad and complex duty to audit the whole process of privatization that has to be finished by January 1, 2003.

The auditing in **Macedonia** is regulated by the *Law on State Audit Office* as a national institution and *Law on Audit* regulating the auditing in private companies and legal entities.

The *Law on State Audit* was enacted by the Parliament in 1997. According to the Law, the State Audit performs audit on budget expenditures, financial reports, financial statements and financial transactions by the state organs, local

[24] SAO Auditing Reports are available to the general public on SAO Internet pages (http://www.revizija.hr). SAO Auditing Reports for year 2001, is on WEB page http://www.revizija.hr/doc-new/izvoradu.doc), and here are also the Reports from the earlier years.

government organs, legal entities partially or fully financed from the state Budget, legal entities in which the state is major shareholder, the National Bank of the Republic of Macedonia, payment operation institutions, funds, agencies and other institutions established by the Law and users of EU funds and other international institutions. The audit contains an examination of documents, reports of internal control and internal auditing, accounting and financial procedures and other evidences, implementation of international accounting standards and auditing standards. The State Audit also examines the legality and efficiency of financial transactions and state expenditures. The state audit has to be performed at least once in year. The State Audit Office is run by the General Auditor, elected and dismissed by the Parliament. The General Auditor and his Deputy are not allowed to perform any other function, to be members of governing, supervisory or any other board, or members of political party. The Law does not clearly state their independence. The funds for State Audit Office are provided from the State Budget.

The State Auditor has a legal power to free access to the business offices and property, insight into the books and other documentation, and the power to require explanation by the subjects in which the audit is performed about all issues essential for the auditing. The legal representative may not declare as a state secret the documents, which do not have such mark, in order to refuse or disable the auditing. If the subject in any way limits the scope of audit, the State Auditor shall include this in the Report, in accordance with auditing standards and immediately inform the competent organ responsible for supervision on the subject. If during auditing procedure the Auditor finds out that there is basic suspicion for misdemeanor or criminal act, he will immediately inform the competent organs to take necessary measures. The organs are obliged to inform the State Auditor within 30 days about undertaken actions upon his findings. In spite of its independence, there are serious indications that government often pressures the State Auditor, due to the fact that the proposal for his appointment has been made by the Government. The influence of competent Government institutions on the selection of persons as auditors does not indicate independent functioning of this institution, as well as efficient performance of his duty. The professional and independent excising of the function by the State Auditor without influence by the competent government institutions should ensure regular control on the use of budget resources and prevent corruption practices.

The State Auditor submits the final Report to the legal representative of the subject, which has a right to make notices and suggestions on it. The competent organ, which supervises the subject, will inform the State Audit Office about undertaken actions in accordance with findings of the Auditor. The State Audit Office is obliged to submit report to the Ministry of Finance if it finds out infringement of law by the financial sector. The State Audit Office submits its Yearly Report to the Parliament. The State Auditor submits also current reports when finds out essential infringement of law and quarterly report considering indicators for monitoring and evaluation of successful performance of its Program, which is part of the Annual Report. The Report of State Audit Office is on the website.

However, the public has not been informed so far, whether the State Auditor has taken any actions regarding the big scandal in the Ministry of Defense in 2001, when several million DEM from the budget funds were transferred to family's company of the former Minister of Defense, who had to resign after the scandal was discovered by the media. This institution is not sufficiently opened to the public or to the media, except through the Yearly Report.

According to 2000 Annual Report which has already been submitted to the Parliament, the State Auditor has discovered abuse of several million Euro in the Health Insurance Fund. No transparent procurement procedure and direct negotiations with known buyer took place. So far, no one of the competent organs has taken any actions. However, having in mind that the Director of the Fund is one of the respectable members of the ruling party, and the practice for such cases so far, there are no optimistic expectations in the public that any actions shall be taken against the Director of the Fund and other persons involved in this scandal. The last scandal discovered by the State Auditor is abuse of 6 million Euro of the budget funds by the public enterprise "Aerodrom."

Within the Ministry of Finance and Economy of the **Republic of Serbia** the Budget Inspection is in function of scrutinizing all budget users in the Republic. Assistant Minister for budget inspection is the head of the department and currently has only five inspectors employed full time. Enlargement and training of this department is among the priorities of the Ministry. Budget Inspection conducted a control of usage of budget property only for the year 2000, which was the last year of Milosevic regime. In a sizeable report

they made, they have identified following criminal acts:

- Misused resources;
- Illegal spending;
- Non-paid foreign currency revenues to the Central Bank;
- Misused solidarity fund resources;
- Non-paid taxes, social securities and other public revenues.

As the consequence of the Budget Inspection of the Ministry of Finance and Economy results, the following measures have been taken:

- 29 settlements for restitution of illegally spent resources;
- 24 criminal charges against 47 former government officials, among which 17 ministers;
- 29 indictments for commercial offence against 142 officials;
- 16 demands for the agitation of the commercial offence procedure against 23 officials.

Republic of Serbia currently does not have a supreme auditing institution, which is the case in developed countries. The expert team has been established under the auspices of UNDP, featuring representatives of the People's Assembly, the Ministry of Finance and Economy and the Ministry of Justice and Local Governments aimed at developing of this institution. It is still not chosen which model will be applied, German one, featuring the institution of court, or the French one, featuring the institution of general auditor. It is expected that the new Law will be developed with the help of the UNDP experts.

It is important to mention that the People's Assembly has adopted on March 26, 2002, *Organic Budget Law* that will among other facilitate the creation of a Treasury. Treasury will be placed within the Ministry of Finance and Economy and its functions will be financial planning, cash management, expenditure control, debt management, accounting and reporting. The centralization of cash flow will decrease the risks of abuse of funds. The Treasury development is supported by the US treasury and the European Agency for Reconstruction.

The Ombudsman Institution

The ombudsman institution is a specialized institution to control and monitor the administration operating on the basis of moral authority against administrative abuse. The main function and objective of the Ombudsman and the certain similar institutions is to monitor the administrative work within the State and act as a brake upon corruption and arbitrariness which interfere with human rights, to assist the reinstatement of private persons' rights after the latter have been violated by the State and its officials, and to create an atmosphere of respect of human rights and of social autonomy. The institution is established in almost all European countries. In most SEE countries, such institutions were established after the democratic changes.

The Ombudsman concept in **Albania** is based on the Albanian Constitution, articles 60-63 and on the *Law on People's Advocate* (No. 8454, dated 04/02/1999). The People's Advocate defends the rights, the freedom and lawful interests of individuals from unlawful or improper actions or failures to act of public administration bodies. He has the right to make recommendations and to propose measures when he observes violations of human rights and freedoms by public administration.

In exercising his tasks, the People's Advocate is independent from any other public authority and has its own budget, which he administers himself. He is accountable to the Parliament only. He is elected by three-fifths of all members of the Parliament for a 5-year period with the right of re-election. He should not be a member of the Parliament.

The People's Advocate enjoys the immunity of the judge of the High Court and his salary is equal to the Chairman of the High Court. He/she may not take part in any political party, carry on any other political, state or professional activity, nor take part in the management organs of social, economic and commercial organizations. He can be dismissed with a special procedure. Minimum of 1/3 of all Parliament's members may present a motion to dismiss the People's Advocate. The basic reasons for his dismissal have to do with breaching article 10 of the Law; receiving a penalty from the court; being mentally handicapped or not present at the working place for 3 months. The decision for dismissal is taken by a minimum of 3/5 of the members of the Parliament. It's worth noting that it is not clear in the law who is the body that prepares the report and the facts that lead to dismissal.

Ombudsman has 3 specialized departments:

- The department of the central and local government and the third parties that operate under their dependence;
- The department of the police, secret service, army and the judiciary;
- The department addressing the issues which are not mentioned above, cooperating with non-governmental organizations, and dealing with the studies in the field of human rights and freedom.

Furthermore, in order to provide the best territorial coverage, the Ombudsman is entitled to appoint a local representative. The local authorities of the place where this representative is appointed are also legally obliged to provide him/her with appropriate office and working conditions. The people can contact Ombudsman either by mail or in person.

The people's advocate can start the investigation of any case when he/she observes or doubts that human rights are violated, based on complaints or requests of interested people as well as on his own initiative for any case made public (but still with the approval of the harmed person). All public bodies and officials are obliged to provide any documents and information requested by the Ombudsman.

The Ombudsman submits a report to the Parliament on annual basis.

There is still more to do with respect to defining the relationship between Ombudsman and other state institutions. Traditionally, governmental agencies and institutions are not used to deal with such an institution like Ombudsman.

Since **BiH** is constitutionally comprised of two Entities: FBiH and RS, plus the BiH District of Brcko, directly under the State supervision, each of those has an ombudsman institution.[25]

On 3 January 2001 the new *Law on the Human Rights Ombudsman of Bosnia and Herzegovina* came into force and gave the current legal basis for the Human Rights Ombudsman. The new Law replaced Annex 6 of the *Dayton Peace Agreement,* which was the valid framework of the Ombudsman office since its birth in 1996.

The Human Rights Ombudsman of Bosnia and Herzegovina is according to the Law an independent institution set up in order to promote good governance and the rule of law and to protect the rights and liberties of natural and legal persons, as enshrined in particular in the Constitution of Bosnia and Herzegovina and the international treaties appended thereto, monitoring to this and the activity of the institutions of Bosnia and Herzegovina, its Entities, and the District of Brcko. The Ombudsman, as a controlling mechanism for the protection of guaranteed human rights, normally requires previous exhaustion of domestic remedies if such exist and if they are effective. If any issue appears to arise in connection with any of the rights protected, the Ombudsman conducts an investigation, and invites the Government to submit its observation. At the same time the Ombudsman seeks to achieve an amicable solution between the parties. Where no satisfactory solution is found, the Ombudsman issues a final report in which he states his conclusions as to the violation of the applicant's rights and freedoms and includes recommendation to the Government how to remedy the violation.

The Ombudsman insists that the Government and competent authorities comply with his recommendations. If no compliance can be achieved, the case will be forwarded to the High Representative and referred to the Presidency/ President of the respondent Party to use their political influence and make the relevant subject comply with the Ombudsman's recommendations. On the basis of his report the proceedings can be initiated before the HR Chamber in order that the Chamber's final and binding decision is obtained.

The Ombudsman can also present a special report to any government organ or competent official to remedy occurred or perspective breach of human rights.

The ombudsman has powers to investigate cases involving maladministration and violations of human rights by any state or Entity authority in Bosnia and Herzegovina. If human rights or fundamental freedoms have been actively or inactively violated by any of the public authorities in Bosnia and Herzegovina, the Ombudsmen may intervene and issue a recommendation to the authority concerned. The Ombudsman can also initiate inspections in institutions where he suspects maladministration. According to the *Dayton Agreement*, the Office should be financed by

[25] Web site: www.ohro.ba

Bosnia and Herzegovina and any relevant authority in its geographic and political area of jurisdiction. However, in the view of prevailing budgetary situation in the country, it was clearly not possible to expect that the Government would meet these obligations. Therefore, since the beginning, the Office is mainly financed from voluntary contributions of the member states of the OSCE and the European Union. The salary of the Ombudsperson is covered by the Swiss Government. The office of the human rights Ombudsman of Bosnia and Herzegovina issues Annual Reports. So far four annual reports have been published and presented since 1996. These reports outline, *inter alia*, the functions and activities of the Office of the ombudsman, co-operation of the Office with authorities, relationship with other institutions and organizations, as well as its financing. The annexes to the Report contain, *inter alia*, the statistical data, list of decisions and reports, summaries of final and special reports, list of contributions and costs, and other information concerning works of the Office. The copies of the Reports are distributed to numerous international and national organizations and institutions.

Unfortunately, the Ombudsman's office has thus far mostly dealt with the return of refugees and displaced persons (DP), and their property claims, and to a much lesser extent with corruption. If any, such cases would most often refer to the corrupt practices in the Ministries of Refugees and DPs which sought bribes either to allow repossession of property or an extended use of temporary accommodation.

Bulgaria is among the few European countries without an Ombudsman institution. Existing safeguard mechanisms cannot always ensure quick, timely, efficient and easily accessible protection of individuals affected by the actions of the administration. As a result, cases of maladministration, including abuse of power, corruption, disrespect of human rights, insufficient levels of gender equality protection, etc. are widespread. All these create the need for a new mechanism, which could operate in parallel with existing institutions and complement their work.

The introduction of an Ombudsman Institution was discussed in the very beginning of the democratic transition, during the elaboration of the new Bulgarian Constitution, adopted in 1991. However the initial idea was not further developed.

The initiative for establishing Ombudsman type institution was launched again in early 1998 by the Center for the Study of Democracy (www.csd.bg) – a leading Bulgarian non-governmental organization active in the field of policy research, drafting of legislation and advocacy activities. The process started within the framework of *Coalition 2000* anti-corruption process (www.online.bg/coalition2000). Experts of the Center for the Study of Democracy (CSD) carried out comprehensive research work, which resulted in the development of a *Concept Paper on the Opportunities for Establishment of Ombudsman Institution in Bulgaria* and a first version of the *Draft Law on the People's Defender*.

Parallel to the work on the Draft Law the CSD and its partner NGO's implemented a number of projects for introducing civic mediation at the local level. As a result local mediators and observers were established in some municipalities, operating on the grounds of special agreements with the municipal authorities.

On June 5, 2002, on a plenary session, the National Assembly passed the three introduced Draft Laws on the Ombudsman on first reading. According to the existing legislative procedure on the basis of these drafts a special working group to the Parliamentary Committee on Human Rights will elaborate one consolidated Draft Law.[26] The law is expected to be adopted this fall.

The fast introduction of Ombudsman type institutions on national and local level in Bulgaria can make them an additional guarantee against administrative arbitrariness and for free exercise of human rights. The development of effective institutions for guaranteeing the human rights is also one of the basic criteria for European Union membership.

Legal basis for the People's Ombudsman (PO) in **Croatia** is the Constitution, Article 92 (OG – NN 41/01). According to it, the People's Ombudsman, as a commissioner of the Croatian Parliament, shall protect the constitutional and legal rights of citizens in proceedings before the state administration and bodies vested with public authority. According to the Article 5 of the *Decree on Announcement of People's Ombudsman Act* of 1992, Ombudsman deals with particular cases of

[26] The CSD and *Coalition 2000* experts continued their work on the initial draft and developed an improved version of the Draft Law on the Civic Defender and the Local Civic Mediators (www.csd.bg/news/law/OmbudsmanE.htm#1), which could serve as a basis for the elaboration of the consolidated draft to be proposed for adoption on second reading by the Parliament.

endangerment of citizens rights in procedures before state administration and bodies vested with public authority, or persons from these bodies. Ombudsman deals with other important questions for protection of the constitutional and legal rights that are based on other sources of information (from mass media etc.). The organization, internal questions and functioning of Ombudsman are determined by *Standing orders about functioning of Ombudsman*, adopted in 1997. According to the Law, to be appointed as a Ombudsman (and his Deputies), one has to be Croatian citizen, a lawyer with at least 15 years of working experience in the legal field, and publicly known for his/her personal contribution to the protection of human rights. The Ombudsman is appointed by the House of Representatives of the Croatian State Parliament for the term of 8 years and he/she can be reappointed. The Ombudsman (and his Deputies) can be dismissed before his/her tenure expires with his/her resignation accepted by the Croatian State Parliament, with the loss of Croatian citizenship, or with Decision of the Croatian State Parliament.

The People's Ombudsman does not enjoy immunity, but his independence is assured with his autonomy and also with his/her high moral standards.

The People's Ombudsman deals with the particular endangerment of constitutional and legal rights of citizens in the proceedings before state administration and bodies vested with public authority, or persons from these bodies according to his initiative or on citizens' requirements. Everybody has s right to complain to PO regardless if they are directly endangered, and PO decides freely whether he deals with a case and in what volume.

The Ombudsman warns, informs, and gives suggestions and recommendations. He is not authorized for direct intervention in acts or functioning of state bodies. Administrative state bodies and bodies with public authority have to inform PO immediately, or in maximum 30 days about the actions taken regarding his warnings, information, suggestions and recommendations. If state bodies do not fulfill their obligation, PO will inform Parliament. PO could inform general public in mass media about his warning, information, proposition and recommendations. Mass media are obliged to publish his information and messages.

All data and information have to be available to PO, and he has a right of access to all documentation and records that are in jurisdiction of Croatia. He also has a right of access to all acts of bodies of public administration and bodies with public authority, regardless of their secrecy. PO and his deputies are required to respect the rules about keeping secrets during their function and after their retirement. The bodies of public administration and bodies with public authority are obliged to provide PO with all required information and documentation, and give him all necessary aid. Government workers are obliged to cooperate with PO and on his request provide information and provide answers to questions.

The Ombudsman submits his Yearly Report at the end of March for the previous year. In his Yearly Report, PO provides data about the level of respect for constitutional and legal rights of citizens. The Yearly Reports have to include the most important cases that PO surveyed in previous period, and provide reasons for complains and actions realized by PO. PO has a possibility to provide another report to the Parliament and to authorized Ministries when he concludes that constitutional and legal rights of bigger number of citizens are endangered. For the time being, PO Office does not have Internet page or does not publish its Reports. Even though PO is principally open and available to all unsatisfied citizens, there is obviously lack of communication with general public, which decreases the public sensitivity for particular cases of violation of human rights. General public is poorly informed about performance and possibilities provided by this Institution, which is not only result of considerable self-denial of PO, but also an effect of insufficient interest of mass media and citizens. However, PO remains an important factor of correction and regulation of public administration, and one could estimate that he would have important role in positive changes in Government, especially in government bodies on lower level.

In **Macedonia** the *Law on People's Ombudsman* was enacted in 1997. Under the *Law on the People's Ombudsman* (here and after Law on Ombudsman), the Ombudsman is an independent state organ, protecting the constitutional and legal rights of the citizens, violated by the state organs and other organs and organizations with public authority. According to Article 4 of the Law, the Ombudsman is elected and dismissed by the Parliament. His/her mandate is 8 years, and may be elected for one more mandate. The Ombudsman has one or more deputies, elected also by the Parliament. The following conditions must be fulfilled in order to be elected as Ombudsman: candidate has to be Macedonian citizen, graduated lawyer with working experi-

ence of over nine years in the legal field, and with proved activities in the field of protection of citizen rights. The Ombudsman and his/her deputies shall be dismissed in the following cases: upon his/her own request; if he/she is convicted for criminal act on imprisonment for at least six months; if he/she has lost the capability for performing the function.

According to the Law the state organs and organizations are obliged to collaborate with the Ombudsman and provide him with all required data and information upon his request, regardless of the degree of their confidentiality and allow him to investigate the case. Ombudsman is required to respect the regulations for keeping the secret.

The Ombudsman begins the procedure upon the complaints of the citizens, or on his/her initiative. During the procedure the Ombudsman may: require explanations and additional information by the state organs and organizations regarding the issues from the complaint; review the matters of the competence of the organs; invite the functionary and public officers from the organ to discuss and explain the issues from the complaint, require an opinion by experts and scientific institutions. If Ombudsman discovers violation of constitutional and legal rights of the citizens, he may: propose to the organs and organizations to start a procedure according to the law; make request to the organ for temporally termination of some provisions; propose initiating an administrative procedure against some public official. The state organs and other organizations are obliged to inform the Ombudsman within 30 days about measures taken upon its request. If the state organ or organization does not inform the Ombudsman for the results of its proposal or recommendations, the Ombudsman may inform the competent Ministry, the Government or the Parliament.

According to the 2000 Annual Report of the Ombudsman, the collaboration with state organs is improving, but is still not satisfactory. The state organs do not respond to his requests and recommendations for taking necessary measures upon the complaints from the citizens.

The funds for the Ombudsman, his/her deputies and the staff are provided by the state Budget. The level of salaries of the Ombudsman and his/her deputies is determined by the Law for appointed officials, while the salaries for the staff in accordance with the law and collective agreement. Such situation may have an impact on the Ombudsman's independence in performing her/his duty.

The Ombudsman submits a Report for his activities at least once a year. The Report is published in the media. According to 2000 Annual Report, 1,166 complaints have been submitted to the Ombudsman (compared with 1,202 complaints in 1999 and 1,183 in 1998) by 2,500 citizens, while 11 cases were investigated on its own initiative. The Ombudsman has brought a decision for 1,080 complaints or 77.36% (compared with 1,440 complaints or 86.22% in 1999). In 310 cases or 28.70 % a violation of citizen's right has been confirmed (340 or 23.61% in 1999). Upon the intervention of the Ombudsman the state organs and organizations in 189 cases or 60.97% have accepted his proposals and recommendations (in 212 cases, or 62.35% in 1999). There were several cases reporting corruption. Such cases were reported to the competent authorities for further procedure. However, in order to strengthen the legal power of this institution, it is highly recommended to amend the Law and broaden the authority of the Ombudsman, so he would be able to take concrete measures against state organs and other organizations in the cases of violation of citizen's rights.

The ombudsman institution in **Romania** is regulated by the Constitution of 1991 and the *Law on the Organization and Functioning of the Advocate of the People Institution (Ombudsman Act),* enacted by the Parliament on March 13, 1997.

Serbia has not adopted the People's Ombudsman Law yet. Ministry of Law is working on the draft law, which has still not been publicly announced. However, the largest Serbian NGO, "OTPOR," plays, to an extent, an ombudsman role. Constantly criticizing all members of the Serbian political life, they have attracted huge support among all citizens who often complain to "OTPOR" on various issues. "OTPOR" members are licensed observers in all Parliament sessions and they oversee the work of several state institutions (i.e. control of customs officers at border crossings).

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It is important to strengthen the independence and capacity of the already established ombudsman type institutions as additional guarantee against administrative abuse of power. The institutions need to be granted powers to exercise free monitoring and specific control within a comparatively broad scope which includes the regulation of society in general: the operation of the

executive power and the administration in its narrow meaning, the judicial system's administration and any other exercise of public activity.

4.4. Law Enforcement

Law enforcement agencies such as police, customs etc., as well as specialized anti-corruption agencies have to play an important role in preventing and counteracting corruption.

Specialized Anti-corruption Agencies

Establishment of a body with special powers to investigate cases of corruption and to submit them to the competent authorities which can take legal action is considered to be of great importance for some SEE countries.

In **Albania** the Government has established Anti Corruption Monitoring Group (ACMG) to monitor the Anti-Corruption Plan, approved by the Inter Ministerial Commission of the fight against corruption. This plan is in the shape of the "National Anti-Corruption Matrix," dated 7 April 2000. The establishment of this group is in accordance with the initiative undertaken by the Albanian Government in the framework of the Stability Pact Anti-Corruption Initiative (SPAI).

The ACMG is composed of the Monitoring Board, which is an *ad hoc* body and the Permanent Anti-Corruption Unit under the Ministry of State. The responsibilities of ACMG as well as the duties of the Monitoring Board and of the Permanent Unit are defined in an Order of the Prime Minister.

Various Anti-Corruption units exist in different state bodies. One of them is the anti-corruption sector at the General Prosecutor's Office. The staff employed in this office is too small to handle the large volume of work they have to deal with. Most of the activities of the Office are made public in the newspapers. The anti-corruption office does not produce any report that would present its achievements.

Other institutions that investigate corruption and abusive practices, such as the Department of Internal Auditing, have not been effective. The Department of Internal Auditing has been more of a political tool, rather than an institution that monitors the abuses of government's funds and tax payers' money. During 1992-1996 period, when the Democratic Party was in power, the Department of Internal Auditing was mainly used against local government officials that belonged to the opposition, or against socialist ministers embroiled in political conflict with the Socialist leadership.

The Albanian government has set up a department specialized to fight corruption, even at the ministerial level, but so far it did not produce any practical result. This agency has produced unreliable data and information that could not be sustained at the court, without having a real impact against corruption. One of the paradoxes is that even when customs officers or high ranking officials were dismissed on charges of corruption, almost none of these cases were taken to the court.

Establishment of a specialized agency in **BiH** is pending and mostly relates to adoption of the anti-corruption act. The outstanding issue is where this agency should be located and the current legislature debate ranges between strengthening certain sectors in the existing institutions or creating a new institution that will be specialized in the anti-corruption issues alone, as outlined above.

In **Bulgaria**, several options for the institutionalization of such an agency have been considered. In early 1999 a *Draft Law on Combating Corruption and Financial Crime* was prepared and discussed. The controversial issue in it was the status of the proposed new entity – Government Agency for Combating Financial Crime and Corruption as a specialized body with the Council of Ministers. The decision taken was in favor of extending the activities of the existing authorities instead of setting up a new agency.

The state agency in **Croatia** dealing with corruption is the anti-corruption office of the State Security Agency (SST). The Agency itself answers directly to the Prime Minister and a special law regulates its activity. The anti-corruption office has been operating since 1999, and it follows a certain strategy in fighting corruption, which is kept confidential. The results of its work are also kept as confidential and the report is only made to the Prime Minister. This office co-operates with the office of the General Prosecutor, Customs Department and the Tax Department. Because of the confidentiality of the work, the relations with the public are limited and the office does not regularly report to the media.

The specialized agency for anti-corruption and fight against organized crime (USKOK) was set up on 11 October, 2001, by *Parliament Decision about announcement of Law for Agency for anti-corruption and fight against organized crime*. It is envisaged to operate as an office of the state

attorney with broader powers. This office has preventive but also intelligence and investigative functions. It has a multidisciplinary composition and includes prosecutors, investigators, accountants and other specialists. This Office co-ordinates the work of agencies on a national level and will play an important role in the international exchange of information of investigations relating to corruption and organized crime. The USKOK should coordinate the operation of existing state bodies that can help in the struggle against organized crime - Internal Revenue and Customs Services, the Bureau for Preventing Money Laundering, the police. The USKOK should also eliminate the possibility for other bodies to avoid complying with orders coming from the bureau or to obstruct its investigations. Furthermore, the forming of a special police unit under the direct command of the USKOK has been envisaged, as well as of a special service to safeguard USKOK agents, protected witnesses and repented witnesses. A special prosecutor is at the helm of the USKOK, who, along with his seven deputies (all of whom have the status of state attorneys) and several financial, database and criminology experts, gather information, investigate and cooperate with similar international institutions, in order to at least curb, if not once and for all root out, widespread crime in Croatia. USKOK has Department for investigation and documentation, Department for fight against corruption and public relationship, Department for prosecution, Secretary and Administrative services.

It is too early to estimate how successful the USKOK Project will be in Croatia. Its efficiency primarily depends on the quality and knowledge of its staff, as well as on public and media perception of its operation. To ensure the proper functioning further training and material support will be needed.

There is no specialized anti-corruption agency in **Macedonia**. According to the new Law against Corruption, the special State Committee shall be elected by the Parliament, with task to propose measures for combating corruption, in cooperation with other competent institutions. This body shall propose to the Parliament measures for combating corruption, and work on specific cases.

The Ministry of Finance and Economy of the **Republic of Serbia** is the main Government coordinator of the State's fight against corruption. The Ministry is the home to the Anti-corruption Office, which is the headquarters for the Council for the fight against Corruption and the Anti-corruption Task Force. Anti-corruption Office secures the information flow between all the parties involved, coordinates relations with the media and civil society, and manages international relations concerning the Government's anti-corruption initiatives. At the moment, the office is made up of three state officials, but a staff of five is actually planned to run the office.

Police Force, including Border and Metropolitan (Special Units for Investigating and Prosecuting Corruption Crimes and Internal Corruption)

Police force plays an essential role in curbing corruption so the existence of special units for investigating and prosecuting corruption crimes and internal corruption is of great significance.

In **Albania** at the Ministry of Public Order, there are two departments that address corruption related issues:

- The Fight Against Economic Crime Department, which tracks corruption cases in both the governmental and private sectors;
- Information Service of the Public Order, which tracks corruption among police forces.

The Fight against Economic Crime Department has been established in 1997, as part of the General Criminal Department together with some other departments such as Interpol, the department of the fight against drugs, etc. The sector focuses its fight against the following types of crime:

- Smuggling;
- Forgery of securities, money, documents;
- Theft of art works;
- Misuse of public position, bribery;
- Money laundering;
- Financial fraud;
- Penalties in the commercial companies, tax tariffs, etc.

The internal monitoring of this department is performed by the Security Service of Public Order and the Inspection of the Minister himself. The department operates under the *Penal Code*, *Civil Regulations* and the *Military Ethic Code*. All of the above provide for disciplinary and penal meas-

ures for the misuse of public administration position or for breaking the law.

The Ministry of Finance has also several departments that include in their activities the fight against corruption. These are the Budget Department and the Treasury, which administers and controls the budget funds. A necessary next step is to further increase the effectiveness in the operation of these units.

The only unit that has vastly covered this agenda in **BiH** is the State Border Service (SBS). They currently control all the official border crossings in BiH. The clearance of goods and the transit of people is legally possible only there, although some 400 illegal crossings continue to operate throughout the country's borders. The SBS's authority does not stretch beyond the narrow borderland strip.

The preliminary police investigation was introduced in **Bulgaria** in the *Code of Criminal Procedure*, in force since January 7, 2000, aimed at improving the state's policy on crime by accelerating investigation through removing unnecessary formalities from criminal procedures. The Bulgarian Police were given the power to investigate about 80% of committed crimes. The advantages and disadvantages of this legislative act have been seen in practice: about five times more police investigations were sent to the prosecution than in the previous year with an option for trial; the average time used to investigate crime was also reduced by a factor of at least five. At the same time many police officers without the necessary legal background have received the powers to investigate; in certain cases this has had an unfavorable effect on the quality of police investigation. In addition, the 2001 amendments to the *Code of Criminal Procedure* instead of solving the outlined problems increased procedural formalism that brought seriously difficulties to police investigation, making it slower and less efficient.

In 2001, the Ministry of Interior made serious efforts adopting the following anti-corruption priorities:

- It completed the restructuring of the administrative services in the Ministry in accordance with the Law on Administration – demilitarization of the administration and regulation of their status in compliance with the Law on Civil Servants. However, it is still necessary to continue the work on the elaboration and application of a system for selection, appointment and career progress of human resources, based on criteria of professionalism and motivation (minimum term of experience, professional training, examinations, etc.).
- The new structure of the Ministry assigns the function of coordinating the work of the various services on fighting corruption to one of the Deputy Ministers. Within the Inspectorate of the Ministry a unit on internal corruption monitoring and prevention has been established.
- A Practical Manual for Police Investigators has been written. Two additional manuals are also being prepared to help the police officers – one for safeguarding public order and one for protection of human rights.

More flexible legislation and its potential to realize greater procedural efficiency is needed, including measures such as improving police investigators' legal skills and training.

In the Ministry of the Interior of **Croatia** there is Crime and Corruption Department. On their web pages there are information about fight against corruption (http://www.mup.hr/korupcija/stoje.html), free of charge telephones, fax and e-mail address where one could give information about corruption. In the period from September 25 to the end of November 2001, there were all together 240 telephone calls on toll-free phone, 20 fax messages, and 160 e-mail messages. The police have been investigating some leads and indications reported by the citizens on suspected corruption. Following an initial surge, the number of reports has been decreasing every day. The police say they are aware that, although anonymity is guaranteed, they will have difficulty obtaining information about bribery because it is always secret. Although the results so far were not spectacular, the police will not close their toll-free phone because they want to provide a permanently available address for citizens to report corruption and since it is believed to be a positive sign of co-operation between citizens and state bodies.

In **Macedonia** there was a special unit in the Ministry of the Interior designed to combat this kind of crime, but one year ago this unit was reorganized, and now city police forces in units for economic crime have officers who deal with corruption cases. The real problem in combating corruption is that Macedonian legal system does not allow special investigative measures as legal use of agent provocateur, controlled delivery, tapping of the telephones, etc. Macedonian constitution does not allow eavesdropping and this has to be

changed because this method is the most effective way to combat corruption. Unfortunately, until now there was not enough determination of the Government and other competent authorities for this. There are no regulations that prohibit and punish corruption within police forces. Police officers are officials according to Article 122 of the *Criminal Code* and they can be prosecuted under the *Criminal code* provisions. Disciplinary by-laws in the Ministry of Interior proscribe only disciplinary offences.

It is expected that the **Serbian** parliament will adopt new Law on fighting terrorism, organized crime and corruption before the end of July 2002. This Law will create the legal ground for the development of special prosecutor's office in charge of the whole Serbian territory. Special prosecutor will have much higher authorizations than it was the case so far. It will be able to arrest persons who are protected with various immunities (members of parliament, government, army) and detain them for longer period of time. The law will also provide the ground for formation of special police units, special detention units and special court. All members of special teams will be extremely well paid for local circumstances. Witness protection program will also be included, which is very important for fighting organized crime. This law (a mixture of Italian and Slovenian laws), as it is announced by the Serbian Government, is supposed to bring an end to organized crime. It will deal with terrorism, organized crime, corruption, distribution of illicit drugs, trafficking in human beings and various other illegal activities.

Customs. Anti-Corruption Reforms. Units for Investigating and Prosecuting Corruption Crimes

In **Albania** there is Anti-Smuggling Unit (General Customs Department). This unit has two branches: the anti-smuggling branch and the department of investigation and information.

The program to reduce smuggling, adopted by the Anti-Smuggling Unit, includes several activities and steps that will be taken, such as computer automation of the customs, establishment of structures to fight smuggling, studying and reviewing the references, decrease of the customs' tariffs, etc. Considering the role of customs and its exposure to corruption, the Unit cooperates with other governmental institutions to achieve effectiveness: the Ministry of Public Order; the Ministry of Defense; General Prosecutor Office; National Information Agency; and international agencies such as Euro-customs and the neighbors' customs. The unit regularly produces reports, which present their specific results over a period of 3, 9 and 12 months. The department has an information sector that analyses the work and publishes it in the media. The department reports to the Ministry of Finance.

Since 1996, the Customs and Fiscal Assistance Office (CAFAO) under a program funded by the EU has been assisting the State and Entity authorities of **BiH** to implement the customs and tax related provisions of the *Dayton Peace Agreement.*

In terms of customs, the key items of customs policy and tariff laws are now all in place, and BiH has a single and uniform customs territory for the first time. The administration of customs and customs procedures is an Entity level responsibility and the CAFAO program is therefore working with the Federation and Republika Srpska to draft identical Entity-level implementing legislation and regulations to reflect the *State Customs Policy Law.* This is being simultaneously supported by the delivery of specialist training in each customs regulation to local customs officers. Such training follows general training delivered to all customs officers by the CAFAO program.

The CAFAO program is also focusing on assisting the Customs Services to enforce the law. A significant step forward in fighting customs crime was the creation during 1999 of Customs Enforcement sections within each Entity Customs Service. The CAFAO program has provided the Sections with both classroom and on-the-job training, as well as all of the equipment necessary to enforce the Customs Law. The Sections will be further consolidated with the future introduction of Customs Enforcement legislation, including penalties, powers and offences for customs officers. The Customs Enforcement Sections' activities are also supported through the CAFAO-initiated "Customs Hotline" established in each Entity in September 1999. This ongoing advertising campaign is encouraging the people of BiH to assist in the fight against customs crime by reporting via a dedicated telephone line any information they believe could assist the Customs Services.

Action is also being taken to ensure that customs staff themselves uphold and enforce the law and prevent possible internal corruption, with the

[27] European Commission, *Customs fight against corruption and organized crime*, (http://europa.eu.int/comm/external_relations/see/actions/customs.pdf)

CAFAO program assisting the authorities to introduce internal audit and management assurance functions. The introduction of a countrywide customs computer system (ASY- CUDA++) is the final and essential element in the modernization and development of customs in BiH. Joint Entity project groups, supported by CAFAO, are currently developing a prototype of this computer system for future pilot testing and then full implementation in BiH. The system will handle all data associated with the clearance and movement of customs goods within BiH, while also assisting the authorities to selectively investigate suspected cases of customs crime.[27]

According to the information available from CAFAO and Ministry of Foreign Trade and Economic Relations, there is no satisfactory cooperation between entity customs administration, and there is a lot of room for improvements. Measures will be taken that are expected to streamline procedures and establish mechanisms of external auditing of custom services. Two customs administrations operate as competitors and apply the single customs policy inconsistently, which leads to diminished total customs revenues and permanent abuses. Serious analysis needs to be undertaken in connection with future organization of customs services, including consideration of introduction of customs administration at BiH level, which is the option that might resolve many of those problems and make the customs system much more efficient and transparent.

This function of customs was elevated to the BiH State level mostly through the function of SBS. No civil society organization has ever been invited to monitor the performance of the customs.

The open nature of the economy in **Bulgaria** in which between 65 and 75 percent of the GNP is realized through imports and exports creates opportunities for the existence of illegal cross-border activities. Like before, in 2001 the Bulgarian customs authorities were one of the basic mechanisms involved in the redistribution of national wealth. According to the surveys of *Coalition 2000,* in the period 1998-2000, 25-35 percent of all the imports and the exports passed through illegal channels.

In 2001 two opposite trends marked the gray import and smuggling in the country. On the one hand, there was a constant increase of legal import of goods, semi-manufactured articles and raw materials. A basic factor for this positive development is the increased presence of the big hypermarket chains like Metro, Billa, Ramstore and the supermarket chains Fantastico, Oasis and others in the country. Similar positive influence comes from the presence of many multinational companies, which continue their penetration in Bulgarian market either directly or by cooperation with a Bulgarian partner.

On the other hand, in 2001 there was an increase of the pressure over border control authorities to allow illegal and semi-legal import and export of goods (unlike the initial years of the transition in Bulgaria when smuggling was dominant, after 1998 the prevailing violations involved mainly import at lower prices, use of incorrect lists of goods, etc.). The following important changes on the domestic market account for this increase:

- The reduction of the sales of part of the mass and luxury goods due to worsening economic situation of consumers.

- The changes in the structure of sales determined by the penetration of the big hypermarket and supermarket chains which drove out of the market part of the dominating until then elements of the chain with large importer - wholesaler warehouse - retailer.

Unlike previous years, in 2001 the situation in the customs authorities was seriously influenced by the results of the parliamentary elections in June. When it became clear that the elections would bring changes, illegal trafficking intensified immensely. According to estimates, three more channels were opened again passing through Varna, Bourgas and Capitan Andreevo. It could be argued that by the end of August 2001 there was massive import of goods levied with very low customs duties. According to *Coalition 2000* estimates building up reserves of goods in the summer months rose to almost 200 percent in comparison with the same period in previous years. An emblematic example in this respect is the import of alcohol. According to big international importers at the end of 2000 the Bulgarian market resembled any other European market with about 10 percent of gray import while in the middle of 2001 again almost 50 percent of the imported alcohol had illegal origin.

According to the Report of Audit Office in year 2000, with the *Decree of Minister of Finance*, the Committee for Internal Control was established in **Croatia**. The members of the Committee were in charge to provide the internal control and require all the data and documentation in Ministry of Finance, Tax and Customs Administration. It was also decided that the Committee would function till the establishment of the Department for

Internal Control, which would inspect the whole Ministry of Finance (Audit Office, 2001).

With Article 33 of the *Decree about Internal Organization of the Ministry of Finance*, adopted in 2001, it was decided to organize Independent Department for internal control that inspects lawful functioning of public servants and employees in the whole Tax Administration. This Department is responsible for control of Central Office, Regional Offices and Branch Offices. It makes inspection of the particular cases according to the rule of control. Hence, it provides measures for detection, reporting and legal proceedings against cases of determined disrespect of law, including corruption.

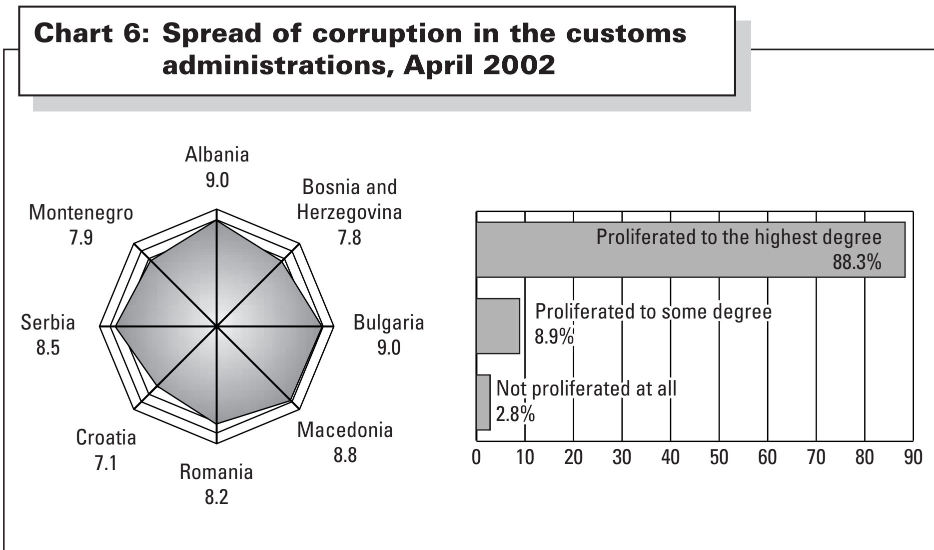
In Customs Administration of Croatia there are no special departments for detecting and proceeding the acts of corruption, neither are applied special measures for combat against corruption. However, with the Article 53 of the *Decree about Internal Organization of the Ministry of Finance*, Department for Internal Control was organized in Customs Administration. The Department systematically investigates the violation of laws and rules from the side of custom employees, realizes the procedures for determination of the facts and circumstances important for legal behavior of custom employees, proposes the expert opinions for submissions of reports or requests for offence or discipline procedure due to the transgression of custom regulation from the side of custom employees. The Department has also authority to deal with investigations and proceedings with cases of crime and corruption.

In **Macedonia** Customs has no special unit for investigating and prosecuting corruption crimes. Similar to police officers, custom officers have criminal law status of official persons and there is no special procedure for investigating and prosecuting them. Many attempts to prevent corruption in customs have been made, but results were poor. There is no civil society involvement in monitoring the work of the customs. According to the public opinion, custom officers are one of the most corrupted professions.

Federal Customs Office in **Serbia** is included in the anti-corruption activities of the Government of Serbia, which is not surprising because its practical competence does not extend to the Republic of Montenegro as it is supposed to. Customs has formed a department that deals with anti-corruption, which has publicly announced a phone number through which citizens can report on any irregularities that are done by customs officials. Contact phones for possible complaints are opened in every custom office, i.e. at every border crossing. Unfortunately the number of reports that have been received through this phone line is surprisingly small. However, several criminal charges were brought against customs employees as a direct result from operating this phone number. Federal Customs Service focused on education of its employees. All employees received letters that explained the criminal and societal consequences of accepting bribe, which is the most often form of corruption in customs. They have also been informed about recent corruption study conducted by the Center for Liberal and Democratic Studies and its content.

In the fight against corruption, the Federal Customs Administration of Yugoslavia (FCA) has reconstructed the service for combating smuggling and custom investigation. This service, thanks to intensive international cooperation with other custom services during the past year as well as to Yugoslavia's return to World Customs Organization, now has the possibility of following various goods and their flows. In order that this undoubtedly important service should work better, after the changes in custom legislation, changes in authorities patterned by those in European countries

Chart 6: Spread of corruption in the customs administrations, April 2002



Source: SELDI Corruption Monitoring System

should be introduced (possibility of tracking, superintendence, entering and checking the business premises, deep control, arrests, carrying and using guns). According to the latest data, illegal import of the excise goods has been reduced, especially of petrol, petrol derivatives and cigarettes. The Yugoslav Customs Administration estimates that the results in the period to come will be even better.

According to the Report of the Federal Customs Administration for the period October 2000-October 2001, Yugoslav Customs Service has registered 4,456 customs violations worth EUR 10M, and 1,269 foreign exchange offences of which EUR 4.6M has been confiscated. Managing staff has been replaced, whereas the employees who violated their duties have been punished. Apart from appointing new director and vice-director of the FCA, 11 out of 14 managers have been replaced. New 11 managers were chosen in the public contest. Since January 1, 2001 disciplinary actions against 31 workers have been undertaken because of the grounded suspicion that they committed serious violations of the position.

For the stimulation of workers from the current budget item, which stipulates rewards in cases of diligence and contributions to the service, money rewards have been introduced for the workers who find out the customs and foreign exchange offences.

Customs and "OTPOR" have started a joint action called "Bring respect back to customs." "OTPOR" activists are present on each border crossing and they are allowed to oversee all the activities in the customs area. It is intended that this action will increase the sense of responsibility among customs officials and raise the risks for corruption. After all, this action should bring respect back to all customs employees.

Corruption and Trafficking in Human Beings

The analysis of methods and preconditions for trafficking in human beings towards South East European countries and through their territories has shown that one of the major and probably most important factors for it during the transition period is the corruption in law-enforcement and border control institutions.

Trafficking in people has been constantly growing in South East European countries and is in most of the cases under the control of organized crime. It can be divided in several different forms depending on the persons illegally crossing the border including the transfer of illegal immigrants, women to be engaged in prostitution, labor force to work under inhuman conditions, trafficking in children, illegal adoptions at exorbitant prices, etc.

In **Albania** the human beings trafficking started at the beginning of the '90s and gradually became a serious social concern. Albania is considered as a country with a high level of human beings trafficking.

In June 2001, on the decision of Prime Minister, the working group in charge of designing the "National Strategy for the Fight against Human Trafficking" was established. This working group includes representatives from the Ministry of Public Order, Ministry of Justice, General Prosecution Office, etc.

The aim of the strategy is to define the main guidelines with respect to prevention and impediment of the human beings trafficking as well as to protect and help the victims of such trafficking, and create conditions for their re-integration in the society.

This document will highlight the measures that the government will undertake to achieve this goal within a 3 year period, as well as the action plan for every concerned state institution.

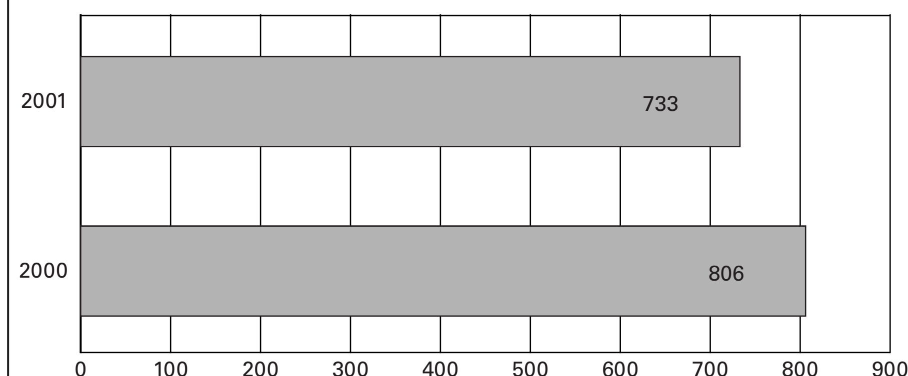
United Nation's Mission to **BiH** is involved in the struggle against human trafficking. More recently BiH has joined Interpol and has launched some prevention activities with its own Entity police capacities, centrally coordinated within the Ministry of Civil Affairs and Communications.

UNMBIH conducts regular surveys on organized crime in various forms, but particularly on human trafficking. Most of these reports are internal and sometimes are shared only with the official authorities, so the general public has no access to the data.

In **Bulgaria** the cases of trafficking in people fall under the scope of application of the Criminal Code of Republic of Bulgaria and criminal liability is provided for the perpetrators of such offences.

Two general types of offences are regulated under the *Criminal Code* – illegal crossing of the state borders under Article 279 and trafficking under Article 280. Two different cases of illegal border crossing are envisaged. The first one consists of entering or leaving through the state border without the permit of the competent state

Chart 7: Persons detained on border crossings in 2000 and 2001 in Bulgaria



Source: Bulgarian National Border Police Service

authorities, while in the second one there is a permit given but the border has been crossed not through the specified places. The trafficking in people consists of transferring persons or groups of persons across the state border either without the permit of the competent authorities or with such a permit but not through the places specified thereof.

Separate provisions are included in the *Criminal Code* dealing with certain offences usually accompanying the trafficking in women.

Criminal networks are increasingly using **Macedonia** as a transit country for human trafficking, but it also appears that a great number of women are being forced to remain in the country to work as prostitutes. Numerous activities have been taken to fight this kind of crime. Primarily, guarding of the border has been improved, and the main routes for illegal crossing closed. For example, according to the report for first five months in year 2000, the Ministry of Interior has registered 616 illegal crossings into Macedonia. Report mentioned the existence of a criminal network operating in the country that lures women into traveling to Macedonia with the false promise of work as waitresses, and upon arrival forces them into prostitution. Trafficking is increasing in the western region of Macedonia – in Tetovo, Gostivar, Struga, and Ohrid through the border crossings of Strumica, Delcevo and Kriva Palanka.

From January 25, 2002, the *Criminal Code* was amended with a new criminal offence called, “trade with humans” (art.418-a). According to this criminal offence, trafficking in persons means recruitment, transportation, transfer, and harboring of a person, by means of the treat or use of force or other means of coercion, or by abduction, fraud, deception, abuse of power, or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes slavery, practices similar to slavery, forced labor, servitude, removal of organs, or the exploitation for the prostitution or other forms of sexual exploitation. The most active NGO in Macedonia working in this field is International Organization for Migration. Its counter-trafficking program is focused in providing direct assistance to the victims, in raising awareness and in capacity building with the Ministry of Interior and other local NGO’s.

There are no studies of the link between trafficking in human beings and corruption. In last several years there were criminal investigations against police officers involved in human trafficking.

Republic of Macedonia has signed and ratified the *Vienna Convention* and *Strasbourg Convention* and other international documents regarding organized crime but there are no studies about the link between political corruption and organized crime.

Ministry of Interior of **Serbia** has had some success in discovering groups that were dealing with trafficking in human beings. However, this problem seems to be increasing due to a presence of large number of international soldiers stationed in Kosovo. It is expected that Special Prosecution Office will more seriously approach the problem than it was the case so far. Nevertheless, further international cooperation is necessary for dealing with this regional issue.

For now, the regional approach in counteracting trans-border crime and corruption is still overshadowed by individual national efforts which are further fragmented by the artificial division on challenges to internal security on one side, and external security of a particular country on the other. The presented overview offers an argument in support of complex challenges, which are facing not only the societies in Southeast Europe, but also the countries of the European Union.

4.5. Legislature. Transparency and Accountability. Budget Process

Preventing corruption in the Legislature and acting quickly upon discovering prerequisites enabling the Parliaments to adopt effective anti-corruption measures are of primary importance. At the same time, the legislative amendments and the adoption of new laws should only be undertaken after serious consideration, preparation of a general conceptual framework and compliance with the existing legislature, public discussion of the proposed drafts and taking into account the opinion of all parties involved. The following main problems are important in this respect: specialized anti-corruption committees; internal rules for MPs (conflict of interest, etc); transparency and citizens' participation in the legislative process.

In **Albania** the *Law No. 8379,* dated 29 July, 1998, defines the state budget as an annual financial program which comprises the Parliamentary approved funds, and where all revenues, loans and other inflows, as well as the expenses incurred by the government, public administration, local government and the judiciary are included (Article 2).

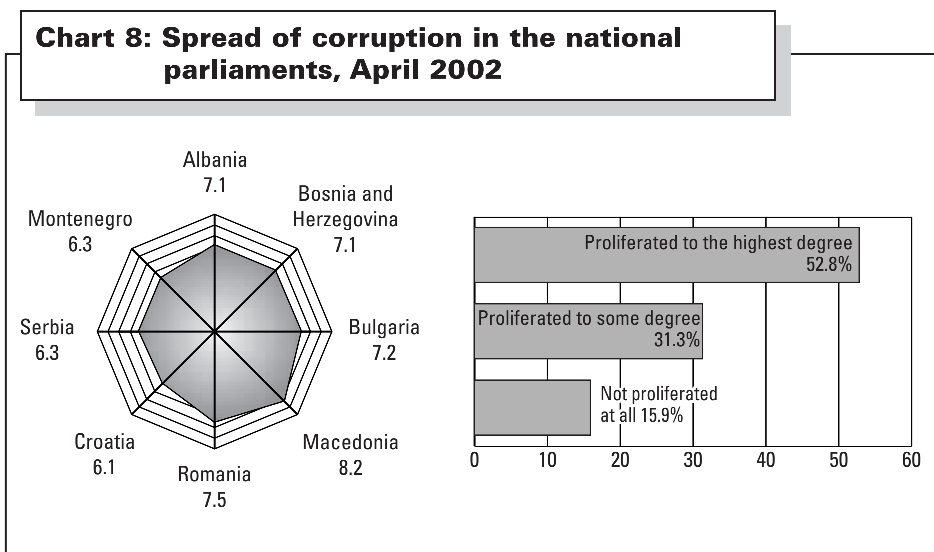
The Minister of Finance completes the budget draft and presents it to the Council of Ministers by October of every fiscal year. After the Council of Ministers gives its approval, it forwards it to the Parliament by the 20th of November of the fiscal year. If the parliament does not approve the budget till the 31 December, then the Council of Ministers approves and implements the expenditure budget for a period up to 3 months from the initial date of the new fiscal year. It's worth mentioning that the law does not provide room for extra budgetary accounts.

The Constitution envisages sanctions for the conflicts of interest for members of the Parliament. According to Article 69, the MP cannot be at the same time: a judge or a prosecutor; actively serving in the army; a Police or National Security official; a Diplomatic representative; a mayor or prefect; chairman or member of election commissions; President of the Republic and high public administration official as described in the law. However, the Parliament has not established any specialized anti-corruption body yet.

The legislative process has become more transparent during the last years. Due to the large number of newspapers and private television channels, people can be informed much better on what is going on during the legislative process. The Parliament itself in some cases has complied with the idea of citizen participation and an example for that is the fact that NGO representatives were allowed to attend the meeting of Parliament where the NGO law was passed. Citizens participated also in the Parliament meetings regarding the Constitution. On the other hand, the meetings held on "Fiscal Package" and on "State Budget" remained closed for the public.

One of the basic principles in **BiH** is accuracy and a prior approval (there is no collection or spending without the decision of Parliament for acceptance of the budget or a decision on temporary financing). According to the Constitution of FBiH and that of RS, the President of FBiH and RS respectively shall dissolve the Parliament if they fail to pass the budget before the start of the budget year.

Chart 8: Spread of corruption in the national parliaments, April 2002



Source: SELDI Corruption Monitoring System

Once the Government has adopted the Budget and passed it to the Parliament for adoption (both houses in case of FBiH), and once it is passed by the absolute majority in the Parliament, the President signs a decree making the Budget effective.

Both Entity Governments have introduced specialized anti-corruption working groups that consist of repre-

sentatives of the key ministries and other public institutions. These groups are the strategic government think-tanks. Governments of both Entities have adopted framework strategies to fight corruption.

As discussed above, the more recent practice is to organize public debates and hearings and that is indeed the case of the new Anti-corruption strategy of BiH. One such debate was organized by the Council of Ministers of BiH, starting on 06 March 2002 in duration of two months. The same procedure applies to all the acts, laws and strategies that undergo the regular procedure for their adoption (rather than special, fast-track). The Constitutions describe in precise terms those instances when introducing the special adoption procedure in the Parliaments may skip the public discussion.

Over the past few years state institutions in **Bulgaria** manifested a strong reflex of defensiveness and self-preservation rather than developing mechanisms to protect the citizens and society against abuses of power. Although the *Rules of Organization and Procedure of the National Assembly* provide for avoiding the conflict of interest, regulating receiving gifts and hospitality, etc. the Legislature should play a more decisive role in counteracting corruption with the National Assembly itself providing an example of effective anti-corruption efforts.

In 1994, **Croatia** passed the *Budget Law*. According to this law, the Budget is defined as an estimate of the annual revenues and receipts, and the determined amount of expenditures and other payments made by the state (and local government units) for all budgetary beneficiaries and approved by parliament. Very often the Budget has been re-balanced. There are no systematic data about the level of neither public debt, nor are there any restrictions on the deficit or the national debt. The system of internal and budgetary control is weak and ineffective. Only part of all actions for the establishment of a state treasury system has been taken.

The parliamentary Finance and Budget Committee has to have the resources and the qualified personnel to estimate the Budget proposals that the government sends to the parliament. However, lack of transparency of the budget can increase the voters' confusion and reduce politicians' incentives to be fiscally responsible. Creating confusion by making it less clear how policies translate into outcomes, policymakers can retain a strategic advantage versus rational, but not fully informed, voters. This advantage would disappear with transparent procedures; therefore, the policymakers would often choose to adopt ambiguous procedures. The less electorate knows and understands about budget process, the more the politicians can act strategically and use fiscal deficits and overspending to achieve opportunistic goals.

Transparency on budgetary decisions is necessary to improve policy decisions and to hold governments accountable. It is, however, not sufficient. Participation of democratic institutions is required just as it is required from civil society, legislatures and the media in order to make transparency effective in bringing about better budgetary outcomes. Institute of Public Finance – Zagreb has published a basic guide to the Croatian budget: "A Citizen's Guide to the Budget."[28] The guide provides a general introduction to the budget. It analyses the various fundamental aspects of national and local budgets; including revenues, expenditures, extra-budgetary funds, and the consolidated budget of the general government. The guide also describes the budgetary process and the main institutions engaged in the process. It also provides a glossary of budgetary terms and an appendix on the taxes in Croatia. The 2,500 hard copies of the guide were distributed free of charge to individuals in parliament, government ministries, public enterprises, the business sector, media, universities, and the broader public. The guide has been widely quoted, discussed and commented upon in the Croatian media, and will hopefully have an impact on policy through a more informed debate on budget issues. Similar Citizens Tax Guide and Citizens Guide for Financial Institutions have been published at the end of 2001.

The government during the first quarter of 2002 should prepare internal rules for MPs incorporated in the *Law Regulating the Prevention of the Conflict of Interest.* Such a law would regulate the prevention of any possible conflict arising between high ranked state officials and their private interest. The law should be scheduled for parliamentary procedure and become formally accepted by the end of the first half of 2002. After the expected adoption of the draft law by the Government and subsequent adoption by the Parliament, it shall be necessary to set up the Commission for the Conflict of Interest and provide funds for its work (compensation for its members, equipment etc.). In Draft of the Law it is proposed that the state officials will have to reg-

[28] The guide is available in Croatian and English at: http://ijf.hr/eng/budget_guide/proen.pdf.

ister all accepted gifts valued more than 500 kunas (appr. $60).

One of the ways to improve transparency in Croatia would be to establish specialized parliamentary bodies in charge of evaluating the transparency, accuracy, and projections of legislative process and government budget. These bodies must be independent. So far, very little has been done.

Generally, in **Macedonia** the legislation is drafted by the competent ministries and other government agencies and in very rare cases by the Members of the Parliament. There is broad practice for participation of the professors of the University in drafting of the legislation. The citizens do not participate in the legislative process, although strong public interest exists for adopting certain new laws or for amending the existing laws. Such interest has been expressed during the public discussion on the proposed Amendments to the Constitution, organized by the Law Faculty, including the Macedonian Academy of Science and Arts and other experts, when some of numerous suggestions have been accepted, mainly under the strong public support.

The Minister of Finance is responsible for the preparation of the Budget Proposal and its submission to the Government. Upon the report on fiscal conditions of the current fiscal year, the Minister of Finance proposes the directives and objectives of the fiscal policy and main categories of estimated revenues and expenditures for the following fiscal year, and submits it to the Government in April for the following year. The Budget Proposal is submitted to the Parliament by the Government not later than the middle of November. If the expenditures require a new source of revenues, or if the planned expenditures should be reduced by more than 5% as a result of failure to generate the planed revenues, rebalance of the Budget is proposed. In the last several years, the Budget was often rebalanced, sometimes more than once. Upon the adoption of the Budget, the Minister of Finance notifies the users that they may allocate the revenues and expenditures to separate unit-users.

Within the framework in the treasury system, which has been introduced in Macedonia, the budget users may open one or more sub-accounts, depending on their own revenues, donations, loans etc. The Ministry of Finance shall open the sub-account (unit-users) upon the user's request. The users themselves and the Ministry of Finance perform the control over the legality and intentionally use of the budget funds and other revenues. There are no provisions in the *Budget Law* or internal rules of the Ministry of Finance regarding the conflict of interest.

There are no specialized anti-corruption committees in **Serbia** - neither in the People's Assembly of the Republic of Serbia, nor in the People's Assembly of the FRY.

Sessions of the People's Assembly and its committees are open to the public by rule (*Rules of Procedure*, Art.169). Sessions of the Assembly are broadcasted live on Radio and Television of Serbia. Parliament sessions are not open to the public in cases defined by law or when parliament decides to do so.

Journalists cover the work of parliamentary committees. Committee reports are available to the public, as journalists holding accreditations get them together with all parliamentary materials, which they get regularly. Committee meetings are closed to the public in cases defined by law or when parliament decides to do so.

Internal rules for the members of parliament are determined by the *Rules of the Parliamentary Procedure.* Day-to-day running of the legislative body is regulated by the Rules. There are many violations in practice, and politicians can be said to exert influence on the work of the administrations, by either speeding up or slowing down the adoption of certain decisions and their performance, or by preventing decisions from being made. The *Law on the Election of People's Deputies* does not prohibit deputies from holding other posts, so that they can be owners or managers of enterprises. Many deputies take advantage of information acquired ahead of other businesspersons, because deputies are often informed about draft legislation relevant to business long before it is enacted. Deputies can also lobby the government for regulations to be adopted, which would place them in advantageous business situation. They also influence the adoption of laws helping them to acquire personal gain.

* * *

Increasing transparency and accountability in the work of the Legislature Institutions are important prerequisites for strengthening the prestige of the Parliament and for the consolidation of democratic values in SEE countries. The accomplishment of this objective requires the establishment of systematic control over compliance with the laws and internal rules by the MPs. In order to reduce corruption in the legislature the following

measures are recommended: establishment of a specialized body on the ethics of the MPs, led by an independent expert with an outstanding public reputation, whose activities and regular reports should be independent of the Parliament or any other institution preventing conflict of interests (similar of the existing bodies in some EU member states, such as the UK); bringing greater transparency to the budget process and the Parliament's finance; introduction of a mechanism for informing public about financial violations committed by the MPs, as well as the sanctions imposed.

Stronger efforts and good will from the Parliaments are needed for the adoption and implementation of measures and control mechanisms which contribute to the more effective counteraction of the internal factors fostering corruption, facilitate the creation of a favorable institutional environment for preventing corruption in the legislative process and for the development of the anti-corruption attitudes and behavior.

4.6. Political Parties

The political corruption, including the one related to the political parties, has two main aspects: a trust abuse and an effort to establish control (monopoly) over the political arena by using power and influence in an undemocratic way.

Financing of political parties is one of the spheres in which the political corruption most often takes place. The acceptance and implementation of the legislation that shall restrict the possibilities of widening the corruption is considered to be of great importance in terms of carrying on an efficient fight against corruption.

The most reliable means for fighting corruption in political parties are: creating legal rules of political parties' registration and functioning, and especially their financing; evasion of the influence of the interested financial spheres and their private interests on the policy of the parties; active control and the necessary transparency and publicity of the parties' finances.

The existence of rules of registration, functioning and financing of the political parties makes transparent the struggle for obtaining political power according to the democratic principles.

Registration of Political Parties – Requirements, Procedure, Revocation of Registration

Most of the Southeast European countries have adopted legal and regulatory framework regarding political parties registration as follows.

In **Albania** any group of people who want to establish a political party should deposit with the Ministry of Justice the statute and the program of that party. The Ministry of Justice should give its official approval or refusal within 45 days of receiving the documentation needed to establish a political party.

In **BiH**[29] this is regulated by the provisional election law of the OSCE that governed all the elections prior to the coming autumn 2002 elections. The registration is handled in line with the law on associations of citizens.

The High Representative has the authority to revoke any party's registration, ban it, prohibit its activities and temporarily or permanently suspend any of its members, or ban them from public appearances. This may be conducted without a prior warning or an appellation mechanism.

Every candidate standing for elected office at the level of Bosnia and Herzegovina or the Entity level is obliged, no later than fifteen (15) days from the day of accepting candidacy for the elections, to submit to the Election Commission of Bosnia and Herzegovina, on a special form, a signed statement on his or her total property situation.

The statement should include the property situation of the candidates and close members of his or her family: spouse, children and members of the family household the candidate has a legal obligation to sustain.

The Election Commission of Bosnia and Herzegovina announces ninety (90) days before the elections the number of voters entered on the Central Voters Register for each electoral race. No political party, coalition, list of independent candidates or independent candidate can, based on the number of voters announced by the Election Commission of Bosnia and Herzegovina, spend more than one (1) Convertible Mark per voter in

[29] In spite of the existing legislation, results of TI's public survey indicate political parties as most corrupt. 37.8 percent of respondents said that corruption is widespread in political parties, and 31.7 percent of respondents think that corruption is on very high level in the political parties in BiH. Only 2.5 percent respondents among general public think that corruption is on low level in political parties in BiH. Out of 12 public institutions (customs, juridical, etc.) in BiH, most of the respondents (10.8 percent) choose political parties as most corrupt. Enterprise managers surveyed reported that up to 4 percent of their company turnover is spent on unofficial payments to political parties.

each electoral race for the purposes of the election campaign.

In order to participate in the elections political parties, independent candidates, coalitions and lists of independent candidates have to certify their eligibility with the Election Commission of Bosnia and Herzegovina. The registration of a political party with a competent authority is a precondition for its certification.

In **Bulgaria** a new *Law on Political Parties* is in force since March 28, 2001. According to this Law, only Bulgarian citizens possessing electoral rights could establish a political party. The Law stipulates that political parties are established by a constituent assembly, which adopts the statute of the party and appoints the managing bodies. Political parties are registered in a separate registry kept by the Sofia City Court. The registration procedure starts upon a written application by the managing body, which represents the political party according to its statute. A set of documents are required to be presented together with the application: the constituting document, the statute of the party, and a list of at least 500 members – founders of the party (indicated by their names, unified civil number, address and handwritten signature). A declaration by the party's leaders certified by a notary and stating that the above documents are true is also required.

The Sofia City Court should examine the application within one month following its submission in an open sitting with participation of a prosecutor and subpoenaing of the applicant. If the Court admits the registration it is obliged to enter the party in the registry within 7 days following the announcement of the decision. The decision of the court, by which the registration has been admitted or refused, could be appealed before the Supreme Court of Cassation within 7 days following the learning about the decision. The Supreme Court of Cassation issues a final decision within 14 days following the submission of the complaint. The decision of the Court for admitting the registration is promulgated in State Gazette within 7 days of its presentation and the political party obtains the status of a legal person from the date of the promulgation.

The *Law on Political Parties* in **Macedonia** was enacted on July 28, 1994. According to Article 7 of the Law, a political party can be founded by 500 Macedonian citizens, living in Macedonia, who make a statement for voluntary membership in the political party. Every person may withdraw from the political party. Political party is founded at the Assembly of founders, which adopts a decision for founding of the party, Program for its activities, an Article of Agreement, and elects the bodies of the party.

The political party is registered in the Register of political parties in the Appeal Court in Skopje. The political party is obliged within 30 days from the day of its founding to submit an application for registration. Upon the application, the Appeal Court is obliged within 15 days to bring a decision for registration of the political party. The Appeal Court can refuse the application if it finds out that the Program and the Article of Agreement of the political party are against the constitutional order or support or call for war aggression, national and racial intolerance and hatred.

The political party terminates its existence: upon the court decision, which forbids its existence; if the Constitutional Court finds out that its program and Article of Agreement are not in accordance with the Constitution; when its authorized body brings a decision for its revocation; and if the number of members of the party decreases under the minimum required by the Law.

The *Law on Election of Deputies* regulates the establishment of the electoral commissions and their activities. According to the Law, the State Electoral Commission, self-government commissions and sub-commissions are responsible for election process. According to the new *Law on Election of Deputies*, which has been adopted recently, the President of the State Electoral Commission and the President of the State among the respective lawyers elect their deputies. The presidents and members of local electoral commissions are proposed by the Government and opposition parties and elected by the Parliament. The last 1999 presidential elections and 2000 local elections have been declared as unfair, irregular and undemocratic, accompanied with numerous infringements of law, electoral procedure and violence. Therefore, it is expected that the rules defined by the new law shall narrow the possibilities for such situation and guarantee more democracy and independence of the commissions.

In **Romania** the political class seems determined to act for its own unpopularity, embracing symbols of abuse and corruption. To quote only one example from an endless list, the fortune of the Romanian Communist Party, including buildings of flats, dachas, Ceausescu's hunting lodges (over 40), was turned after the Romanian Revolution in a public real estate agency. Generations of politicians, regardless of their

political party, have used its services for themselves and their families, both in the capital and in mountain resorts. The winner of the 1996 elections, the Democratic Convention of Romania, promised that it will liquidate the Regime, restore the houses to the owners who had previously been illegally dispossessed by the Communist Party and privatize the rest, but it did not live up to this promise. In 2000, the new winners of elections, the Party for Social Democracy of Romania found most of the dachas already occupied and since evacuating former dignitaries is a long and painful process – even Ceausescu-time ministers can still be found residing in Protocol houses – they preferred to seize the buildings of another agency, Locato, which used to rent them to embassies and other rich clients and use them for themselves and their clientele for free.

Another example is the financing of the political parties. Though tough rules were enacted immediately after 1989 to govern the political money in Romania, it is a public knowledge that no major party comes even close to compliance. The media and NGOs monitored the costs of the last campaign for the general elections (November 2000), market value of paid advertising, open campaign and other related events and compared the results with those disclosed by the parties, according to the law. The staggering result is that the real costs exceeded five to ten times the legal limits, which implies that 80-90% of the campaign funds were black political money. Some party leaders (from the opposition) admitted openly that they broke the rules, and started to advocate for more transparency and reasonable standards.

In **Serbia**, the activities of political parties are regulated by the *Law on Political Parties*, adopted in 1990 and amended in 1993 and 1994. According to the Article 5, political party can be found by at least 100 persons holding a Yugoslavian citizenship that are at least 18 years old. Act on founding of a political party must contain names of the founders, and aims and objectives of the political organization. Political party defines its internal organization based on democratic principles (Article 6). Political party must be registered in the Register of political parties in the Ministry of Justice of the Republic of Serbia. The Ministry of Justice must give official answer (approval or refusal) in the period of 30 days since the application has been filed.

Political organization terminates its existence if:

- it makes a decision on the termination of its existence
- a number of its members drops bellow 100
- its work is forbidden by the authorized institution (Supreme court)

One of the reasons for which political party might be forbidden is if its activities are financed from abroad.

Funding of Political Parties – Applicable Legal Provisions

In **BiH**, according to the *Law on Party Financing*[30] (State level law) a party may obtain funds from membership fees; contributions from legal Entities and natural persons; income generated by property owned by the political party; budgets of Bosnia and Herzegovina for financing of the parliamentary groups in accordance to the Art. 10, Entities, or any subdivision thereof; and profit from the income of the enterprise owned by the party.

The total amount of the single contribution may not exceed eight average worker’s salaries according to the official information by the Bosnia and Herzegovina Agency for Statistics in a calendar year and may not be cumulated more than once a year.

Public grants appropriated for political youth organizations do not count towards the contribution limits imposed by this article and are reported on political party financial disclosure forms separately from other incomes to the party.

If the total amount of the contributions given by the single contributor exceeds 100 KM such payment must be recorded in the financial report.

A state body, public institutions, public companies, local community bodies, humanitarian organizations, businesses which by virtue of their activity are exclusively intended and directed for non-profit, religious communities, as well as economic association in which public capital has been invested to the amount of a minimum of 25% may not finance parties.

Private enterprises, which through government contracts perform public services, cannot financially support political parties.

According to the *Law on Party Financing*, political parties have obligation to render a public statement of account. A political party is obliged to file with the Election Commission of Bosnia and Herzegovina a financial report for each calendar

[30] Law on Party Financing, (http://www.ohr.int/ohr-dept/legal/oth-legist/default.asp?content_id=6015)

year (accounting year). A political party has to file a separate financial report for the campaign period as determined in the *Election Law*.

Political parties have to submit by 31 March of the following year a financial report in a format approved by the Election Commission. Such report shall contain the same information as determined in the Election Law. The Election Commission of Bosnia and Herzegovina issues Regulations in order to implement this article, whereby it specifies in detail the content, form, manner and other details of reporting.

A political party, coalition, list of independent candidates and independent candidate that participates in the elections at any level in Bosnia and Herzegovina are obliged to submit a financial report for the last three months to the Election Commission of Bosnia and Herzegovina. In addition, no later than thirty (30) days after the Election Commission of Bosnia and Herzegovina publishes the election results, a financial report must be submitted to the Election Commission of Bosnia and Herzegovina for the period beginning on the day of submission of the application for certification until the certification of the results.

The Election Commission of Bosnia and Herzegovina has jurisdiction with respect to enforcing this chapter, and power to make determinations that a political party, coalition, list of independent candidates or an independent candidate, or any other person has violated provisions of this chapter. The Commission has the power to assess civil penalties against any political party, coalition, list of independent candidates or independent candidate for non-compliance with the mentioned provisions, or to take appropriate administrative action within its general authority under this law.

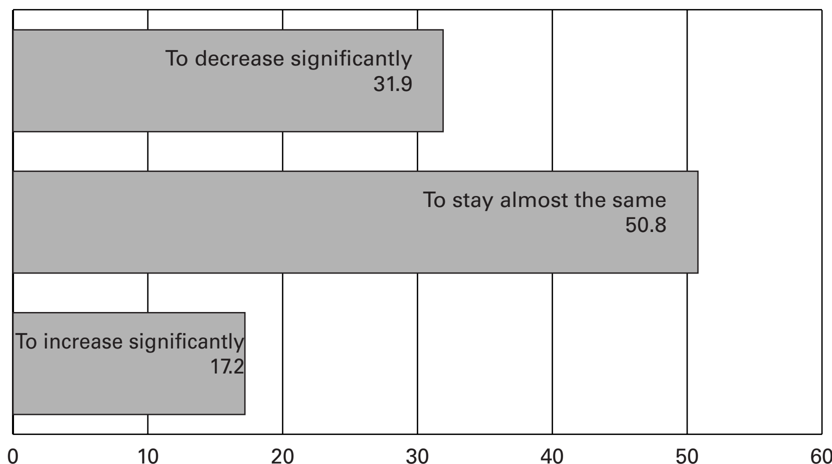
Before assessing a civil penalty or taking administrative action, the Election Commission seeks to achieve voluntary compliance with the political party, coalition, list of independent candidates or independent candidate determined to be in violation.

The party system in **Bulgaria** is not yet based on principles and models, which would make it more transparent. The interweaving of political parties with the state apparatus in any society tempts to advance particularistic political interest under the guise of public interests, including through the use of corrupt means. The introduction of state financing based on objective criteria, accountability and strict rules to ensure the transparency of party finances as a whole and of the funds used during pre-election campaigns in particular was therefore urgent in order to curb corruption in political parties and to sever the informal bonds between political parties and private interests. The legislation on the funding of political parties has been enacted in 2001.

The newly adopted *Law on Political Parties* contains a number of anti-corruption provisions, including prohibition for political parties to engage in business activities or hold equity in companies; exhaustive listing of revenues of political parties and regulation of their annual state subsidies; assigning overall control over political party revenues and expenditure to the National Audit Office. Nevertheless, the continued tolerance of anonymous donations makes it impossible to have full transparency of the parties' income because a portion of it remains beyond state control.

The activity of political parties in **Croatia** is regulated by *Law on Political Parties*, adopted in 1993. The Law (part III, article 18-22) contains the regulation about funding of political parties. Possible funding sources of political parties are: membership fee, voluntary contribution, revenues from publishing activities, revenues from advertisement and organization of parties' manifestations, subsidies from state budget and budgets of local self-government units, profit of firms in parties' ownership. A party whose candidates are elected for Parliament receives fixed amount for its function, and variable amount that depends on numbers of its MPs. The sources for the functioning of political parties are distributed by Parliamentary Committee for election, appointment and administrative duties. Party's revenue is subject to a public announcement. The parties have to publicly announce the source and purpose of the money collected during the year. If parties do not record their revenues in adequate bookkeeping, of if they receive revenues against the law, the parties lose the possibility for subsidy from central government budget. Bookkeeping has to be performed in line with the rules applied for non-profit legal entities. The political parties, which receive subsidies from central government budget, have to provide Parliament each year with financial statement for the previous year. This financial statement will be controled by State Audit Office.

In comparison with regulation in many other countries, regulation of funding of political parties is almost completely undeveloped. The sources of political parties' money, the ways and means of its spending, and regulation of the control over spending are not clearly determined.



Source: Corruption Assessment Report 2001, Coalition 2000

different funds for political parties financing: first for social activity, second for staff education and third for pre-election activity, which would be under full control of general public. It is expected that the Amendments of Law will be discussed and accepted in the Parliament during the first half of 2002. Unfortunately, the *Draft Amendments to the Law* (or a new Law – it is still not clear) does not contain any directive regarding many problems of political life (for example political party accounts – availability to the public, including obligation for publishing), as well as the legal regulation of lobbying, so there are no regulation or/and limitations.

Everybody is finding his/her way and solution according to the knowledge and capabilities. The unregulated system of political parties financing enables political and material corruption of elected politicians.

It is not surprising that political life in Croatia is overloaded with different suspicions and conflicts of interest, and that only few politicians are consistent, respect principles and protect public interests of their constituency. This completely biased and deformed political praxis can be changed only with structural changes in political and organizational framework. Because of that, Croatia is confronted with serious obligation of introducing multifaceted regulation of funding of political parties, which could enable establishing of the situation similar to developed European countries.

To secure a just and equal position for all political parties in Croatia and to secure objectivity and righteousness in the implementation of political programs, a reform of the legal status of political parties in Croatia is necessary. The financing of political campaigns has proven to be one of the major weak spots. TI Croatia is demanding that the regulations for political party financing be tightened. Public debates have been initiated by TI Croatia to speed up and improve the process of reforms.

The group of Croatian legal and political experts in co-ordination of the Croatian Legal Centre began to prepare changes and improvements of Law about political parties. They propose three

In **Macedonia** according to the Law, the political parties may derive resources for their activities from the membership fees, donations, revenues, their own property, credits, gifts, legacy, and from the state Budget.

The political parties are not allowed to obtain resources from governments, international institutions, organs and organizations from foreign countries and other foreign persons, from state organs, organs of the local self-government, out-of-budget resources, and from the state owned enterprises (including those, which have started the privatization process). The Constitutional Court has abolished the provision, which allows the political parties to derive resources from performing business activities, which creates opportunities for abuse of power and corruption. However, instead to respect the decision of the Constitutional Court, the ruling party VMRO-DPMNE has transferred the property, including shares, to its own members, who have become major shareholders in various companies and banks. The political parties have a legal obligation to maintain accountability for revenue and expenses. The political parties have to make evidence of the amount and source of their revenues.

Under the Law, the sources of political parties are public. The Law defines public disclosure of

resources of the political parties. The competent state organ supervises the financial activities of the political parties.

However, the financing of the political parties is performed in nontransparent manner. In spite of the provision of the law, which does not allow financing from abroad, there are indications that a large amount of funds from abroad have been transferred to the ruling political parties by lobbying groups from abroad, during their election campaign. There is no efficient control on the resources of political parties, especially those coming from abroad, due to the lack of political will and because of confidentiality of such activities, which usually are executed through secret channels. According to the legal provisions the funds provided in the Budget for political parties in amount of 30% shall be divided equally to the parties, which received at least 3% of the total votes during the last elections, while the rest of 70% of the funds shall be divided to the political parties which candidates have been elected as deputies in the Parliament, according to the number of their deputies. The individual gifts and donations by the physical and legal persons may not exceed 100 average salaries in the country. During the elections, the individuals' gifts and donations from the physical persons and legal persons may exceed up to 200 average salaries in the country in the last month.

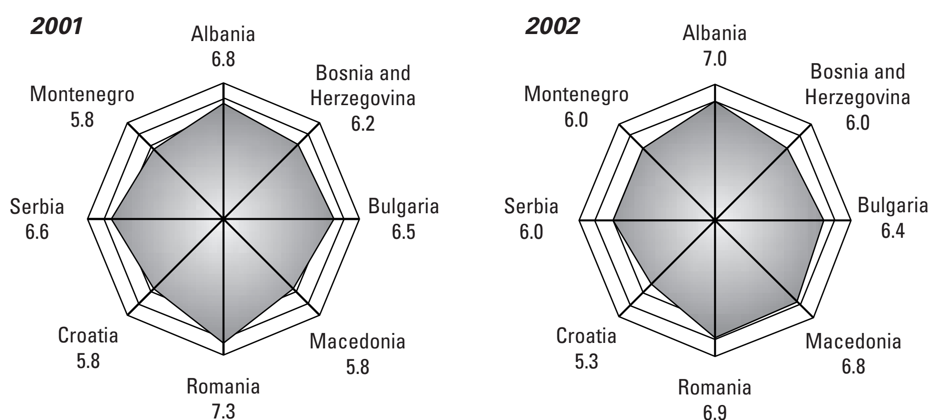
The Financing of Political Parties Law in Serbia was adopted in 1997. Under this law, a political party can acquire funds needed for its operation from membership dues, donations, income from its own property, ownership rights in enterprises and credits, as well as from budget of the Republic of Serbia. Political parties cannot be financially supported by the authorities and organizations from foreign countries and other foreign nationals, or by state or local organs of authority, except in ways defined by law. Anonymous contributions are allowed if they do not exceed 3% of a party's net income from the preceding year. Parties represented in parliament also receive means from the Serbian budget.

Campaigns for parliamentary and presidential elections are partly funded from the budget. Maximum permissible contribution a legal entity can contribute to political party equals to 50 net average monthly salaries in Serbia. Public enterprises may not give contributions to political parties. Parties are legally bound to keep records of income and expenditure; the sources of income are public knowledge.

In practice, the *Financing of Political Parties Law* never really became effective in Serbia. Despite the legal obligation to make financing transparent and to conduct all operations through bank accounts open to financial supervision, neither the ruling parties nor the opposition heeded the law. Most of the income of the opposition parties came from foreign donors (which the law bans) or local businessmen, anonymously. During the former regime, it was quite reasonable for opposition parties' donors not to reveal their identity.

The situation did not change significantly after political changes in 2000. Political parties are still constrained by the law only formally, duly keeping books showing only permissible income and contributions. Major donations still go unreported, which leads to political corruption. It is not known whether any supervision of the financing of political parties has been carried out lately. An investigation against several Socialist Party of Serbia (SPS) officials, suspected of masterminding alleged irregularities in the financing of the SPS at the time

Chart 10: Spread of corruption in eight SEE countries



Source: SELDI Corruption Monitoring System. Scores close to 1 correspond to low spread of corruption, those close to 10 to highest degree of proliferation.

when it was in the power is currently taking place in Belgrade.

Following the requests of the Council for Fighting Corruption, the Government of the Republic of Serbia has issued a conclusion on 22nd March 2002, obliging the Ministry of Finance and Economy and the Ministry of Justice and Local Governments to develop *Draft law on Preventing Conflict of Interests in Public Administration*, *Draft law on Recording the Property of State Officials* and *Draft Law on Financing of Political Parties*.

* * *

In many Southeast European countries legal provisions regarding registration and funding of political parties still are not adequate and do not guarantee equal rights and transparency of the elections campaigns and the political process as a whole. Even in the countries where the respective regulatory framework is already in place its proper implementation is often hampered by informal influence.

In order to curb corruption related to political parties and cut off the informal bonds between political parties and private interests it is recommended for the SEE countries to ensure better accounting and transparency of party finances. The parties should obligatory keep financial accounting and should include auditors in the process. Special bodies for financing and keeping the records should be created for exercising a more effective control over the parties' finances. A separate list of the donators and received donations should be kept following the current practice of most of the European countries and the USA. Publication of the parties' financial records will provide publicity of their activity.

The legislator should be very strict and precise because on one hand the law should provide free association in the political parties, and on the other hand it should give the country an opportunity to regulate the functions of the parties, which are important for the entire political system, as well as to restrict the possibilities of corruption to a maximum level.

In order to further reform the political system on a sustainable anti-corruption basis the following measures should be undertaken: further differentiation between the state and political parties as well as between public and private interests; introduction of mechanisms for development of legal sources of funding as well as for control over functioning of political parties and politicians; introduction of sufficient guarantees for equal treatment of political parties during pre-election campaigns.

Lobbying in favor of corporate interests is routinely done in modern societies, whether it is considered legal or not. In the most SEE countries there is a lack of legal regulation of lobbying methods which often border on corrupt practices at all levels of politics. What usually happens is lobbying through corrupting. Since lobbyists are operating as representatives and mediators for political parties, private persons or companies whose main objective is to influence the final outcomes of the policies (laws, political decisions, public procurement, awards, etc.), the negative social impact of their unlawful activities is obvious, especially if and when they resort to corrupt means. In addition to the direct negative impact of the abuses in the course of lobbying for the authority of the state and its representatives and the common public perception of corruption, the consequences can also have unpredictable and possibly negative permanent effects on the state of the national economy policy, different aspects of legislation and so on. Despite of these risks, however, lobbying is still not being legally acknowledged.

Lobbying activities need to be legally regulated, although not necessarily through a separate law. It is possible to include specific rules and provisions in relevant laws, mandatory codes of ethics for business organizations and the non-governmental sector in general. In any case such activities should be regulated on a broad legal basis after a careful consideration. This will help create a new model of interaction between politicians on the one hand, and businesses and non-governmental organizations, on the other hand, and strengthen the trust between them

V. JUDICIAL REFORM

Corruption in any institution impedes its operation and distorts its objectives. However, corruption in the Judiciary is particularly damaging for several reasons. The Judiciary is one of the fundamental pillars of a market economy whose role as arbiter of the law encompasses both the formulation and implementation of public policy. In addition to deciding criminal cases, the courts are responsible for upholding property rights, enforcing contracts, and settling disputes. As a result, corruption in the Judiciary can display aspects of both state capture and administrative corruption. Failure in any of these roles can be costly and reduce incentives to invest by forcing firms to resort to more costly private means of contract enforcement and protection. In addition to these direct economic costs, a corrupt legal system has a wider impact, undermining the credibility of the state and making the implementation of public policy more difficult. In particular, since the legal system will be the ultimate arbiter of any anti-corruption program, a corrupt Judiciary will fundamentally undermine anti-corruption efforts themselves.

The process of reforming judicial systems in many Southeast European countries is monitored and measured by international organizations and institutions as well as by national civic organizations and initiatives:

- Evaluation of conducting judicial reform in EU applicant countries by the **European Commission** as reflected in its "**Regular Reports**"
- **EU Accession Monitoring Program of the Open Society Institute** initiated in 2000 to encourage independent monitoring of the process by which the EU is considering applications for membership from the ten candidate States of Central and Eastern Europe and to complement the EC Regular Reports – edition "Judicial Independence in the EU Accession Process", 2001
- The **American Bar Association – Central and East European Law Initiative (ABA/CEELI**) developed its Judicial Reform Index (JRI) for Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo, Romania and Serbia.[31] The objective of the JRI is to assess a cross-section of factors important to judicial reform in emerging democracies.

As the various evaluation and monitoring instruments show, the Judiciary was once again ranked among the most corrupt institutions while judges, lawyers, prosecutors, police officers and other law enforcement professionals are among the most corrupt occupation groups.

The legislative measures, already implemented or planned for the future, target objectives in different areas, namely improving the substantive and procedural laws (legislative reform in the strict sense), reforming the organization and operation of courts and court administration reform and raising the criteria for the appointment of magistrates and their professional qualifications – training of both magistrates and court administrators.

The fundamental objectives of the judicial reforms in the countries in transition are to create conditions for the quick and efficient sanctioning of corrupt practices and to preclude any possibilities for corruption in the judicial system.

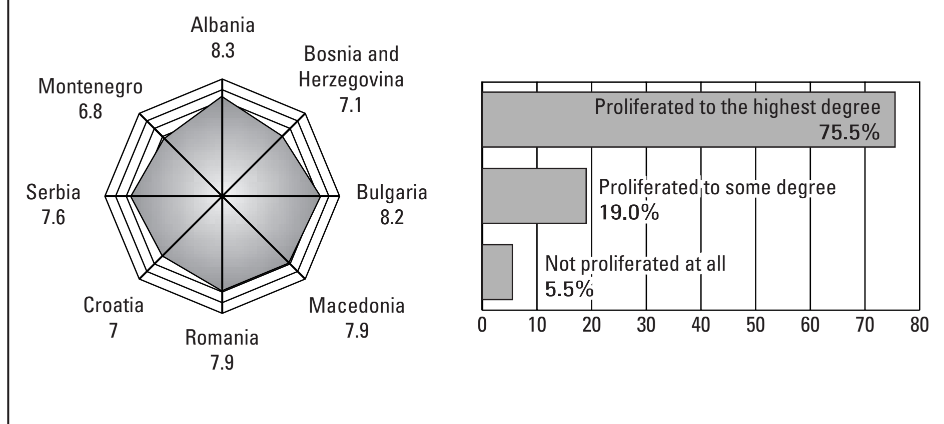
This chapter contains reviews on the most significant problems in the sphere of judicial reforms in the Southeast European countries:

- Structure, Organization and Governance of the Judiciary. Independence and Relations with the Executive;
- Status of the Magistrates – Independence, Appointment, Promotion, and Removal Procedures. Qualification and Training;
- Judicial Administration – Legal Basis, Status and Organization;
- Working Conditions. Modernization and Computerization.

[31] http://www.abanet.org/ceeli/publications/jri/home.html

[32] In September 2000 the project was successfully launched as part of the *Southeast European Legal Development Initiative (SELDI* - www.seldi.net). *SELDI* was created by the International Development Law Institute and the Center for the Study of Democracy in April 1999 with the overall goal to contribute to the building of the rule of law and democratic institutions in the countries of SEE through the institutionalization of regional public-private cooperation in anti-corruption and judicial reform.

Chart 11: Spread of corruption in the judiciary



Source: SELDI Corruption Monitoring System. Scores close to 1 correspond to low spread of corruption, those close to 10 to highest degree of proliferation.

5.1. Structure, Organization and Governance (Independent Governing Bodies). Independence and Relations with the Executive

The structure and organization of the Judiciary and the governance of the judicial system are vital for the successful anti-corruption efforts of the Judiciary. The main principles, concerning the structure of the Judiciary, its organization and governance, as well as its relations with the other powers are contained in the countries' Constitutions, adopted after the change of the political system in Southeast Europe. They are developed in details in the structural and procedural laws, most of which are elaborated and adopted in accordance with the new social and political reality in the region.

One of the principles, proclaimed in the new Constitutions and current legislation of the countries in transition is that of the independence and autonomy of the Judiciary. This can be achieved by different means, but the most important is the creation and functioning of independent institutions, which determine the composition and carry out the organization of the judicial system, and play the role of policy–making bodies. Such institutions already exist in most of the countries in Southeast Europe, but most of them still need fundamental institutional strengthening.

The system of justice in **Albania** consists of District Courts with general jurisdiction, Appellate Courts and the High Court. Each level deals with civil, criminal, commercial and administrative cases. The system of military justice is also included in the criminal justice system.

Albania has six Appellate Courts and one Military Appellate Court, which review the decisions of the first instance courts. The procedural competencies of the High Court are provided for in the *Codes of Criminal and Civil Procedure*. Competencies of a substantive nature are provided for in the *Law on the Organization and Functioning of the High Court and the Administration of Judicial Services*. Following the adoption of the new Constitution in November 1998, the High Court now needs further regulation (a new organic Law), which is almost completed.

By virtue of Albanian *Constitution* of November 1998 the **High Council of Justice (HCJ**) was established. HCJ is the state authority in charge of appointing, dismissing, transferring and instituting disciplinary proceedings against judges of primary and secondary instance in the Republic of Albania. Its aim is to ensure judicial independence, competence and impartiality. HJC does not belong to any of the classical branches of government. The *Constitution* makes this independent position clear by dedicating a separate chapter to the HCJ and distinguishing its responsibilities from the Legislative, Executive and Judicial branches of government. Although the role of the HCJ is focused mainly on disciplinary issues it exerts also quasi-regulatory powers, such as giving preliminary opinions on the proposals of the Minister of Justice to the President for the establishment of the territorial jurisdiction of the courts and the determination of the number of judges as well as announcing and organizing exams for judges jointly with the school of magistrates and School of Law at the Tirana University.

HCJ therefore has the potential to play a decisive role in judicial affairs. The organization and functioning of the HCJ's inspectorate is perhaps the hottest issue regarding the HCJ. The **Judicial Inspectorate** monitors and controls the Judiciary on behalf of the HCJ. Its competencies

are extremely vague. As a consequence, there are serious uncertainties about what procedures the inspectorate must follow in its investigative and decision-making capacity regarding the misbehavior of judges. The rules governing the Inspectorate must be clarified for it to carry out its work better and more efficiently.

Many legal experts plausibly argue that the poor performance of the Judiciary can be ascribed, to a great extent, to the inefficiency of the HCJ. Some of this inefficiency can be traced to the HCJ's organizational volatility, exemplified by the fact that it meets only periodically. However, as the HCJ currently stands, it cannot be transformed into a permanent committee with full time members because it includes members that have other governmental duties such as the President of the Republic, the Minister of Justice, the President of the High Court, etc. Several "moderate" proposals have been put forward. One of these proposals is to have the mandates of judges who become members of the HCJ suspended when they are called upon to serve on the HCJ. Another idea is for the deputy chairman of the HCJ to serve on full time basis. An increase in honoraria for the HCJ members has also been considered as yet another means to make members of the HCJ more devoted to the institution. Another proposal is for the HCJ to split into specialized sections. In theory, specialization would allow the HCJ to review more cases with greater expediency at a higher level of professionalism. Of course, there would be no impediment for the HCJ to review cases in plenary sessions when such an action is deemed appropriate.

The relationship between the Judiciary and the Executive is strained because each maintains a certain degree of control through a separate inspectorate. Distinctions between these inspectorates are blurred. The first inspectorate was created by the *Law on the Organization of the Judiciary* and is attached to the HCJ. The other consists of a number of inspectors attached to the Minister of Justice (some argue that this is not a real inspectorate).

The issue whether the parallel existence of two inspectorates is beneficial or detrimental is a subject of debate in the legal community. One view is that the existence of the ministerial inspectors is an unnecessary vestige of the communist era – when the interference of the executive power into the affairs of the Judiciary was legitimate (the Albanian constitutional doctrine at the time was that of unity of government powers). Another argument, which is practical in nature, is that the parallel existence of two inspectorates causes serious communication difficulties and in the long run can lead to the failure of the HCJ's supervisory role. The supporters of this view would advocate for the abolishment of the office of ministerial inspectors and therefore for the concentration of supervisory powers in the HCJ's inspectorate. However, this view remains a minority view. Most legal experts argue that concentrating all of the supervisory powers in the HCJ's inspectorate alone is a bad idea because most of the HCJ's members are judges. If the only check on judges were other judges, there might be a tendency towards supporting judicial independence to the point of virtual unaccountability. Such a situation would undermine the rule of law and the constitutional doctrine of checks and balances. Ministerial inspectors, on the other hand, are seen to be in a constant state of "institutional tension" with the Judiciary, and should, in theory, be more likely to criticize the Judiciary. Ministerial inspectors are also more accessible and, as a consequence, constitute a better advocate for individuals whose rights have been allegedly violated by the Judiciary. Finally, the performance of the HCJ inspectorate is arguably diluted by the fact the HCJ is not a standing organism but rather meets only periodically.

The new *Constitution*, by strengthening the political control over the Judiciary through a politically selected HCJ, has only nourished the tendency of politics to misuse the Judiciary and to effectively abolish its independence. Even the law amendments have only served to strengthen the position of the prosecution in respect to the position of the court, to diminish the rights of the accused, to prolong the terms of preliminary detention, rather then to provide for independence, impartiality, protection from political pressure etc.

After the political changes of 1997 in Albania, there was a strong movement towards changes within the Judiciary which resulted in an intolerable politicization of the Judiciary. This had considerable negative effect on its independence. The Head of the Constitutional Court and the President of the High Court, as well as other courts throughout Albania were dismissed and replaced with people pertaining to the Socialist Party.

The failure of the courts in punishing notorious criminals, murderers and terrorists, known also for their links to politicians in power, as well as the misuse of the Judiciary for the punishment of opposition party leaders, have severely compro-

mised the independence and impartiality of the courts. Furthermore, they have damaged the constitutional and legal guarantees for the rule of law, and eroded the faith of the public in justice.

In the last three years the state prosecution, especially the Attorney General's Office, has compromised itself with absurd accusations against the leaders of the opposition. The Judiciary in Albania is therefore clearly an instrument of political oppression.

The examples of such political oppression were the arrests and detention of thousands of opposition supporters, because of their participation in protest rallies organized by the opposition in the aftermath of the disputed October election. Numerous people were arrested and detained for periods varying from 48 hours to two months in a clear violation of the law. Many victims of unlawful detention and mistreatment were minors.

Using the courts as an instrument of political oppression has obscured their constitutional status and functions. Political pressure has made judges vulnerable towards any other kind of pressure. Bribery, threatening, corruption, incompetence have become main features of the Judiciary.

Albanian courts are filled with Socialist Party supporters. They feel that their positions are secure, because of their political affiliation. In such a situation reports about the release of notorious criminals and the failure of the courts to punish real crime have become normal.

The system has failed to pursue organized crime, and especially corruption and trafficking, related to the highest political level in the country. Recently severe accusations have been raised against the Attorney General of the country for his involvement in the international drug-traffic, as well as for his efforts to protect famous criminal organizations. These accusations resulted in the Parliament discussion whether to lift his immunity. The socialist majority protected him and thus hindered his prosecution.

The corrupt and inefficient justice system is one of the most serious obstacles to democratic governance. The Judiciary has failed in two aspects: 1) it has failed to be independent, and 2) it has failed to fulfill its constitutional mission and legal obligations.

There is an open tendency on the politicians' side to blame the Judiciary for the failure of the anticrime policy of the Government. By accusing the Judiciary of unprofessional behavior and corruption, the Government wants to hide its political failure to reform the police and the prosecution, which are really to blame for this precarious situation.

Corruption in itself cannot be fought without a functioning and clean Judiciary. Corruption has become a malaise of the Albanian system, widespread at all levels of the administration and a serious obstacle to efficiency. As such, it undermines legitimacy of the system. Public trust in the Government and state institutions is very low. Combined with the above mentioned corrupt and dysfunctional state institutions, this undermines the efficiency of the state in collecting revenues, and in implementing and making policies.

Bosnia and Herzegovina (BiH) is currently reviewing all judges and prosecutors. The current judges and prosecutors are required to reapply for their positions and undergo a comprehensive evaluation – by the newly created **High Judicial Councils (HJC**). This review started in June 2000, when the Entities' new laws on judicial and prosecutorial service established independent commissions (in the Federation of BiH) and councils (in the Republika Srpska). These bodies were charged with determining incumbents' professional and moral suitability for continued service, albeit under the close supervision of the Independent Judicial Commission (IJC), which was initially created under the auspices of the High Representative and his office (OHR) in early 2001 to assist in the process of guiding and coordinating a comprehensive judicial reform strategy in BiH. As part of this task, it provides assistance to domestic judicial and prosecutorial commissions and councils that deal with matters related to the appointment, discipline, and review of judges and prosecutors. The International Crisis Group (ICG) carries out its pivotal role in close co-operation with both local and international partners.

Both Entities have local courts that operate at the municipal level and only in those municipalities that are sizeable enough to require one. Each of the ten FBiH Cantons operates a cantonal court and in RS there are five regional courts to cover only the largest centers. These are the first appellation instances, above which there is only the Supreme Court. Notwithstanding the level of the magistrates, the new appointment procedures, as well as the verification of promotion, are now subject to the HJC's decisions. Removal procedures as described below again require the ultimate decision of the HJC.

In addition to the parallel judicial system in the two Entities that is being harmonized, the BiH District of Brcko, having become a non-Entity territory and directly subordinated to the State institutions, organized its own administration including Judiciary. This has very much been an exercise of the International Community (IC), primarily a US-led effort. While there has been much criticism over state-building in a town of 30,000, most of the work related to making the courts professional and independent has been successful.

The major outstanding issue is the organization of the Judiciary. In the complex BiH judicial environment, now certain motions exist on formation of the BiH Supreme Court and the BiH State Prosecutor. They currently exist solely at the Entity level. If they were to be established at the joint level, they would focus on the international and inter-Entity commercial crime and organized crime. Regardless of the judicial system, any interference of political and government structures must be eliminated. For the purpose of ensuring a more efficient resolution of disputes, it will be necessary to establish alternative institutions, for instance, in the area of business arbitrage and mediation. The possibility of re-establishment of commercial courts in the resolution of commercial disputes or an establishment of specialized commercial departments within the existing courts should be considered. This decision will be based on general strategy of judicial system reform.[33]

The Executive cannot directly influence the work of the judges. Ministries of Justice in both Entities and in the Cantons of FBiH cater for the supporting staff to the courts and other expenditures for Judiciary. They also pay for investigation processes and all external staff associated with the courts on a case by case basis.

However, this has presented the courts with another problem. Any investigation is pending a prior authorization of the Government, by the means of funding the experts, evaluators, etc., and this way may indirectly disable courts in their decision-making. Much of the current magistrates were appointed by the previous administration and now refuse to review their mismanagement, fraud and criminal activities and the current Government has no means to influence a greater efficiency and impartiality. This vicious circle is likely to extend for as long as there can be some influence, exercised on the judges by the Executive.

Bulgarian *Constitution* provides that judicial branch of Government is independent and has three parts (a) the courts (b) the prosecutor's office and (c) investigating bodies which are responsible for performing the preliminary investigation in criminal cases.

Three-instance proceedings were introduced, namely: first instance, appeal-on-the-merits and cassation proceedings. The current system includes 112 regional courts (courts of first instance), 28 district courts (of both first and second instance), five courts of appeal (which operate as courts of second instance with respect to the regional courts' judgments only), five regional military courts, one military court of appeal, a Supreme Court of Cassation and a Supreme Administrative Court.

When evaluating the Judicial system's efficiency in curbing corruption, one usually underscores the court's administration of justice. Under the existing Constitution, the other units of the judicial system (the investigation and the prosecution) should also be taken into account, as the efficiency of their work is a prerequisite for better and more efficient administration of justice. The proper place and role of the prosecution in the judicial system including the status of the Attorney General has been the subject of serious discussions. Different and often controversial approaches have been suggested: to preserve the status quo; to amend the Constitution and transfer the prosecution to the Executive, in particular to the Ministry of Justice; to give it greater independence from the Supreme Judicial Council; to impose parliamentary control over the Attorney General, etc. According to the *European Commission Regular Report 2001* the fact that criminal investigators with the functions they

[33] The WB survey data show that businessmen use courts much more often than informal channels – courts were used by 41 percent of those interviewed and informal channels only by 10 percent. Most of those who did not use the court system to resolve these problems cite as the main reason complicated court procedures. Another reason mentioned by several respondents is when the issue concerned "was not substantial". Those who used courts for resolving relevant business matters were asked about their experience. As many as 66 percent of respondents in the enterprise survey who dealt with courts considered them fair, unbiased, and objective. At the same time, 46 percent of the same group of people (those who dealt with courts) said that the courts are corrupt. Courts are regarded as not fast, with unnecessary delays by 77 percent of the respondents who dealt with them. Moreover, firms that felt the process was unfair were also very likely to declare it corrupt. (WB, ibid. pp. 49-50) http://www1.worldbank.org/publicsector/anticorrupt/Bosnianticorruption.pdf

exercise in Bulgaria (some of which are exercised by police elsewhere), are members of the judiciary, is unusual, and the inter-agency co-operation is weak and complicated. The issues related to the judicial system's composition are subject to discussion in the context of the recently launched debate on constitutional amendments.

The governance of the Judiciary is a key factor for the efficient fight against corruption both inside the Judicial system and throughout the rest of the society. A pressing issue is the delineation and redefinition of the authority and functions of the **Supreme Judicial Council (SJC)** as a governing body which makes decisions on personnel and organization, and the Ministry of Justice as a unit of the Executive.

The SJC has the main representative function in the Judiciary as well as broad powers in its administration. Unfortunately, there are serious weaknesses in its activities. Some of these are created by constitutional provision on its composition, responsibilities and powers while others can be corrected within the current constitutional framework. These weaknesses are generally due to the lack of transparency in the work of Judiciary, lack of clear procedures for a number of aspects of its activities, outdated internal rules, insufficient administrative capacity and a lack of feedback mechanism with the branches of the Judiciary. The unclear division of roles between the SJC and Ministry of Justice is an issue, which contributes to the poor functioning of judicial system and was also pointed out in the last *Regular Report* of the European Commission.

Under the pressure of criticism regarding the shortcomings of judicial reform both from the Bulgarian civil society and European Commission as well as from other evaluations missions of international or foreign organizations, the Government in its recent reform efforts tried to address the problems of the Judicial system by starting the implementation of the following measures:

- Using the experience of nongovernmental organizations and their initiatives to reform the Judiciary and developing partnerships with these organizations – among them the *Judicial Reform Initiative*[34] and *Coalition 2000;*

- Adopting a *Strategy for Reform of the Judicial System in Bulgaria* (SRJ) on October 1st, 2001. Its aim is to develop European Standards in justice by determining the political and legislative priorities in the reform of the judiciary, thus contributing to the preparation for European Union membership. The Strategy and the Action plan cover a five-year period. Although the Strategy does not deal with issues where in fact constitutional change will be required, the implementation and the monitoring of the effectiveness of the institutional and legislative measures proposed remain a high priority.

In the course of the implementation of the *Strategy for Reform of the Judicial System in Bulgaria*, the *Law on the Judiciary* was amended by the National Assembly in July 2002. The principal changes regarding the structure and governance of the Judiciary are as follows:

- The Law extends the competencies of the Supreme Judicial Council with regard to creating capacity to perform governing functions for Judicial system - strategy, financing, governance and to removing magistrates. One fifth of the members of the Supreme Judicial Council may also demand that the Chief Prosecutor be divested of immunity.

- Regional prosecutor's offices will be required to regularly submit reports on their activities. The Chief Prosecutor will also submit the report to the Minister of Justice who will include it in the yearly report on the work of the judicial system.

- The National Investigation Service shall be re-established to manage administrative and financial matters relating to the investigators.

[34] The *Judicial Reform Initiative (JRI)* was launched in March 1999 as a joint endeavor of eight Bulgarian non-governmental organizations, including the Center for the Study of Democracy (CSD) acting as a Secretariat to the Initiative, and representatives of the Legislature, the Executive, and the Judiciary. Within the framework of JRI (www.csd.bg/jri) a *Program for Judicial Reform in Bulgaria (PJR)* was drafted, benefiting from the combined efforts of influential non-governmental organizations, representatives of State authorities and experts. Since July 1999 the Draft program has been open for discussion and suggestions from the major stakeholders in the reform process such as the Ministry of Justice, the Supreme Judicial Council, associations and guilds of the legal profession, concerned non-governmental organizations, representatives of the media, independent legal experts and the Bulgarian citizenry. The amended and revised Program, incorporating the comments, suggestions and notes provided, was endorsed at a Policy Forum in May 2000. The Program represented the state of the Bulgarian Judiciary and the legislation as to May 2000 and pointed out the priorities to be followed during the next steps of the reform process.

Its independence from the prosecution shall be enhanced.[35]

- The Law provides for the establishment of an Uniform Information System. This System should link the data on crime from the Ministry of Interior, the Ministry of Defense, the Agency Financial Intelligence Bureau, the customs authorities, the investigation, courts and public prosecution offices and make much easier the interaction between the above mentioned institutions in curbing corruption.

In order to achieve better co-ordination of the governance of the Judicial system and protect the independence of the Judiciary, it is of particular importance to establish **a model of interaction and at the same time delineation of the responsibilities of the Executive and the Judiciary**. Strengthening the independence of the Judiciary also requires that the Executive, i.e. the Ministry of Justice does not restrict the creation of the necessary material conditions for its efficient functioning. These conditions include the management and maintenance of court buildings, providing the required materials and equipment etc.

The **Croatian** *Constitution* stipulates that the rule of law is one of the *Constitution's* fundamental values. The government is divided into legislative, executive and judicial branches along the principle of separation of powers in order to foster "mutual cooperation and reciprocal checks and balances provided by the *Constitution* and law."

According to the constitutional principle of separation of powers, the Judiciary is independent and autonomous.

Croatia's legal system follows the principles of civil law. Thus, the primary sources of law are the Constitution, laws enacted by Parliament, and other written legal provisions enacted pursuant to statutory provisions. Court decisions are generally not viewed as precedents, and – although lower courts tend to follow the opinion of the higher courts – there is no legal obligation for judges to follow the legal interpretations of higher courts. A practical problem is the current lack of access to many court decisions. Only decisions of the highest courts are published, and even then only in short excerpts, and only those selected by anonymous administrative services of the courts.

Court hearings are open to the public and judgments pronounced publicly (Article 119). Croatia is also committed to equality and the equal treatment of citizens before the law.

Although basic procedural norms govern the system, they do not reflect how it actually functions. Legal disputes often drag on for years without resolution, raising costs for businesses and increasing uncertainty for investors. Instead of solving problems, the legal system often prolongs them, and creates a fruitful environment for corruption. The criminal justice system is also inefficient, and criminals – both white-collar and violent offenders – have little fear of effective punishment.

There is currently a satisfactory legal framework for effective co-operation between the prosecution and the police; however, this co-operation must be reinforced in practice. The prosecutors must become involved in police investigations at an earlier stage in order to improve the quality and effectiveness of the investigations, especially in the more important and more serious cases.

This shortcoming is especially obvious in regard to the lack of coordination between the different bodies engaged in combating corruption and organized crime: the police carries out investigations on their own without contacting the district attorney's office for necessary legal backup, the district attorneys cannot thoroughly examine the evidence in the mere 48 hours of custody prescribed by the law, and as a result the public prosecutor refrains from instituting charges against the detainee, since there is no way for him to establish in such a short period of time whether the evidence submitted by the police is strong enough to uphold the indictment in a court of law.

Both experts and practicing lawyers agree that the intentions of the law are not being achieved. Judges have not yet been appointed for many judicial positions (an estimated 1/5). Croatia's judges are also relatively young – almost 40% are

[35] Previous experiments in reforming the investigation reflected in confrontation between the short-term particularistic interests and resulted in ineffective cases of preliminary investigation, including cases on corruption. Over the course of the last 10 years several attempts to re-organize the investigation have been made. They have varied from transferring investigation services back to the Ministry of Interior (1997) to closing down the National Investigation Service and creating 28 independent district investigation services and one Specialized Investigation Service (1998). As a result, the Specialized Investigation Service was deprived of organizational, financial and administrative means of influencing district investigations. In 2001, an attempt was made to subordinate administrative of investigation to the prosecutor's office

younger than 35 years old. That can be a positive trait, but it also means that they do not have adequate life and professional experience. In municipal courts, 61.5% of all judges have fewer than 6 years of working experience in the courts. Despite the lack of judges, efficiency concerns do not favor the alternatives of raising or lowering the number of judges. In the late 1990s, it became evident that the Judiciary was not able to cope with either its new functions or a fast growing caseload consisting of many complex cases. Understaffed courts with highly centralized and inflexible management do not allow for a quick and adequate response to the pressures created by market. As a result, since 1998, the courts have been continuously swamped by a backlog of over one million cases – in a country of only four million people (the figure more than doubled from 1996 – 2000). An example of the reasons for this backlog is a new system of land cadastre registry where the situation is almost chaotic. Croatia chronic economic instability also accounts for the increase in the volume of court cases. Each of the successive economic reforms enacted by the government completely changed the rules. The confusing rules enacted have resulted in an enormous number of disputes between parties with different understandings on how to adjust to a certain obligation. The volume of court cases coincides with a very weak and inefficiently managed court system. The courts have not yet designed and implemented a uniform policy or internal management system that would guarantee more efficient results.

The management crisis also affects criminal justice and the law enforcement system, which have been extremely inefficient in effectively prosecuting and punishing those who commit a crime. The volume of criminal cases also exceeds capacity, and controls over judges and court clerks, if any, are also very weak. Consequently, judicial proceedings are slow and sometimes useless.

As a result, corruption seems to be widely spread in the sphere of Judiciary as some examples show. For instance, there were publications in the media revealing documentation that owner and director of the First Artisan Savings Bank (FASB) bribed the highest judicial officials by paying for their summer holidays, air tickets and by granting them favorable loans. The former President of the Administrative Court and current member of the Constitutional Court, the head of the Criminal Section of the Supreme Court, a judge from the Commercial Court, a judge from the Administrative Court and a judge from the High Commercial Court were all connected with the controversial banker.

Crime statistics are not reliable. Many people report activities that are not criminal, and many criminal activities go unreported. Nevertheless, it is interesting to note that only 17.2% of reported offences in Croatia result in a conviction, and only 0.0392%, end with a non-suspended prison sentence. This does not necessarily reflect the actual extent of the frequency of certain criminal acts, but tells more about the efficiency of the detecting bodies, which occasionally fail completely and leave the perpetrator of the criminal act undiscovered.

Indeed, the Croatian judicial statistics are alarming. The penalties associated with the violation of rules that regulate economic activities are extremely low. The total number of persons legally prosecuted is negligibly small and the number of those actually convicted is even smaller. The perpetrators are exposed to very low risk, since the courts of law are overloaded; employees are too busy and court decisions take years to become effective. The main problem is still the slowness of the judicial process, particularly in the criminal field. There is also a lack of judges and support staff. The direct result of this situation is the low number of charges pursued. It is disturbing that only a small number of people were charged and convicted for the criminal acts of accepting or giving bribes. This does not reflect the frequency of individual criminal offences, but rather the lack of effectiveness of the bodies that investigate these crimes.

The impact of law and the courts on society is much greater today than ever before. During the socialist era, most of the social and political problems were resolved outside the legal system, in the bodies of the party bureaucracy. With the transition to a market economy and multi-party democracy, many heated issues are being submitted to courts, which are often unprepared for such hard tasks. Virtually all the major issues of social and political life are resolved by the courts – from privatization and economic restructuring to organized crime, corruption, and the consequences of ethnic conflicts and war. In response, the Croatian judicial system has improved its capabilities. Despite its slowness and inefficiency, it is finally assuming the responsibility of guaranteeing that new laws do not violate the *Constitution* or other conflicting legislation. Reflecting the growing pains of a new democracy, the executive and legislative branches have passed huge amounts of new legislation. The accomplishments of the transition period should not be entirely overshadowed by the presence of corruption.

The judicial system has also been subjected to improper executive and political influence. Unfortunately, although progress is hoped for, cooperation between the Croatian Judiciary and foreign experts in carrying out anti-corruption activities remains weak.

Macedonian *Constitution* adopted in 1991 created an independent Judiciary – subject only to the *Constitution* and the various laws and regulations. Judicial independence was further developed in 1995 by the *Law on the Judiciary* and the *Law on the Republic Judicial Council* as well as laws to regulate judicial procedures. Although Macedonian Judiciary is nominally independent several improvements are necessary for it to become more effective and truly independent.

The organization of the courts is uniform, irregular courts are forbidden. Judgments should be made on the basis of the *Constitution*, laws and international agreements are ratified in accordance with the *Constitution*. The Supreme Court is the highest court in the country and is responsible for providing a uniform implementation of the laws. Publicity of both trails and of the court's rulings is guaranteed by the *Constitution*. However, the public may be prevented from attending trials in some circumstances. The court council executes trials. In some cases, the sole arbiter is a judge. In other cases, there may be three judges. In yet other cases, there is a right to a jury. Juries cannot be held responsible for the opinions or decisions made in the procedure of rendering a verdict.

The Republic Judicial Council (RJC) consists of seven members. Members of the RJC are elected by Parliament and consist of respectable lawyers. Each member of the RJC is granted tenure of 6 years, with the right to pursue one additional term on the RJC. The members of the RJC enjoy immunity. The functions of the RJC are incompatible with any other public duties or professions or with membership in a political party.

There are several practical problems regarding the relationship between the Judiciary and the executive power. The most serious issue concerns the financing of the Judiciary. In Macedonia, the Judiciary receives its entire budget from the Ministry of Finance, a state institution. This total reliance on state resources has serious implications because it can jeopardize the Judiciary's independence. For this reason, the Macedonian Judges Association has advocated for the creation of an independent judicial budget. A special study was conducted by the Government. It concluded that such a law is necessary since financial independence is a precondition for judicial independence.

Another practical issue is the abuse of political influence. There are often indications of serious problems regarding the influence of political parties on the election of judges. Some judicial candidates proposed by the RJC were not elected judges after several votes in the Parliament, without any explanation being given. This creates an unfavorable picture of the Judiciary and of the RJC as a competent body. The executive power is also known to interfere with the Judiciary's power, disputing the legality of judicial decisions and court sentences. The Judiciary opposes all such interventions and indeed any influence that might jeopardize its independence.

However, real judicial independence has not yet been achieved. Due to the lack of effective internal mechanisms and procedures the Judiciary is still not in a position to prevent internal corruption and combat corruption in the society.

Although some improvements were made over the last decade, the independence of the Judiciary in **Romania** is still severely hampered by legal, institutional and practical obstacles. Judges' career depends to a large extent on the executive branch. The Minister of Justice is granted recommendation powers in the process of appointment, promotion, transfer and removal of judges. The Minister may easily avoid appointment or promotion by keeping uncomfortable names off the agenda. Equally, the Minister may decide not to initiate disciplinary proceedings leading to sanctions or even removal of judges. The **Superior Council of Magistracy (SCM**), which controls the selection, promotion, transfer, removal and sanctioning of judges is formed of both judges and prosecutors although the latter are subordinated to the Minister of Justice. The executive branch is also influencing the Judiciary through the budgeting process.

In addition, judges' professional activity and conduct is subject to verification by inspectors in the Ministry of Justice, in the courts of appeal and by court presidents. Although the law provides that such verifications may not interfere with judges' decisional independence, the controlling process includes assessments of the application of laws in particular cases. Reportedly, judges suffer interference and pressure in the course of the verification process, the results of which are essential for their career. High political officials in the current Government have repeatedly attempted – during the first months of the year 2001 – to influence the judicial decisions in particular matters and to

hamper the independence of the Judiciary. Many, including judges, see this issue as raising very serious concerns with the **Government's intentions in the area of judicial independence**. In many respects, judges' status is equal to that of prosecutors. Law calls them both "magistrates" and provides similar ways of appointment, transfer and promotion, similar salaries and even a unique code of ethics. In addition, prosecutors continue to perform judicial like functions, and the Attorney General enjoys the power of filing extraordinary appeals against final judgments. The powerful role of the prosecutors has been guarded through political obstruction of institutional reforms that propose diminishing prosecutorial power in favor of increasing the powers and independence of judges. The military justice system continues to exist, deciding, *inter alia*, on allegations of police mistreatment.

The public perception is that the Judiciary is corrupt. As suggested by the 2001 World Bank's survey,[36] corruption should be treated in a systematic way, including the legal profession and education as well as the public at large in addition to courts system. The lack of legal culture contributes to the corruption or to the image of a corrupt Judiciary. Judges' associations are few and weak, lacking a voice strong enough to defend and promote judges' rights and independence. Professional capabilities and integrity is not seriously evaluated during the appointment and promotion process. In addition, the training of judges is still at the beginning and it does not have the force to include a large number and to provide extensive knowledge on constitutional law and reasoning, international and in particular EU law, court management and ethics. The public as well as the large majority of judges is unaware of the EU assessments and recommendations in all areas, including the judicial system, and therefore their support to reforms is merely declarative.

The current court system in Romania follows a four-tiered pyramid structure. The lowest level consists of District Courts, the next level is comprised of Regional Courts, and the Courts of Appeal occupy the third level. At present, there are 186 District Courts, 41 Regional Courts and 15 Court of Appeal. The Military Courts are divided into military tribunals, military territorial tribunals and military appellate courts. The Supreme Court of Justice is at the top of the system and it is distinctly regulated. Constitutional matters are handled by the Constitutional Court, which acts as an independent institution.

Although the independence of judges is constitutionally guaranteed, some judicial decisions prove that a number of judges continue to operate as they had under the communist regime, particularly by defending state property to an extreme, and dutifully following the bureaucratic chain of command. For example, in cases where state civil liability is at stake, some judges provide little redress since they feel a duty to protect the state budget.

In addition, many of the judges that had served under the previous political regime remained on the bench, particularly in the higher courts. However, it should be also emphasized that many judges do indeed understand and defend their independence. During the 1990s, judges had strengthened their attempts to lobby for legislation that would ensure their economic independence and grant them substantial incentives. The implementation of such legislation was seen necessary in order to deter corruption and further stop the exodus of magistrates into the private sector. Judges' salaries (as well as prosecutors') and other financial benefits were substantially increased during the last five years, in particular in 1997. Nevertheless, the Romanian Magistrates Association claims that judges' income is disproportionately low in comparison with the income of some private lawyers. Yet, this comparison seems dubious, since the competition among judges is not nearly as high as it is among private lawyers and many judges value job stability more than a high income.

Public trust in courts and other law enforcing institution is low. The public perception is that the Judiciary is corrupt. A 2000 survey of the World Bank shows that between 53% and 65% of those interviewed believe that the judges and prosecutors engage in corruption. Journalists do bring into the public discussion matters within the administration of justice and allegations of corruption. In response, many judges say that the way media reports on the Judiciary contribute to the low public trust. Some journalists and politicians joined in expressing an overall criticism of the Judiciary. At present, the development of liberal institutions, such as an independent Judiciary, has strong support among intellectuals and professional elites rather than among the majority of the population and the government officials. According to a survey performed by the non-governmental organization *"Pro Democratia,"* the public believes that the courts, the prosecutors and the police are the most corrupt institutions in the country.

[36] 2001 World Bank Anti-corruption Survey http://www1.worldbank.org/publicsector/anticorrupt/Bosnianticorruption.pdf

International organizations do not perceive the Romanian Judiciary as fully independent and very effective. The *European Commission 2000 Regular Report*[37] provides the image of a Judiciary facing a real risk of political influence and having a low administrative capacity. The World Bank survey shows a significant lack of public trust in the Judiciary and a domestic overall perception of corruption within the judicial system. In addition, the 2000 US State Department's report on Romania states that the Judiciary remained subject to the executive branch influence.[38]

Corruption is a major obstacle to judicial independence and continues to be a widespread and systemic problem in Romania. Corruption in the Judiciary goes largely uninvestigated and unpunished. However, there have been some cases where corruption was identified and sanctioned. In 1999 the SCM handled 14 disciplinary actions against judges and of the eight actions accepted, six judges received disciplinary sanctions and two were removed from office.[39] However, any form of corruption is a crime requiring criminal investigation and court hearings. By applying disciplinary sanctions, the SCM avoided the courts' jurisdiction and the public debate over such cases.

The information provided by the Ministry of Justice showed, for example, that during the first 6 months of year 2000, the prosecution requested approval to investigate six judges and the Minister had only approved three. This process is not transparent, and it seems that officials are more concerned with the public image of the Judiciary than with bringing the allegedly corrupt judges before the courts and face media reporting.

A series of procedural shortcomings in the judicial system encourage corruption and prevent judges from being punished. For instance, court proceedings are not recorded. In practice, the leading judge uses his/her own words to summarize the parties' and witnesses' statements and dictates these summaries to the clerk. The oral debates between the parties or between the court and the parties, as well as the questions asked during the interviews are never recorded. In addition, there is no record of the questions rejected by the court. The lack of recording applies to all cases at all levels of jurisdiction. Under these circumstances, a corrupt judge may easily distort what the parties and witnesses have stated in the court. Moreover, the appeal proceedings lack the instruments of identifying eventual wrongs in the previous proceedings. The right to a fair trail is seriously limited.

The Judiciary in **Serbia** is regulated by two *Constitutions* – that of Serbia and that of the Federal Republic of Yugoslavia (FRY). Although the two *Constitutions* are not identical, there are no major differences regarding judicial issues. The *Constitutions* of both Serbia and the FRY define the states as democratic states and provide for the separation of power into legislative, executive and Judiciary branches of government. The Judiciary is regulated by the Republic, and it will remain the same regardless of any future agreements on the principles of the relationship between Serbia and Montenegro. The Serbian Constitution provides that Serbia is established on the basis of the rule of law.

The *Constitutions* cited above were drafted in 1990 (Serbian) and 1992 (FRY). However, both were largely disregarded during the turmoil that engulfed the region in the 1990s. Indeed, under the previous regime, the Judiciary was highly dependent on executive power, or more precisely on the personal networks close to Milosevic and his cronies. The period since the fall of Slobodan Milosevic's regime has not been characterized by comprehensive and radical judicial reform. A new set of judicial laws has been proposed, but in the meantime, judicial reform has been confined to some personnel changes. New laws have come into force, but time is needed to assess how the new institutional solutions will function. Since application of the law depends on the proficiency and moral integrity of the judges and magistrates, good personnel are of great importance for the quality of the Judiciary. For this reason, the Ministry of Justice launched an initiative to discharge 69 magistrates. Of this number, 21 judges were dismissed, and it is suggested that the rest should not be reelected. This was all done before December 2001, under the old laws, which permitted the Ministry of Justice to exert influence on judges.

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[37] European Commission *2000 Regular Report on Romania's Progress towards Accession*, Chapter on Political Criteria and Rule of Law. http://europa.eu.int/comm/enlargement/report_11_00/pdf/en/ro_en.pdf

[38] US Department of State, *Country Reports on Human Rights Practices – 2000, Romania*; February 2001. http://www.usis.usemb.se/human/2001/europe/romania.html

[39] European Commission *2000 Regular Report on Romania's Progress towards Accession* http://europa.eu.int/comm/enlargement/report_11_00/pdf/en/ro_en.pdf

The Serbian Parliament adopted five new laws to regulate the Judiciary in November 2001, and they came into force on January 1, 2002. The five laws are: *Law on Court Organization, Law on Judges, High Judiciary Council Law, Public Prosecutor Law, Law on Placement of the Courts and Public Prosecutors.* The new laws are aimed at bringing Serbia in accord with some of the norms and standards of modern European judicial systems. The Law on Judges provides for an independent Judiciary, lifetime appointments, the immovability of judges, livable salaries, the right to form a union, freedom of thought, and a certain degree of immunity.

The basic division separates the Judiciary into general courts and special courts. The general courts are: Municipal Courts,[40] District Courts,[41] the Appeals Court[42] and the Supreme Court of Serbia. The special courts include the Trade Court,[43] the Higher Trade Court,[44] and the Administrative Court.[45]

The Supreme Court decides the competence of the courts, controls the courts, defines uniform rules for court practice, gives advice on legislation concerning judicial power, elects judges and members of the **High Judicial Council (HJC),** defines criteria for assessing the judges' activities and performs other duties concerning the Judiciary.

The general impression is that the Judiciary in Serbia would not be independent enough even if legislation provided for fairness and court independence. One of the key questions is how citizens and businesses evaluate the Judiciary. Surveys carried out by the Center for Liberal-Democratic Studies (2001)[46] demonstrate that citizens have an extremely bad perception of the Judiciary. Less than thirty percent of the population (28.4%) rates the case courts as being just and unbiased whereas three fifths (60.3%) believe that this is only rarely or never true. Thus, the citizens of Serbia believe that the courts deny justice and impartiality, as they, also, deny fairness (65.8%), speed and efficiency (74.3%), accessibility (57.8%), reliability (67.1%) and the ability to carry out their own decisions (58.1%). The courts did even worse in a survey of entrepreneurs, who were evidently concerned about the court's problems settling business disputes fairly.

The creation of truly independent Judiciary in Serbia is impeded by a number of factors: courts have no real influence on the election of judges (particularly of the presidents of courts), many courts do not have presidents but interim presidents, the commercial courts are almost all resistant to change, salaries in the Judiciary are lower than in legislative and executive branches. These problems still remain unsolved thus creating favorable conditions for the continuing attempts of exercising political pressure over the Judiciary.

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Country review reveals the necessity of further institutional and organizational strengthening of the Judiciary in Southeast European countries and improvement of the judicial systems' structure and governance. Achieving judicial independence also remains a priority of the reforms and the anti-corruption efforts.

5.2. Status of the Magistrates (Independence, Appointment, Promotion, and Removal Procedures). Qualification and Training

The progress made towards the creation of an independent and stable Judiciary in Southeast European countries depends to a great extent on the status of magistrates. Some of the most important provisions in the new laws concerning judicial systems are related to the problem about the status of the magistrates, including their appointment, promotion, immunity, removal procedures and criteria, as well as protection against removal and disciplinary proceedings. The profes-

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[40] Municipal Courts are the courts of first instance and try cases involving less serious crimes, including legal and citizens' disputes and labor and residential issues.

[41] The jurisdiction of the District Courts has increased under the new laws. In addition to hearing the appeals of municipal court verdicts, they now serve as the courts of first instance for more serious crimes, such as those involving violence, bribery, commercial law offences, trafficking, deeds against individual rights, criminal offences committed by judges, deeds against national integrity and sovereignty and so on.

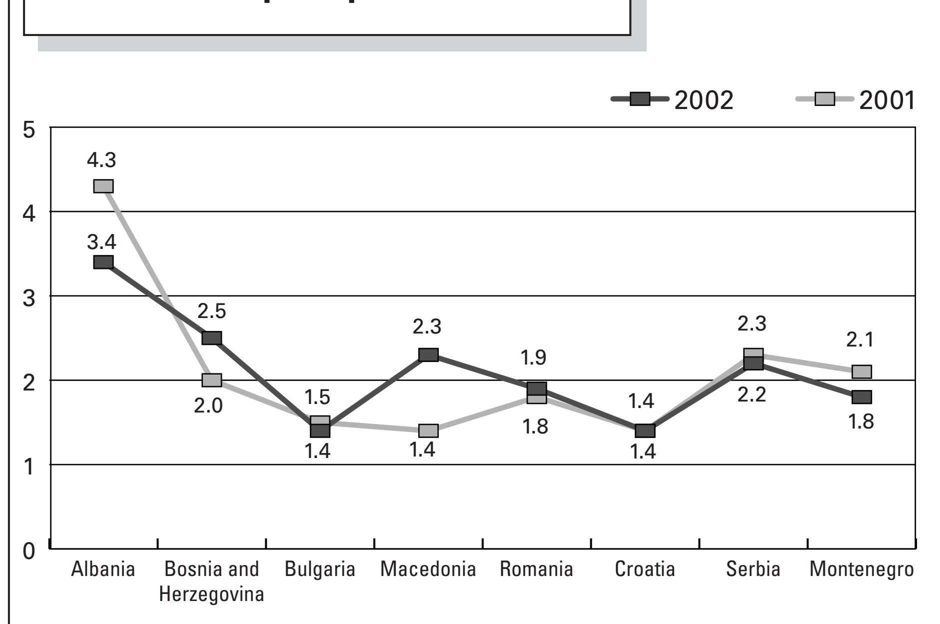
[42] The Appeals Court is an intermediate court based in Belgrade that also hears cases in Kragujevac, Nis and Novi Sad. This court decides appeals from the municipal and district courts.

[43] The Trade Court assumes the competence of the old Commercial Court and judges disputes between business enterprises or other economic subjects.

[44] The High Trade Court decides appeals from the Trade Court.

[45] The Administrative Court is a new institution created by the *Law on Court Organization*. Its competence is to settle disputes that arise within Government institutions. This court is conceived to encompass a wide range of activities, including banking, finance, foreign trade, intellectual property, etc.

[46] Center for Liberal-Democratic Studies, *Corruption in Serbia.* http://www.clds.org.yu/html/e0.html



Source: SELDI Corruption Monitoring System

Parliament passed the aforementioned *Law on the Organization of the Judiciary* after the new *Constitution* came into force, clearly contradicting it. However, although the problem is a very serious legal issue it still remains unsolved neither by the Parliament nor by the Constitutional Court.

Improving the level of legal education is imperative. It is also urgent that regulations ensure that judges have the requisite specific judicial knowledge and qualifications. With the establishment of the magistrates' school in 1997, the government undertook an important step in this regard. Although much remains to be done to upgrade its faculty and curriculum, this school presently functions as the sole institution for the education of new judges. The main problems concern the level of legal education and the lack of training opportunities.[47]

An examination of all sitting judges was administered by the Organization of Security and Cooperation in Europe (OSCE) and the Council of Europe in May 1999. The purpose of the examination was to weed out judges weak in legal knowledge, so the examination questions were very basic. Only four judges failed the exam. Several judges refused to take the exam and as a consequence were dismissed by the Supreme Council of Justice.

The School of Magistrates was established to train judges and thereby combat the Judiciary's lack of proficiency. The School of Magistrates' mandate comprises:

- Teaching regular students;
- Providing ongoing training for sitting judges with fewer than five years of experience;
- Providing ongoing training for court administrators.

sional training of magistrates is one of the indisputable priorities in the judicial reform so many efforts should be made to raise the professional qualification of those, working within the system in the countries of Southeastern Europe.

Details on issues of selection, recruitment, appointment, career progress or termination of office of a judge, as well as of disciplinary proceedings against judges in **Albania** are set out in the *Law on the Organization of the Judiciary*, and in the upcoming *Law on the Organization and Functioning of the High System of Justice.* At present, one can only anticipate the outcome after these new forms of controls of the Judiciary are adopted and speculate on how effective the controls will be in fighting corruption in the Judiciary.

However, it must also be noted that inconsistencies between the *Constitution* and laws that have already come into force make it difficult to determine which body actually has which power. Namely, the *Law on the Organization of the Judiciary (Law no. 8436)* stipulates that the HCJ nominates judges for the courts of first instance and the courts of appeals (Articles 20 and 24). On the other hand, the new *Constitution* stipulates that the nominations of judges are made by the President of Republic based upon the proposal of the HCJ. In this case, the hierarchy of norms is clear - the constitutional text is to prevail. However, the

[47] Currently there are only three law schools in Albania (Tirana, Elbasan and Shkoder). The Law School in Elbasan no longer enrols students, and will close in two years, so this need is urgent. The Faculty of Law in Tirana is the largest law school in Albania with 3,300 students. Its environment has improved recently, but it remains fraught with problems.

The school is designed to be a two-year program and is currently attended primarily by recent law school graduates.

However, the main shortcomings in the implementation of judicial reform in Albania remain:

- The lack of democratic procedures for appointing, assigning, remunerating and removing judges and prosecutors, in order to insulate them from political influence and pressure;

- The insufficient publication and dissemination of legal information, including judicial decisions, necessary to increase transparency in the fight against corruption;

- The lack of recruitment standards based on professionalism;

- The corruption within the Judiciary.

In **BiH** the period designated for the judicial review expired in FBiH at the end 2001 and in the beginning of 2002 in the RS. The RS agreed to prolong the review until June 2002, but the FBiH rejected any extension. Consultations with international and local agencies also provided information on the work of the Judiciary. Both OSCE and the Ombudsmen's offices supplied valuable material on judges' and prosecutors' adherence to and implementation of the laws.

Only five incumbents were removed (two more are pending) and 32 disciplinary procedures were initiated. Another 30 individuals resigned rather than face appraisal. (Five of these resignations were directly attributable to the review process.) Thirty-three new judges and prosecutors were appointed, while twenty judges and prosecutors (in the Federation only) were reappointed when their mandates expired. The review process, therefore, resulted in less than a 2.5 per cent rate of replacement.

This judicial review process does not apply to appointments to the Constitutional Court of BiH, the Constitutional Courts of the FBiH and the RS, the Human Rights Chamber, to judicial and prosecutorial appointments in the Brcko District altogether, nor to the nomination process for appointments to the Court of BiH.

Following the adoption of the federation *Criminal Code* and *Criminal Procedure Code* in 1998, special training on the new legislation was provided to members of the legal professions, including the Judiciary, prosecutors and defense lawyers, as well as police officers. In the meantime a series of specialized study visits, seminars and training on anti-corruption measures have also been organized mainly for prosecutors and police officers. However, in general, more sustainable training structures should be established; this could be one of the tasks of the new Training Institute for Judges and Prosecutors.[48]

With regard to the selection and appointment of magistrates in **Bulgaria** during 2001 the need for competition based on detailed criteria defined in the *Law on the Judiciary* and overseen by the SJC gained further support and provisions on such a procedure are included in the *Law on the Amendments to the Law on the Judiciary*. The *Law* introduces mandatory competitions for the selection of junior judges, junior prosecutors and regional judges, regional prosecutors and investigators.

Regular assessments for each magistrate's work were also introduced. Magistrates may be demoted as a result of these assessments. Magistrates will also be required to undergo an assessment before acquiring irremovable status. The procedure for such assessments lies within the power of the Supreme Judicial Council. The objective criteria are clearly defined by the Law, thus reducing the possibilities for subjective judgments and corruption to minimum.

With regard to the magistrates' further training in the year 2001 the Magistrate Training Center (MTC)[49] continued to function successfully, earning a deserved reputation as a unique institution to provide training for already appointed magistrates. In the beginning, training programs targeted mainly judges, but in 2001 prosecutors, investigators, civil servants at the Ministry of Justice, and university lecturers were also included. Training curricula already includes general courses in European law and the Institutions of the EU and specialized courses in international co-operation on criminal cases.

The new amendments to the *Law on the Judiciary* envisage the establishment of a National Academy of Justice as a public institution for professional training of magistrates and clerks, and create a legal framework for magistrate's qualifi-

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[48] Stability Pact Anti-Corruption Initiative, *Anti-corruption measures in South-eastern Europe - Country reviews and priorities for reform*, Council of Europe, September 2001, p. 76 ,http://book.coe.int/GB/CAT/LIV/HTM/l1780.htm

[49] The existing Magistrate Training Center was set up in 1999 as a non-governmental entity and has been a unique institution providing training for already appointed magistrates.

cation and its consequences for the magistrate's movement in the professional hierarchy.

In **Croatia** the Judiciary's independence is safeguarded by a number of protections. Judges can be suspended only for the reasons enumerated in the *Constitution*, judicial positions carry lifetime tenure and judges cannot be transferred against their will. Judges can be discharged only if permanently incapacitated or if sentenced for a criminal offence that makes it impossible for them to hold a judicial position. The latter case requires a specific disciplinary procedure before the State Judicial Council. A judge must not be a member of any political party and has to avoid any kind of political engagement. Law prescribes the salaries of the judges. All these measures are intended to secure the autonomy and independence of the courts.

The provision granting judges lifetime tenures has been extended only to judges appointed since the new Constitution came into effect. Making lifetime tenure available only to judges appointed by (and loyal to) the new Government was a clear message to others to withdraw from the function. Thus, it is not surprising that in the years immediately following the passage of the new *Constitution* (until 1997) there was an unprecedented flow of judges to other legal professions (mostly to become lawyers and notary publics). This long period of insecurity had a far-reaching impact on the quality of the Judiciary and contributed to the present crisis in the state justice system. The court system has suffered from such a severe backlog of cases and shortage of judges that the right of citizens to address their concerns in court has been seriously impaired.

Better training and specialization would be beneficial to both the efficiency and the quality of the justice system. Detecting unlawful activities in certain fields of business and finding additional evidence in support of previously available facts often requires specialized economic or criminalistic knowledge and expertise. At present, judges working in the criminal and investigative departments of the Croatian courts do not specialize in either economic crimes or any other individual branch of criminality. The solution is to appoint specialized law enforcement personnel and specialized judges – people who know about what they are fighting against. This would significantly increase the efficiency of courts. More importantly, judges would be able to properly evaluate the often complex financial and book-keeping reports of the court experts and other evidence that requires detailed knowledge of the economic and business administration issues. Training police officers and inspection services personnel is equally important, since they are the ones who must discover delinquency and uncover it in the initial phases. To sum up, in order to better combat economic crimes and corruption, specialized training of all the personnel involved in detection and enforcement is required.

Students who want to become judges and state attorneys begin to prepare for their professional responsibilities immediately after graduating from law school. Up until 2000, every Croatian citizen who completed studies at a faculty of law and passed the state Judiciary exam was eligible to be appointed as a judge at the municipal or petty crimes courts. Since 2000, appointment has required two years of practice after the examination. For promotion to higher courts, a longer period spent practicing law (mostly at the first-instance courts) is required.

The judicial and law enforcement authorities are constrained by the lack of resources. Attracting qualified judges is difficult because of low wages. The judicial system also suffers from a massive case backlog. Cases involving average citizens drag on for years, while criminal libel suits or other cases affecting high-level government officials are heard within weeks under "urgent proceedings." Salaries have also been increased. The *Law on Judicial Salaries*, passed in 1999, raised the salaries of judges on the lower courts by an average of about 50% and judges on the Supreme Court by 200%. Still, courts remain poorly equipped and the basic equipment they have is often not properly maintained. For example, it is not uncommon that judges are forced to use their own computers or to work at home. The same applies to other types of office supplies and basic working tools.

Inadequate training, together with low salaries and poor working conditions, results in an inefficient law enforcement system that is vulnerable to corruption. Corruption also results from the lack of effective control over the activities of law enforcement agents, such as public attorneys, police officers, advocates, states advocates, etc.

Croatia suffers from a problem common to many transition countries – a weak Judiciary suffering from inadequately trained judges and the lack of procedural reforms aimed at overcoming excessive delays in court cases.

Judges elected in **Macedonia** are granted lifetime tenure. They may not be removed against their will. A judge is dismissed only:

- at his/her own request;
- if he/she permanently loses the capability to perform judicial functions, which is defined by the Republic Judicial Council;
- if he/she retires;
- if the judge is found guilty of a criminal offense that entails a minimum incarceration of 6 months;
- if he/she commits a disciplinary infraction that makes him/her unsuitable to perform judicial functions, as defined by the Republic Judicial Council

The Republic Judicial Council (RJC) proposes the election and dismissal of judges to the Parliament. It also decides the disciplinary responsibilities of judges, evaluates their competence and conscience and proposes two judges to the Constitutional Court. The Constitutional provisions related to the Judiciary are further refined by the *Law on the Republic Judicial Council*, which also provides for the de-politicization of judges. The RJC bases its proposals on the recommendations of the applicant's current colleagues as well as from the superior court and the Supreme Court. RJC bases its proposal for the election of judges to higher courts on the basis of an objective evaluation of the experience, professional competence, skills and ethics of the candidate. The RJC proposes an equivalent number of persons to the number of judges that need to be elected. When a candidate for judge does not get the required majority of votes in the Parliament, the RJC nominates a new candidate. If the RJC does not support the nomination of any of the proposed candidates, it must inform the Parliament, which then shall announce again the need for election of a judge to the respective court. The RJC proposes dismissal of judges when certain conditions are fulfilled. Aside from the RJC, judicial evaluations of incompetence may also be addressed by the president of the court, the president of the superior court and by a plenary session of the Supreme Court. For this reason, the RJC has adopted rules of operations. The RJC has also adopted general criteria for the election and dismissal of judges.

According to the *Law on the Judiciary*, judges are obliged to have professional training. However, no state system for the education and training of judges currently exists in Macedonia. For this reason, the Center for Continuing Education (CCE) was formed by the Macedonian Judges Association with the aim of establishing a permanent educational institution for judges. The Center educates the judges by creating annual programs in order to educate judges from the Basic courts, the Appeals courts and from the Supreme Court. The educational program is administered by respectable lawyers, primarily judges from the Appeals courts and the Supreme Court. It is also necessary to establish regular and effective anti-corruption training programs for prosecutors, the police, the Judiciary and financial intelligence officers.[50]

Romanian legislation provides for a number of legal guarantees aimed at maintaining the impartiality and independence of individual judges. The 1991 *Constitution* states that the position of a judge shall be incompatible with any other public or private office, except for academic teaching activities. In addition, the *Law on the Judiciary* prohibits magistrates from acquiring membership in political parties and engaging in public political activities. Consequently, judges may not attend political meetings and they are not allowed to write political articles or be involved in any political debates. Judges are allowed to write articles in legal, literary, academic, or social journals and take part in broadcasting programs except where the context is political.

Judges are not allowed to perform, by themselves or through agents, commercial activities, or be active in the leadership and management of trading companies, civil partnerships or autonomous economic administrations. Consequently, judges may not engage in entrepreneurial activities. However, some believe that judges have the right to acquire shares and other securities, and to become stockholders, but only at levels below that of a controlling share.

In accordance with the law, judges must submit statements on their assets at the beginning and the end of the term they serve. In practice, however, their statements are never verified, neither at the beginning of the term, nor at the end. While at present such statements are confidential, some believe that judges' ownership statements as well as those of the parliamentarians and other officials should be made public. The law regulates judges' conduct in cases of conflict of interests in order to ensure their impartiality in individual cases. Judges either disclose the conflict refraining from the case or risk that the parties disclose

[50] Stability Pact Anti-Corruption Initiative, *Anti-corruption measures in South-eastern Europe - Country reviews and priorities for reform*, Council of Europe, September 2001, p. 122, http://book.coe.int/GB/CAT/LIV/HTM/l1780.htm

it and require them to step down. In addition, judges are not allowed to give legal advice, orally or in writing, even in cases pending before other courts. They must also refrain from publicly expressing their views on lawsuits that are pending.

Judges may set up professional associations or other organizations for representing their interests, improve their professional skills and protect their status. They may also join international professional organizations. However, judges are not entitled to form or join trade unions. At present, there are two associations, neither strong enough to represent judges' interest before the other branches of power. The Association of the Romanian Magistrates includes judges, prosecutors and civil servants of the Ministry of Justice. Although judges' interests are not similar to those of prosecutors and other officials, some continue to place them on equal foot. The Association of the Romanian Magistrates has been quite active, but not necessarily successful, in defending the financial interests of its members. Another organization is the Union of Judges' Association, formed exclusively of judges. It claims that half of the existing judges are its members. However, the Union mainly focuses on professional training, and it has not been a voice defending judges' rights and independence. Apparently, the two associations compete for representativness. None of them had reacted publicly against the recent political interference with the Judiciary independence.

Although there are some legal guarantees for judges' individual independence and impartiality, the institutional guarantees are not satisfactory. In addition, some high officials have failed to support judicial independence and the Governing Program for the next four years is ambiguous in this respect, mixing up the needs of independence and controlling. While at present judges are irremovable, some high officials have recently placed this status into questions. Both the Minister of Justice and the President publicly expressed doubts with regard to judges' irremovability. At the same time, judges' associations are week and have failed to represent judges' interests, rights and independence against the other branches of power.

Judges' disciplinary liability[51] falls under the jurisdiction of the Minister of Justice, the Superior Council of Magistracy and the Supreme Court, each playing different roles. The Minister of Justice fulfils the role of the disciplinary prosecutor, except in cases concerning the justices of the Supreme Court, where the disciplinary action may only be initiated by the Deputy Chief Justice. Prior to Minister's decision, an inquiry takes place. The inquiry commission is formed by judges or by general inspectors of the Ministry of Justice following the Minister's order.[52]

In **Serbia** a new institution called the Great Personnel Council (GPC) was created to handle disciplinary procedures. The GPC is composed of 9 judges from the Supreme Court. The President of the Supreme Court, who cannot be a member of the GPC because of potential conflicts of interest, initiates dismissal procedures and the GPC decides the cases on their merits. The Presidents of the lower courts may also propose dismissal proceedings against members of their courts.

The GPC must follow clear criteria and procedures for dismissals. Judges may be dismissed only for one of the following reasons: they are sentenced to six months or more in prison, convicted of a crime that makes it inappropriate for them to be a judge, guilty of the nonperformance or unreliable performance of judicial duties, permanently lose the ability to carry out judicial duties, delay the process or act against the rules of the judicial system, or perform other jobs that conflict with judicial duties. Dismissed judges may appeal their discharge to the Constitutional Court.

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Achieving the stability of the institutions that guarantee the supremacy of law is impossible without an independent Judiciary consisting of independent, objective, highly qualified magistrates possessing impeccable moral standards. The independence of the Judiciary is a major democratic achievement. It should not be regard-

[51] The grounds for disciplinary proceedings are: frequent delay in the paper work; unjustified absence from work; interference with the activity of another judge or persuasion for unlawfully solving personal or family demands; offensive attitude in the office; violation of the deciding process or of other confidential activity or document; public political activities; activities affecting the professional integrity and honour; unjustified denial of fulfilling the duties; violation of the taxation rules; repeated violations of the celerity requirements; repeated work negligence; violation of rules of judges' incompatibilities; major misbehaviour breaking the rules set forth in the Code of Ethics.

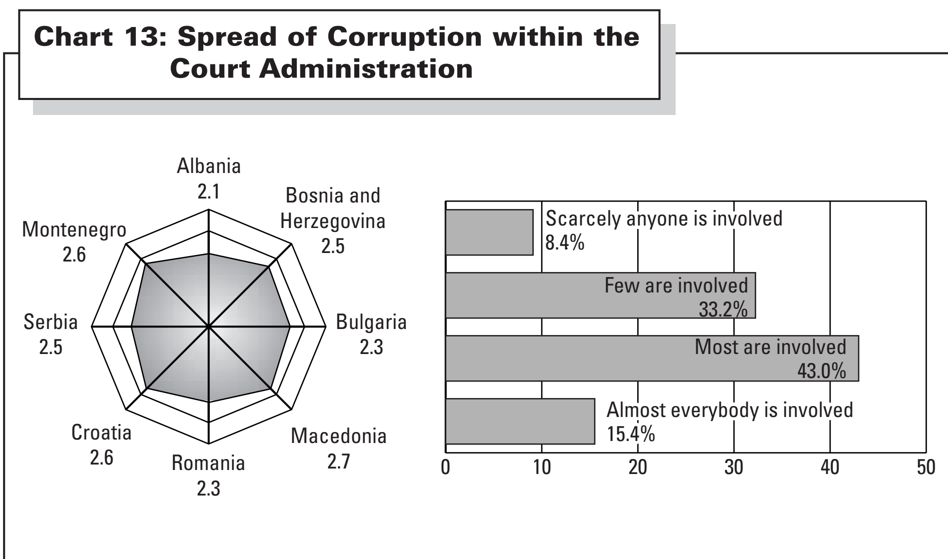
[52] When a judge is found guilty, the Council can apply one of the following disciplinary sanctions: warning; admonition; reduction of the basic salary up to 15 percent, for a period of one to three months; transfer for a period of one to three months to another court; suspension from office for a maximum of 6 months without pay; dismissal from a leading position; or expulsion from the magistracy

ed as a privilege of the magistrates but as a guarantee for establishing order and the rule of law in the states and for a fully-fledged protection of citizens' rights. Judicial independence is also an important precondition for preventing internal corruption as well as combating corruption in the society.

5.3. Judicial Administration – Legal Basis, Status and Organization

The professional competence of magistrates is an essential, though insufficient, prerequisite for the efficient operation of the Judiciary. Equally important is the good organization of their work, generally denoted as "court administration."

Administrative staff working in the courts as well as in other units of the Judiciary is responsible for the performance of all non-judicial tasks necessary to process cases through the system. The level of efficiency with which administrative staff performs has a profound impact on the administration of justice. The want of qualified administrative staff deteriorates the quality of the administration of justice and the public assessment of the work of the Judiciary. Any improvement of the work of that staff would certainly benefit the operation of the whole system. Addressing the needs of administrative staff for continuing professional education and acknowledging their role in improving the operations of the courts is therefore essential to improving the judicial system. However, according to the public opinion, corruption in the sphere of court administration seems to be widely spread.



Source: SELDI Corruption Monitoring System. Scores close to 1 correspond to low spread of corruption, those close to 10 to highest degree of proliferation.

The Western concept of judicial administration is not really known in **Albania**. The Chief Judge is responsible for assigning cases randomly. Judges have secretaries who record hearings and type the decisions. Many judges, particularly at the Tirana District Court, complain that their secretaries and clerks are unprofessional.

The few people who serve as court administrators do not have a clear understanding of their role in a judicial system. This means that most Albanian judges serve as both judges and court administrators, leaving them with little time to focus on their caseloads.

Moreover there is no clear definition of the term "court administrator" which often results in its very broad interpretation. Thus for instance court administrators are the court messengers, the security personnel/police, the court secretaries, the chief secretaries/chancellors, the archive personnel, the budget staff, the execution office staff, and the company register staff.

There is a great need to train court administrators to perform tasks that they do not presently perform. Training programs teach employees how to assist with monitoring the workflow and budget, manage cases and assist in managing the dockets, develop an annual court budget, manage other court employees, such as secretaries and filling clerks, ensure that decisions and other orders are disseminated to the right parties, collect filing fees, compile and compute statistics, assign cases, and develop courtroom procedures.

However, Albania still lacks the necessary institutional and regulatory prerequisites for the establishment of an anti-corruption environment in the area of court administration.

Some basic training has been organized for the supportive staff in **BiH** primarily in the use of information technology, which is non-specialized. Several tests are being taken by the staff upon hiring, to ensure their general judicial knowledge and the basic understanding of the system, but there is lit-

tle training preparatory work, let alone any follow-ups.

There was notable progress on several priorities of the reform in the field of court administration during 2001 in **Bulgaria**.

The newly created automated system for case management throughout the entire Judicial system was presented at the first annual assembly of the Bulgarian Court Clerks' Association in November 2001 and is expected to begin functioning soon. However there is still no adequate regulation of the court administration, including the rights and obligations of the different categories of the court administration staff as well as the position of a court administrator. Court administrators' positions have already been created within the Supreme Court of Cassation, the Supreme Administrative Court and the Attorney General's Office. In addition to the amendments to the Law on the Judiciary the respective secondary legislation is necessary to be adopted in order to overcome the inefficiency of court administration (poor procedures for case management, lack of central coordination of management practices, etc.).

In **Macedonia** the president of the court is responsible for managing the judicial administration, organizing the work of the judicial administration and undertaking measures to perform the Judiciary's activities in a timely and orderly fashion. The president also implements the judicial rules of procedure, which regulate the internal functioning of the courts. The courts, in which the number of judges exceeds seven, have a secretary. The secretary's job is to help the president perform the duties of judicial administration. The laws to ensure that the Judiciary gets adequate funding and that the judges and their staffs are properly compensated are necessary.

In **Romania** the judicial administration consists of independent judicial counselors, judicial counselors, beginning judicial employees and other clerks who perform administrative, technical and other activities, depending on the scope of the activities and the needs of Judiciary. It also includes persons responsible for the security of the courts, premises, property and persons. The judicial police have the task of keeping order in the court.

Cases are assigned to judges by court presidents. The assignment process is not transparent. The assignment of a case to a particular judge may be a deciding factor in the outcome of a trial. For example, in cases involving the nationalized property, the practice proved that most judges have strong personal opinions on the matter – as to return it or not to the former owners – and therefore the assignment becomes decisive for the judicial outcome. The law does not provide for criteria in cases assignment, leaving the court presidents with a wide discretion. Corruption had also been connected with the assignment process. A World Bank survey found that one of the most cited reasons for bribery was "to assure that a certain person would be assigned to the case." There have been some attempts to develop formal rules for case assignment to judges, but software for distribution of cases has not been introduced.

The rules on tracking the case files have not been modified in the recent years and reveal a number of shortcomings: limited identification of the individual judge, clerk or other administrative staff working on a particular case file; uncontrolled access to the case files by members of the registry or other administrative staff as well as by the court's presidents or vice-presidents; insufficient control over the handing of case files leaving open the possibility of documents' disappearance without any chance of identifying the moment or the responsible person. Although there is a judge in charge with the supervision of the court's registry in each court, permanent and effective control is still inadequate.

Following a verification of the registry and notification offices of some of the lower courts, the Ministry of Justice issued a press release in June 2000, noting the large number of malfunctions in the process of tracking the case files. Some staff members were dismissed while others received disciplinary sanctions.

In addition, it is common knowledge that many of the staff in the registry and judicial clerks are involved in petty corruption on a daily basis. When asking for information or case files, the parties or their lawyers bribe the staff. As this has become a notorious practice, the bribe is often offered automatically.

* * *

To reduce everyday ("petty") corruption in the interaction between the court administrative staff and the citizens ***a new approach to administration in the courts must be adopted,*** *including a system of management of the court's records, human resources, distribution of cases among judges and their progress through the courts, automation, and a database for judges. Also, additional institutional capacity of the inde-*

pendent governing bodies, including setting up a National Coordination Offices for the Court Administration, has to be built, and a Code of Ethics for the Administration of the Judicial system needs to be prepared. All of these measures should lead to the creation of clear, transparent and logical rules, which will facilitate fair administration of justice and prevent opportunities for corrupt practices to arise.

5.4. Working Conditions, including Modernization and Computerization

A very important issue as regards to judicial reform in all Southeast European countries is the problem with the poor working conditions and the inadequate or completely missing technical equipment in the courts. Although of great significance, this issue was until recently unreasonably ignored by most of the countries.

However, efficient distribution and maintenance of electronic data within courts, between courts, and between courts and other actors inside the government and legal community is a necessary component of improving judicial administration, as well as improving the condition and utilization of the physical space in courts for the convenience of employees and the public. Facilitating the communication between the staff and the citizens and allowing more rapidity and transparency in the work of the court administration, would play an important role in curbing corruption. This cannot be done without the introduction of modern information technology.

The poor working environment is a major concern of the judges in **Albania**. Buildings are not adequate, and there are not enough telephone lines, computers, etc. When improvements are made, judges are often not consulted. For example, the Tirana District Court judges did not know about plans to build a new court and they were not given a voice in planning the new building to accommodate their practical needs.

Security is also a major concern of the courts. The judges have requested that non-police security guards be placed in the courts. They complain that the police have no respect for the Judiciary and will only take instructions from the Ministry of Public Order.

Meanwhile, many judges think that the government has been trying to shift the blame for lawlessness to the Judiciary. The poor conditions of the courts, insufficient support at all levels and an overall lack of respect for the Judiciary are ongoing problems. For instance, the Attorney General of Albania has assented some publicly accused high government officials, including three ministers, for corruption, financial abuses and other major economic crimes. He declared that no investigation will be conducted since his office did not have the means, the necessary staff and the ability to conduct such an investigation.

Finally, two years ago, the government accepted the appeal of the Tirana District Court Chief Judges and put a special police force at their disposal that was under direct authority of the Chief Judges themselves. This was a good precedent and it has improved the situation.

The courts have very few computers and little, if any, practical experience in using them. Approximately 270 computers were bought by the government and given to the courts. The government was not able to fund training classes in computer skills for the court administrators. However, the USAID Judicial Training and Strengthening Project (East-West Management Institute) stepped in and provided the necessary training. Computerization is essential to improve the efficiency of operations in the administrative offices that support the Albanian Courts.

Some degree of modernization and IT has penetrated the courts in **BiH**, but virtually none in RS. There the courts still operate on typewriters with no databases other than the large registers and file folders.

A large sum of donor money is now scheduled to enter the court system through various judicial reform sub-projects. One such case is the register of enterprises and the register of pledges which will both be run and maintained by the cantonal/regional courts and will consist of an integrated public database that will be harmonized across the Entity lines and in Brcko. This should provide the commercial sections of the courts (perhaps to become separate commercial courts in the future) with the brand new equipment and the related training, not only in IT, but also in the application of the new laws to govern this area, as well as the procedures in processing the matter and other technicalities of the process.

There are also plans to modernize other parts of the courts and such efforts will be streamlined and coordinated by the IJC in collaboration with the Ministries of Justice and the Entity budgets and the HJCs throughout the country.

In **Bulgaria** the administrative staff within the judicial system works in a primitive environment. The level of modernization of the working environment and the conditions of work are still comparatively low. For instance numerous registries are kept mainly by hand, causing great difficulties to citizens and attorneys alike when they are making inquiries. There are also unsolved problems as regards to court buildings.

The following measures could be pointed out as marking some progress in the field of court administration. Reforms were made in the administration of 11 pilot model courts, including:

- More than 400 judges and court administration servants underwent judicial administration training.
- Office re-organization aiming at "one-stop shop" system was initiated.
- More than 400 PCs and other equipment were installed.
- An automated system for case management was created, developed especially for Bulgarian courts.

The working conditions are absolutely inadequate for the needs of the Judiciary in **Croatia**. Problem areas include the rooms, tools, communications equipment, computers, and registers. Only in the commercial courts is the digitization of information routine. In all other courts, old-fashioned machines continue to predominate. In contrast, it is not rare for judges and administrative staff to have their own private computers at home. The poor status of the facilities and resources includes other paradoxes. For the sake of cost reduction, the Supreme Court was not able to purchase works discussing the independence of the Judiciary. Simultaneously, however, huge renovations of many court buildings were being carried out, including renovations involving the Supreme Court's own building.

In **Macedonia** the Judiciary is making huge efforts to modernize its administration and upgrade its facilities. A committee has recently been established to digitize the workings of the Supreme Court, including creating computer programs for the first level procedure, the second level procedure and the judicial practice of the Supreme Court. The process should be completed soon. It is anticipated that the incorporation of these programs will improve the general environment of the Judiciary as well as assist the judicial staff in performing their functions. Other investments include constructing new buildings and modernizing current buildings and premises.

Courts in **Romania** suffer profoundly from under-investment, due to the limits of the state budget resources in general, and to the courts' small budget in particular. It is interesting to note that the budget for the Judiciary has constantly been lower than the budget for police, armed forces or secret services. The quality of the courts' activity is clearly influenced by the low level of financial resources. The small number of staff, the lack of electronic registration of the archives and court hearings, the poor conditions for studying case files contribute to the low quality of services. District courts, in particular, face permanent resource shortages.

Judges endure rather difficult working conditions. Many of the courts' buildings are inappropriate, in particular in Bucharest. The equipment is old, the archives and hearing rooms are small and overcrowded, in particular in the district courts which hear the large majority of cases. In many of the district courts in Bucharest 4-6 judges share an office. There are no legal requirements on office space or standard technology. Court presidents are left to deal with these problems, although many of the tools needed to resolve them are out of their hands.

Court hearings take place in rather precarious conditions. They are not registered by electronic means. In practice, judges dictate the clerks summaries of what the witnesses, defendants or others say in the court, and the clerks write these down by hand or by using old manual typewriters. Quite often, the clerks' written reports differ from what the judges have said, due to the low judicial knowledge and training of the clerks. Obviously, the lack of full registration of the courts' hearings as well as of the electronic registration and distribution of the case files has a strong negative impact upon the way justice is done.

Courts receive legal journals and the Official Gazette, together with printed collections of laws. However, many courts receive a reduced number of copies, and therefore a large number of judges do not get free individual copies. The legal materials, including the Official Gazette are usually kept by the courts' presidents. Digests of case law are not freely available to most of the judges. Under these circumstances, many judges have to pay for copying or buying the legal materials. All

these constraints and limitations might constitute entry points for corruption in courts.

* * *

Achieving legal stability and confidence in the Judiciary, providing conditions for greater efficiency, quality and transparency in the administration of justice, creating internal control mechanisms to combat abuse of power and corruption within the Judiciary and creating a system for improving the professional qualifications of magistrates remain the major issues on the agenda of judicial reform in the countries in Southeastern Europe.

The necessity of counteraction against corruption not only by the administration of justice but also by high morality evokes the need of preparation and implementation of the codes of ethics for magistrates, and rules of ethics and standards of conduct for court administration employees. In most countries of the region such either do not exist or their implementation is very limited. It is very important that moral rules of conduct are adopted and internal check-up and control mechanisms set up, disciplinary procedures for non-compliance with the law and the rules of ethics improved in order to raise the reputation of the Judiciary and to create among the magistrates an atmosphere of intolerance to any conduct damaging the reputation of the profession.

VI. CORRUPTION IN THE ECONOMY

In modern times the Balkans have been always the least economically developed region of Europe. Even the accelerated industrialization of some of the countries from the region, after the end of World War II, did not help overcome the gap between those countries and the more developed Western European states. The investment decisions were not based exclusively on their economic advantages, but were also politically motivated in the context of the rivalry between the two blocks. When eventually the economies of those countries had to face the competition of the world markets, most of their fixed assets turned out to be non-viable. Given the new market conditions, their value was significantly decreased. For those countries, the last decade of the 20th century was a period of economic degradation.

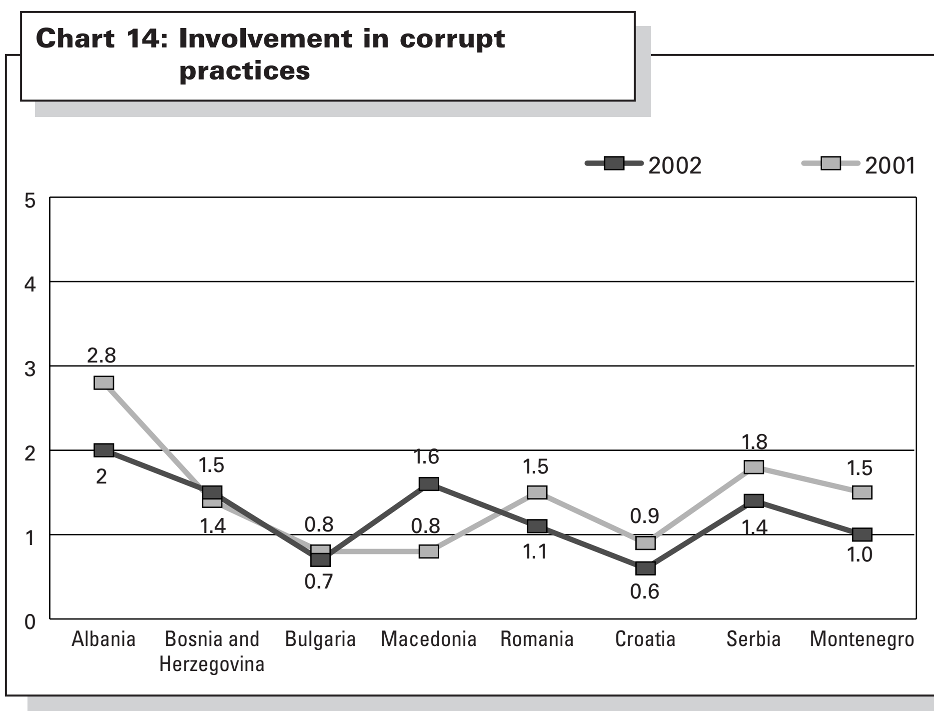
The process of disintegration of former Yugoslavia, ridden with conflicts and violence, maintains the instability and unpredictability of the region. The establishment and consolidation of new states, the issues of national security and minority problems are distracting the attention of governments and social structures from the economic aspects of the reforms. Many of the countries from the region are too engaged in building new political systems, solving constitutional, ethnic, legal and many other problems. Thus, there are little political, legal and institutional conditions for launching a market-oriented economic activity, particularly as the predominant stereotypes of economic development in South-Eastern Europe are ones of a state-dominated economy.

All these conditions appear to be a very fertile ground for corruption and it became one of the striking features of the transformation in the Southeast Europe. The widespread corruption was enhanced by the state collapse, the rotation of elites and the widespread failure to introduce and enforce appropriate legal and cultural norms.[53]

6.1 Privatization And Post-Privatization Control

Over the past decade, the pace of privatization in the South-east European transition economies had clearly lagged behind that in the "early reformers" from central Europe, suffering from basic difficulties and repeated delays due to a lack of commitment, inconsistent policy measures, complicated legislation and administrative deficiencies. While the late 1990s and early 2000s witnessed a general acceleration in the process across the region, as well as considerable improvements in the procedures and their implementation, many problems still remained especially with respect to the transparency of the transactions, the application of selection criteria and the post-privatization control. The institutions in charge of privatization have been typically granted large discretionary power that is generally seen as a hotbed of corruption. Moreover, the administrative capacities of the privatizing agencies appeared overall weak and these institutions have practically remained under rather strong political influence despite their nominal independence. The

Chart 14: Involvement in corrupt practices



Source: SELDI Corruption Monitoring System

[53] *Economic Survey of Europe*, 2000 No.2/3, Economic Commission for Europe, UN, Geneva, 2000, p. 134.

prevention of potential conflicts of interest, insider favoring and corrupt behavior proved also a particularly challenging task in the context of the existing legal loopholes and the preferential use of some privatization techniques. Therefore, it was not strange to see that the transfer of state-owned assets into private hands has been accompanied by growing public discontent over the outcomes of privatization and allegedly widespread corruption.

6.1.1. *The process of privatization in South-east Europe: legal frameworks and current progress*

During much of the 1990s, the privatization process in South-east European transition countries had been rather slow and hesitant, with the region's economies trailing well behind the more advanced reformers from central Europe in the pursuit of their ambitious strategies. While most of the former countries had made a relatively quick progress in transferring the ownership of small- and medium-sized enterprises, large-scale privatization had been considerably delayed due mainly to political constraints and controversies, as well as low incentives on the part of insiders. The overall slow pace of economic reforms and the gradualist approach towards the sell-off of state assets created fertile ground for rent-seeking behavior. In the second half of the 1990s, however, there was a marked pick up in large-scale sales that contributed to the notable acceleration of the whole process. This strengthening momentum reflected important policy changes and a general diversification of the employed privatization schemes and methods. In line with the shifts in the policy of divestiture the basic laws governing the privatization process have been amended rather frequently, although the effect of the legal changes fell apparently short of expectations with respect to reducing the risks of corruption.

Yet, the significant strides in privatization during the latter half of the 1990s played a key role in the restructuring of the South-east European transition economies, with the private sector gaining a dominant position in overall output. The wide-ranging reforms undertaken in **Albania** since the fall of the communist regime have totally reshaped the national economy. The process of privatization has been going on in the country for 10 years on end and at present approximately 80% of Albania's GDP is generated by the private sector. The *Privatization Law* of 1991 paved the way for the rapid privatization of small-sized entities employing up to 10 people. That was the first step forward in terms of changing the ownership structure of the then public property followed by the adoption in mid-1990s of a voucher scheme. A Mass Privatization Program was launched in September 1995 with a view to privatizing all small and medium-sized state-owned enterprises. By now, almost all of them are already privately owned and even some strategic state-owned companies are about to be privatized soon.

Since 2000 there has been considerable progress in the field of liberalization and privatization in both entities of **Bosnia and Herzegovina (BiH**). Despite the intensified efforts, however, the process of large-scale privatization is only at the beginning. Consequently, many of the larger companies are still state-owned (almost all of the top 100 companies in terms of net capital book value and the number of employees are owned by the state), although the number of small- and medium-sized private enterprises appears substantial. The process of mass privatization is also well under way, with the registration of people for vouchers and their distribution and investment being already completed. In addition, a number of bidding procedures for the privatization of enterprises with the capital value below and above 300,000 KM (approximately 150,000 EUR) have been carried out in the Republika Srpska (RS), as well in the Moslem-Croat Federation (FBiH). Yet, the privatization process could hardly be described as being fast. The primary reason for this seems to be the size and unattractiveness of the BiH market for investment, and not so much the unwillingness to privatize. Besides, there were a number of forced delays and frauds in the privatization process that caused some pullouts and revisions of the privatization status, resulting in an even lesser interest in the purchase of existing enterprises. Finally, the model that was to offer as much participation, transparency and equality to all citizens proved to be rather complex, slow, expensive and painstaking. However, any additional review of the model itself (having undergone some two to three crucial structural adjustments in the last decade) would prove to be even more costly.

For the whole period since the start of 1993 up to end-January 2002, a total of 4,789 privatization deals have been concluded in **Bulgaria**. A reported 52.64% of all state assets have been already privatized, representing more than 80% of the assets slated for privatization. Meanwhile, the share of the private sector rose to 71.7% of total value added in 2001, up some two points from the previous year. The basic *Law on Transformation of State and Municipal Enterprises* was passed in April 1992 and has been amended many times afterwards. The initial legal framework provided

for a wide range of cash privatization methods, although a 1995 major amendment in the original law allowed for a mass privatization program to be launched in 1996 based on a voucher-type scheme close to the Czech model. Further important amendments were made in 1997 and 1998 in order to accelerate privatization by offering greater flexibility with regard to the employed multiple methods. In early 2002, a new *Law of Privatization and Post-privatization Control* has been adopted that includes, among others, several provisions aimed at the prevention of corruption and increasing the transparency of the process. The major goal was, however, to streamline the procedures with a view to rapidly completing the remaining large-scale deals and paving the way for the second-round privatization in network industries.

In 2000, around 60% of **Croatia's** GDP was produced in the private sector. At least three institutional and legislative framework factors proved to be decisive in the process of privatization in the Croatia. The first is the concept of privatization chosen, which resulted in the *Law on Ownership Transformation of Socially Owned Property* (1991). It was mainly based on methods of selling, on a case-by-case principle with preferential treatment for former and current employees. The frequent changes and amendments of the original text put, however, the new owners in an unequal position, produced feelings of legal insecurity and created favourable conditions for many forms of "grey economy" activities. The original Law of 1991 had six amendments, with the majority of them being aimed at the protection of small shareholders in the privatization process. Their participation was extremely important for the government, seeking to ensure broad public support for privatization as the process had lost a great deal of its vitality and strength during the first two years of implementation. The pace of privatization remained, however, rather slow and tainted by insider favoring, lack of transparency surrounding some transactions with privileged individuals (tycoons) well-connected to the political elite, as well as increasing reports of alleged corruption that raised the concerns of potential investors. The concentration of decision-making in the privatization agency and the existence of many legal lacunae with respect to important practical issues contributed also to the rise of irregularities during the privatization process of the 1990s. Thus, the latter was widely perceived as conductive to the expansion of the informal economy and corrupt practices.

The privatization process in **Macedonia** started by the end of the 1980s and the beginning of the 1990s. During this period, a number of companies went through transformation of ownership, according to so-called "Markovic Law". The privatization was mainly based on the method of selling to the managing board and employees in the respective companies. There were several positive examples of companies privatized under this law that succeeded in increasing investment, broadening the field of business activities, keeping all employees and improving the company's efficiency in general. In 1993, Macedonia adopted a new *Law on Privatization and Restructuring of the Enterprises with Social Capital* which has been amended and supplemented several times. A special Law for the privatization of agriculture companies (kombinats) was also passed. According to most analysts, however, the privatization process in Macedonia has been rather slow and hesitant. Moreover, during the last three years the government has privatized many companies practically for its own interest, creating the so-called "false privatization". Yet, according to the Privatization Agency, the sell-off process is near completion. In the past decade, a total of 1,678 companies have been privatized and there remain approximately 89 companies scheduled for privatization via public tender. The number of minority shares packages that remain to be sold is, however, very large. There are currently about 390 such packages with a total nominal value of EUR 400 million and it will likely take between three to five years for this process to be completed if its recent pace is further maintained.

The government of **Romania** has recently also made an important step towards addressing some of the existing problems in the employed privatization techniques by passing a *Law for the Speeding Up of Privatization* in March 2002. This so-called "law for 1-Euro selling" admits that privatization of state-owned companies on complicated contracts, with many investment promises and social strings attached, proved to be detrimental, since such contracts are hard to monitor and enforce. Instead, the open tenders will be preferred with the contract awarded to the highest bidder. Several hotels and other small companies have already been sold for cash, but analysts still wait to see an important privatization deal taking place under the new law.

In contrast to the rest of the South-east European transition economies, the process of privatization in **Serbia** had been delayed during the whole of the past decade. Three attempts had been made under the former regime to transform social- and state-owned property into private ownership along the lines of the following laws: the *Law on Social Capital* (1989), the *Law on Conditions and*

Process of Transforming Social Property into the Other Forms of Property (1991), and the Law on Property Transformation (1997). The dominant method of privatization was the so-called "wild privatization", referring to the transfer of social property into private hands in a murky way. Such transfers were not necessarily illegal, but were inevitably accompanied by corruption. Although the pace of privatization accelerated during the period of hyperinflation, the subsequent amendments in the Law of 1991, as well as the Code on Revalorization put the whole process to the very beginning by annulling all the privatization transactions that were closed at the time of the inflation hikes. Following these acts of annulling the hitherto privatization deals, the share of the privatized capital was reduced to only 3% in 1994.

Until the change of regime in October 2000, only 400 enterprises, or 5% of all social-owned companies, had stepped in the process of privatization under the Law of 1997. Since the political changes of October 2000 the process of privatization has accelerated for a number of reasons, ranging from new incentives for managers of socially-owned enterprises up to the possibility to gain a greater share of free of charge capital after the official exchange rate came on par with the market one. However, until the suspension of privatization under the Law on Property Transformation, a modest total of 800 enterprises, or slightly more than 10% of all enterprises subject to privatization, have been privatized. Thus, it may be concluded that legal privatization had virtually stalled until the new *Law on privatization* was adopted by the People's Assembly of Serbia in June 2001. Adding to the legal framework of the privatization process are also the *Law on the privatization agency* and the *Law on the share fund*, as well as three government decrees that refer to the methodology for valuation of capital and property and their sale through public auction and tender. The new model of privatization has two main features: first, the dominant method is sale, and second, the government granted itself significant discretionary power in order to play the main role in the privatization process.

After the ten years of practical stagnation, the process of privatization in Serbia could be accelerated under the new law. There are currently 7,500 socially-owned enterprises. Larger enterprises (about 150-200 of total) will be sold through public tender, while the remainder will be privatized through public auction. The first tenders were organized in December 2001 when three cement factories were sold to foreign investors. Privatization through auctions has began only recently, with the first auction being held on March 22 when three out of nine enterprises offered were successfully sold. The recent experience showed that the privatization process under the new law has been fairly smooth and transparent until now. Public concern has been raised only once on the occasion of the privatization of the cement factory BFC Beocin as the government tried to sell the enterprise by a mutual agreement with the purchaser, instead of organizing a public tender. As a result of huge public pressure, however, a tender was finally organized, with the pre-selected buyer actually winning the tender.

6.1.2. The institutions in charge of privatization

In **Albania**, the National Agency of Privatization (NAP) is the main government institution responsible for the implementation of the *Privatization Law* and the organization of the prescribed procedures. It is also supposed to be a sort of register containing detailed information on privatization deals. The Agency has its own branches all over the country. While the Ministry of Public Economy and Privatization prepares the whole package of privatization, the Agency is the executive institution of the bidding procedure. The Agency reports every month at the Council of Ministers and at the Anti-Corruption Commission about its work. Throughout the transition period the Agency has been allegedly involved in politically biased and corrupt privatization deals in several cases. However, while the media has been especially aggressive when it comes to denouncing suspicious deals during the privatization process, there has been not a single accusation of corruption from either the High State Control or the General Prosecutor for the period 1999-2000.

The Agency for Privatization is in charge of the process in the Moslem-Croat Federation of **BiH** with offices in each of the ten Cantons that con-

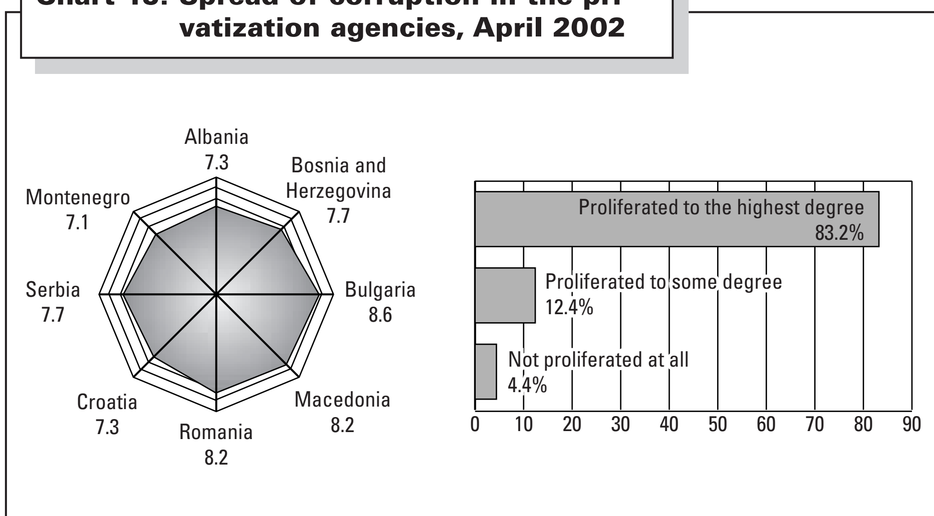
Corrupt privatization
According to results of Transparency International BiH survey, 79.4 percent of respondents think that corruption exists in privatization process. 37.4 percent of respondents mark the privatization process as mostly unsuccessful, and 38.5 percent of respondents as very unsuccessful. The most corrupt are managing directors in the state owned enterprises (31.2 respondents think in that way), then officials in Agency for Privatization/ Directorate for Privatization (26.7 percent of respondents) and finally those officials in Entity governments and ministries (20.9 percent of respondents). (TI-BiH, ibid.)

duct the day-to-day operations, while in Republika Srpska this function is assigned to a centralized Directorate for Privatization. The agencies work very closely with the respective governments, with their staff and especially chief executives being typically appointed by the same political parties that are in charge of the cabinet formation. Therefore, there are substantial political and partisan interests at play. The distribution of the higher-ranking posts in the respective agencies mirrors the distribution of cabinet seats. The same applies to the appointment procedure with respect to the top executive positions in state-owned enterprises, which are all subject to the so-called "party co-ordination meetings". Convergence of the party interest at these various posts all relating to privatization, either ensure depletion of the enterprise budgets, spontaneous privatization or extra profits from the "legal" one. Often, it allows even for a combination of all that mentioned above. Press reports appear to confirm such assumptions on a daily basis, entailing the reaction of the IC in some instances.

Under the Law of 1992, various state agencies were entitled to initiate privatization deals in **Bulgaria**. Municipally owned enterprises were privatized by municipal agencies, the privatization of small enterprises was handled by the line ministries, whereas that of larger companies was the responsibility of a special body - the Privatization Agency - that also served as a general coordinator of the whole process. With the start of the mass privatization program a separate institution was also set up to carry out the specific tasks in this area. Until the notable pick-up in privatization during the second half of the 1990s, however, the line ministries and the municipalities appeared rather reluctant to pursue a rapid transfer of the ownership under their supervision. On its part, the Privatization Agency remained vulnerable to political pressures usually exercised through its Supervisory Board whose members were appointed by the government and the parliament. While the process of transferring state assets into private ownership accelerated markedly since 1996, the vast array of programs and employed privatization techniques strained the administrative capacities of the implementing agencies. Despite some problems in administrating and coordinating the whole process, the latter part of the 1990s saw a strong momentum in privatization, although its outcomes caused growing dissatisfaction among the population. Given the advanced stage of privatization and the public outcry against alleged corruption, the new Law of 2002 stipulates a centralized management of the process by the special Agency, as well as a strengthened control both on the conclusion of deals and their subsequent implementation.

One of the main factors that is deemed conductive to the increase of irregularities in **Croatia's** privatization experience was the concentration of decision-making in the hands of a single state agency, with the latter being also in charge of the subsequent implementation. The central role of the state in managing the entire process of privatization had a series of undesirable side effects. Although all firms and companies had been guaranteed the right to suggest their preferred privatization modes under the Law of 1991, the final decision on the privatization of a particular company was made by the Agency for Restructuring and Development (later to become the Croatian Privatization Fund, CPF). This meant in practice that it was the Agency that had the final say on whom to sell and at what price, even though the companies themselves had the right to propose privatization methods and the potential buyers that suited them best. Thus, corruption and other irregularities were some of the undesirable side effects of the disproportionate role of the state Agency in charge of privatization. Yet, this was not something specific to Croatia alone as it is to be found in other countries in transition and everywhere in the world (especially in developing countries),

Chart 15: Spread of corruption in the privatization agencies, April 2002



Source: SELDI Corruption Monitoring System

mainly in situations when a large part of decision-making is left in the competence of a government body or administration.

The Law of 1991, however, did not precisely establish the order of priorities or criteria for the assessment of application for ownership transformation and privatization. The opacity of the criteria and the procedure itself opened up possibilities for an unusually large area of discretionary maneuvering space for the Agency (CPF) administrative council to assess each case separately and according to ad hoc established goals. This unrestricted arbitrary decision-making and the right to use own discretionary right in assessment of individual purchase offers can by all means be held responsible for the consequent development of numerous irregularities in the process as it fostered expansion of corruption and intermeshing of politics with the new private elite. The lack of transparency surrounding the conditions for sale and their adjustment to each individual case produced negative consequences on the decisions of individual investors and immensely damaged the general perception of the privatization process in the eyes of the public. In this respect, the biggest problem was the lack of legal restrictions of the role of and arbitrary decision-making by the state administration in the privatization process. Had the Agency not been given the role of central arbiter by the Law, the problem would nowadays be far less critical.

According to the Law, the key institution that is responsible for administration and support of the privatization process in **Macedonia** is the Privatization Agency whose mission falls in line with the final goal of ownership transformation in the country. Although the Privatization Agency is defined as an independent institution, it is under strong political influence. By appointing its Director and other senior officials the government can directly influence all the decisions of the Agency. The Director has always been a member of the political party in power, implying his/her acting in the interest of the given political formation and the government. For example, during the last three years several directors of the Agency were appointed and dismissed accordingly to the ruling coalition parties' wishes and their particular interests in the selection of a potential buyer for profitable companies (usually accompanied with indications for corruption).

The institutions that have been created under the new privatization laws in **Serbia** are the Agency for privatization, the Shares fund and the Central share register. The Agency for privatization is the main body in charge of the process and has large discretionary power. The institution promotes, initiates, executes, and controls the process of privatization, although the latter can also be initiated by an enterprise slated for privatization and a potential buyer. The Agency is also empowered to approve the results of the tenders and auctions. Thus, it appears to be granted strong discretionary power, being at the same time burdened with functions that should be distributed among the enterprises slated for privatization, state and independent bodies. The Agency is operating under the control of the Ministry for Economy and Privatization, the Government of the Republic of Serbia, as well as the Serbian Parliament and representatives of the World Bank. Through this four-fold monitoring of the Agency's work, corruption possibilities seem vastly reduced. Moreover, there is no evidence that political parties exert influence on the privatization process. The present minister of privatization, Aleksandar Vlahovic, is not a member of any political party, as well as the other high officials of the Ministry.

6.1.3. Litigation, implementation and renegotiations of closed deals

The experience of **Albania** showed that during the privatization process, there have been several cases where the parties involved claimed for renegotiations. That was the case of the Italian brewery "Peroni" which was the wining bidder for a domestic brewing company and 6 months after the privatization deal was struck "Peroni" demanded renegotiations of the details of closed contract. The request was not accepted by the government and the deal was awarded to the second-best bidder during the privatization process.

In **BiH** as well, there have been many cases of undertaken campaigns for renegotiations of already closed privatization deals. They are being typically launched by the directors of the then state-owned companies, most of whom are political appointees, the moment the award of a privatization bid has been made public. All these efforts have an aim to postpone the privatization of the cash-cows that fill the party budgets, primarily during the frequent election campaigns. Flagrant is the example of the Banjaluka Brewery that was the first cash-cow to undergo an international tender. The winning bidder - the Belgium Interbrew - withdrew after two years of struggles and an eventual Constitutional Court ruling, much to the disgrace of the executive and the overall privatization process in RS and BiH. The second-place bidder - the Slovene Lasko Brewery - currently faces similar difficulties and the final result is yet unknown.

In **Croatia**, the ownership transformation of 2,650 companies resulted in 908 legal proceedings initiated against the CPF in the courts of jurisdiction. Thus, more than one third of all companies that have undergone ownership transformation feel that they were not accorded their due rights. Moreover, nine company ownership transformations were completely annulled, while other 94 were partially cancelled. According to the law, the annulment of ownership registration is possible only within three years following share registration in the share register. Therefore, it seems likely that ownership of privatized companies' shares will consolidate regardless of the manner of their acquisition. A large number of companies were bought on an installment plan that did not, however, affect their new owners' rights to immediate management. A little more than a year ago, an intensive trend was observed in connection with some of these companies. Unable to fulfill their obligations towards the CPF they began being returned to state ownership. Their adverse financial positions could be explained by the fact that a significant part of their resources had gone "private". These failures very much affected the state, the taxpayer-creditors and the banks that extended loans to these companies. The structure of those who demanded a review of the transformation is also indicative of the public perception, with most of such demands being made by the owners of nationalized and confiscated property, small shareholders and unions. The reactions of the legal system were, however, overall slow and the first indictments were made only after the HDZ government was ousted out of power, although some cases had been investigated earlier.

While the existing mechanisms in **Bulgaria** ensure a relatively fast transfer of ownership once the privatization deals are struck, they do not provide sufficient guarantees for compliance with the agreed upon obligations. The preferential use of such a technique as "negotiations with a prospective buyer", the excessive reliance in recent years on MEBOs and the use of indemnifying promissory notes for payment created wide opportunities, often accompanied by corruption, for the non-monetary obligations to be avoided. The consequences of the deals with Balkan Airlines, the Plama refinery and several other companies became clear in 2001, serving as a fine illustration of these practices. A number of these privatizations brought about allegations of corruption in addition to the fact that they provoked considerable losses for the former owner (i.e. the state) and a practical liquidation of some of the enterprises concerned.

The discretionary power of the Privatization Agency in **Macedonia** with respect to the assessment of individual purchase offers and the final decision to whom to sell have resulted in numerous irregularities. Such large rights in the selection of buyers are typically a fertile soil for the abuse of public office for private gains. Due to allegedly corrupt practices and irregularities in the completed procedures, more and more privatization deals have been disputed at the court that usually finds out an infringement of the Law.

6.1.4. Post-privatization control

The problem with post-privatization control in **Croatia** appears profound. Rather paradoxically, the governing laws stipulated that the control over privatization had to be performed by the CPF, or the very same organization that was in charge of the process. So, the unbiased public control over privatization was practically absent through the 1990s. In this aspect the role of media turned to be quite important in filling the gap. The need to strengthen the legal and institutional framework remains, however, an urgent task in view of providing efficient safeguards to ensure a strictly rule-based interface between public and private interest.

The lawmakers in **Bulgaria** have recently made some important steps in this direction by stipulating, among a number of anti-corruption measures, the creation of a separate Agency for post-privatization control. The role of such a specialised body is seen as key in reducing the opportunities for the assumed legal obligations under the privatization contracts to be evaded by the parties involved. Indeed, the country's experience showed a rather widespread practice of privatized enterprises getting seemingly unreasonable waivers of obligations, following the renegotiations of the initial clauses of the contracts. The Agency for post-privatization control was set up in April 2002 and it remains to be seen whether this controlling institution can prove effective in protecting public interests, although already at this stage some analysts warn about its fragmented legal regulation.

Given the non-negligible amount of lawsuits and the existing potential for litigation and renegotiations with respect to already closed privatization deals, it seems most surprising that the issues related to the control over ongoing procedures and post-privatization implementation of the contracts have either been largely neglected or got rather undue attention on the part of the legislative and the executive. Moreover, the controlling functions are typically assigned to the privatiza-

tion agency that is responsible for organizing the procedures, specifying the terms of the sell-offs and selecting the actual buyers. According to the Law, for example, the control over the privatization process in **Macedonia** should be performed by the Privatization Agency and its bodies, which may terminate the agreement for selling a particular company if an infringement of the procedure is found out. A compliant against the Agency's decisions may be submitted to the government whose conclusion could, in turn, be disputed in court.

6.1.5. Preferred methods of privatization

Since the beginning of transition in **Albania,** a very liberal privatization law provided that privatization could be carried out through a variety of forms such as auction, free selling of shares, direct selling of objects to employees and managers, or any other appropriate form. A decision of the Council of Ministers (No. 248 of April 1993) accepted auction as the only way of transforming state property to privately owned property, considerably narrowing the latitude of the privatization law. That led to social tensions among different groups of employees. This situation drove the Government to review the privatization strategy and the Mass Privatization Process through voucher scheme came into effect. The process was launched on September 11, 1995.

The privatization process in **BiH** is proceeding along separate lines in the two entities, although there are many basic similarities. The divestiture in Republika Srpska includes the privatization of enterprises and banks on the basis of equal treatment of domestic and foreign individuals and legal entities. The basic law governing the process is the Law on Enterprise Privatization in Republika Srpska that was passed in June 1998. Subject to privatization is the capital in state owned enterprises and enterprises that had already been partially privatized according to the ex-Yugoslav "Markovic's" program of the late 1980s. Enterprises are being sold partly against cash and partly against vouchers issued as compensation for frozen foreign exchange deposits, validated restitution claims, claims related to unpaid salaries during the war, but mostly general claims that have been distributed to all the citizens. Vouchers cannot be, however, used in banking sector privatization as the strategy adopted is based primarily on fresh capital injection and know-how to the banks themselves rather than on cash for the state budget. The transfer of ownership in the Federation BiH encompasses the privatization of enterprises, banks and socially owned apartments. As in RS, the privatization program also establishes various claim categories for FBiH citizens (frozen foreign currency savings, earned but unpaid military salaries, pension arrears and restitution) that they can use in the privatization schemes through certificates (vouchers). Many of the strategic big companies are not, however, subject to voucher privatization in either entity. This refers mostly to the disguised cash-cows that generate large natural monopoly profits. The other part represents those businesses that are out of the market and for which the government does not wish to take the risk of losing electoral support as a result of painful measures, primarily in the form of closures and declaration of bankruptcies. On its parts, the loosely defined voucher privatization has led to the existence of some privatization funds and quasi-funds operated by the enterprise directors with the inputs from the labor that have shown signs of insider privatization. However, given the current level of economic activity of most such enterprises, this has not been a major cause for concern except as a procedural and legal matter.

The original *Privatization Law* in **Bulgaria** provided for a wide range of methods, including auctions, tenders, direct negotiations, debt-for-equity swaps, public offering of shares and MEBOs. The subsequent amendments allowed for a mass privatization scheme to be launched, as well as a more preferential treatment for managers and employees. The latter contrasted with the virtual absence of favouritism in the initial law, although the most recent changes in the legal framework restored the principle of equal treatment of all prospective buyers. Besides, the new Law of 2002 prescribes open auctions and public offerings as main privatization techniques, while direct negotiations are practically excluded as a method of divestiture.

The most common method of privatization in **Croatia** was the management-employee buyout, while as a second measure voucher privatization was applied. Unfortunately, the inherited economic system with its deep structural flaws and the initial "transitional depression", later enhanced by the war, were not particularly beneficial to the adopted basic concept of selling with a preferential treatment of formerly and currently employed persons. As time passed, it proved more and more unrealistic with regard both to the receipts realized through it and the extent of privatization. In the time limit laid down in the law, no significant interest was shown in the purchase of parts of socially owned capital, except by employees and managers. Because of the war the interest of foreign investors was almost non-existent. Consequently, the greater part of socially

owned capital finished up as a state-owned property. A number of serious economic analyses had very clearly and correctly foreseen this, considering as highly questionable a concept based only on selling. According to the Law, all the unsold property of the socially owned enterprises was transferred without any compensation into the ownership of three public funds: to the Croatian Development Fund (two thirds) and two pension funds (one third). The same happened to the assets of companies that failed to apply for ownership transformation in the authorized time limit. Non-privatized socially owned property thus formally became state-owned property and the citizens who had participated in creating that property in the first place were now represented by state institutions. The chosen model of privatization with its forms of preferential sale had at least three negative consequences. These were the centralization at the level of the state administration of all decisions concerning ownership transformation and privatization; the state take-over of a significant part of socially-owned capital; and the selection of large buyers according to political loyalty.

Although the companies in **Macedonia** have the guaranteed right to suggest the method of privatization and buy out the enterprises, the final decision to whom to sell and at what price is in the hands of the Privatization Agency. Thus, a large number of companies have been privatized in a non-transparent way with respect to criteria and procedure, by announcing the specific conditions to known buyers before the public announcement for the bidding procedure was started. The Constitutional Court abolished some provisions of the *Privatization Law* that had not been in accord with the rules of a market-type economy (for example, the privatization through direct sale, which does not provide equal opportunities for all prospective buyers). However, several privatization transactions with government shares were accompanied by non-transparency, lack of public tender and under-estimation that decreased the value of the companies up to 80%. The sale of the largest profitable state companies (such as the country's oil refinery) through non-transparent tender procedures indicated an involvement of the highest government officials, although no one was investigated. Very often, the defined criteria, procedures and methodology for value estimation were not strictly applied, provoking a considerable number of lawsuits. In 2001 alone, there were several cases when the value of the companies slated for privatization was decreased by up to 90% and they were sold to members of the political parties in power or their relatives. Numerous privatization procedures turned being disputed by the employees at the court and on several occasions the latter cancelled their implementation that was not in conformity with the proscribed rules and criteria. Besides, the Privatization Agency itself changed its decision for selling several companies under the pressure of employees' protests and disagreement.

In **Romania**, the main factors that stimulate corruption in the area of privatization are related to enterprise restructuring before privatization, the inclusion of municipal property on the privatization list, the application of qualification criteria and other requirements for potential investors. For example, the legislation gives the state property fund (currently APAPS, a ministry-like institution) the option to restructure companies if such a restructuring increases the sale price or make the firms more attractive. This restructuring is paid for either with proceeds from other privatizations, or with money squeezed out of banks by political pressure. The restructuring can also be used as a pretext for postponing privatization or taking loans and extending guarantees on behalf of the state.

The experience of other states as well shows that state-managed restructuring is often protracted. First, there is the theoretical argument that, if the state had been able to restructure and make a company more efficient, there would be little need for privatization in the first place. In the second place comes a more practical point: while being under special supervision of the state fund, the companies' performance typically declines, whereas assets are dissipated. The restructuring capital is often siphoned off by interest groups active in the company. Moreover, restructuring is sometimes an easy excuse to delay action, especially when no clear timetable is set up. Though there were many attempts to reduce government's discretion in this area, little progress has been made so far. Many times the restructuring is launched with no clear vision of what the final state of the company should be. Adding to this is the absence of a firm blueprint of splitting the firm into independent entities in order to sell them one by one which seems to be the only rationale for engaging in restructuring in the first place.

With respect to municipal assets the local governments have the right to decide which of them should be slated for privatization, as well as when and how these assets are to be privatized. As the privatization laws do not define automatic rules or criteria for putting municipal property up for sale, many municipalities and local public com-

panies tend to retain commercial assets under their control and postpone the privatization. Delays in these areas are often related with corrupt interests and attempts to derive personal gains from the management of commercial items. The situation is all the more serious since the legislation covering the conflict of interests in the local government is quite loose, and there are many local councilors who engage in private business transactions with the public institutions they supervise. Such a high-profile case was the General Council of Bucharest, where about two dozens of councilors from all parties (roughly 1/3 of the total) were doing business with the local government institutions or public companies in a way or another. Moreover, the provisions against conflicts of interest introduced by a law passed in 2001 were considered inapplicable to the current council who had been elected before the legal changes. In this context, the central government took the extreme measure to dissolve the General Council and call for new local elections in Bucharest in the first half of 2002.

Most of the cases of corruption disclosed by the media in Romania were connected with public tenders, both at the national and local level. Preselection of the would-be owners has been one of the most cited flaws. This selection is done by customizing the terms of the contract so that they fit the prospective winner only, or even by changing the conditions of the tender when things run out of control. Even though sometimes such changes can be motivated by genuine attempts to defend the public interest, the non-standard behavior is overall highly susceptible and opens broad opportunities for corruption to materialize. The means available so far to expose possible manipulation in such schemes are very limited.

The search for "strategic investors" also raises problems. A strategic investor is understood as a credible company with a high level of efficiency and expertise in a specific line of business. The idea is that such investors are more capable than "ordinary" ones to restructure and manage efficiently important companies currently owned by the state and which the government would not like to close down. The problem is, however, that privatization executives have the right to establish different criteria for assessing how "strategic" an investor is. This is another entry point for corruption, since the arbitrariness and executive discretion stimulate would-be buyers to offer "success premiums" and other kickbacks to the decision-makers. Moreover, evidence shows that even if clear qualification criteria are put forward, they are usually skewed later on to the benefit of well-connected investors.

The privatising agency in Romania has also in many cases the right to negotiate with the top two bidders over the improvement of their price and investments proposals. Although in principle this may seem beneficial with a view to enhance the terms of privatization, evidence shows that such procedures invite corruption and abuse of official power. First, when negotiations are carried out with two potential investors, leaks of confidential information may help eliminate the rival. Second, serious incentives for abuse of official power stem from the powers of privatization executives to offer potential investors special concessions of exemptions provided that they revise their bids in return. Very often, what looks like an improvement of the initial bid ends up as a contract with more favourable terms for the buyer. The same pitfalls are involved in the powers of privatization authorities to establish requirements relating to the preservation of jobs and the volume of investment as well as the right of investors to request additional concessions and exemptions.

The **Serbian** *Law on privatization* prescribes the sale by tenders and auctions as a basic method. The tender procedure is stipulated for larger enterprises, whereas auctions are being envisaged for the smaller companies. Seventy percent of the social capital is to be sold, while the remaining 30% should be distributed free to employees and citizens. If the purchaser does not accept the offer of 70%, a lesser percentage of the capital will be sold. In the case of prior restructuring, all of the capital or property is offered for sale. The procedure can be initiated by the entity to be privatized, by the Agency for Privatization or by the Ministry of Economy and Privatization. The privatization process is to be completed within a four-year term; otherwise the Agency for Privatization is obliged to do it.

6.1.6. Transparency of the privatization process

The privatization process in **Albania** is believed to be fairly transparent and is reported to the public generally through the mass media, with the information about the deals being filed with the NAP. However, even though the country has adopted a *Freedom of Information Law*, there are practical difficulties in finding data and information on privatization issues sometimes.

Transparency is one of the basic principles of the adopted privatization model in **BiH**. The rules of

privatization are known to all those who wish to participate, thus providing possibility for public scrutiny of the process. Besides, the privatization agencies in both entities are running pubic education and information programs. On the implementation side, however, the story differs from the technical issues relating to the model itself and the mass privatization, which does not apply to the profitable strategic enterprises. With respect to the latter it is extremely difficult peeking behind the thick curtain and finding out what is truly happening with those companies that are not subject to the more transparent mass privatization method. Already mentioned was the case of the brewery that was on the never-finalized list of some 60 so-called strategic enterprises in RS. The media and the public are still trying to investigate the actual course of events and the complexity of various interests. The same has happened in FBiH with the privatization of several hotels in Sarajevo (Holiday Inn, Bristol), BH Steel and, more recently, with large utilities such as the energy distributors, telecoms etc.

The general lack of fully transparent mechanisms for the transfer of public assets into private ownership is seen as one of the main sources of corrupt behavior in the economic sphere. While the privatization process in **Bulgaria** showed sustained improvement in this respect during the late 1990s and early 2000s, the recent changes in the legal framework have included further measures to ensure greater transparency of the procedures and outcomes of the sell-offs. The notable shift in the preferences away from such a privatization technique as direct negotiations with prospective buyers is an important step in the government's drive for increased transparency and prevention of corruption. The new Law of 2002 provides also for the creation of a public register of the closed privatization deals and post-privatization control that aims at making the process more transparent and information easily accessible to the general public. Despite this further strengthening of the legal framework, however, the recently adopted provisions could hardly be automatic safeguards as even open tenders may turn into a source of corrupt practices and favor certain prospective buyers through the customization of the specific terms of the procedures.

Privatization in **Croatia** is widely perceived as a hotbed of crime and illegality, corruption and grey economy, as well as a symbol of all the negative social consequences of the process of transition. These perceptions have been partly attributable to the existing problems with transparency of privatization deals that seem to be very profound. The CPF management Board often made decisions that were not fully in compliance with legislation (such was, for example, the change of illiquid for liquid shares between PIFS and CPF). Some of those decisions were, however, ruled out by the Court of Arbitration at Croatian Chamber of Commerce. The lack of rule of law is also perceived as the underlying cause for corrupt privatization practices. In its 2000 program, the new government expressed the intention to improve the situation, but it has so far focused the efforts on the legal basis for the review of the privatization process, instead on building up appropriate institutions. Obviously, the revision of an already done ownership transformation is not the best of all available solutions. On the one hand, such a revision seems inadequate and inefficient, while on the other hand, it sends a bad message to investors and puts new uncertainties into the area of property rights. Instead of a revision of an ownership transformation, broader institutional measures are required, especially those aimed at the prevention of any future irregularities and corrupt practices. Having this in mind, it should be pointed out that there is still no public register containing detailed information on privatization deals in Croatia. Even such organizations as the CPF and the Central Depository Agency do not have a chronological record on ownership change and privatization deals, which is indicative of current transparency problems.

In **Macedonia** , the privatization deals have been publicly reported through the media, especially when it comes to large-scale sell-offs or disputable cases. The Privatization Agency has an investment section on its website in which potential investors can find information about the country, company-specific data, as well as information about the current offer of residual shares, public tenders etc.

Following the adoption of the new privatization laws in **Serbia**, the analysts share the opinion that the process could be very transparent by being performed through tenders and auctions whose procedures are clearly defined. Nevertheless, there is a potential for corrupt behavior during the tender procedures since the Law does not establish a sole criterion for the selection of the winner. Furthermore, the minister and the other officials of the Ministry for Privatization and Economy have declared several times that price offered would not be the most important factor determining the winner of a tender. In the absence of a sole criterion, a tender might appear largely senseless because of the vast possibilities for an arbitrary decision to be taken.

6.2. Corruption and Public Procurement

Public procurement appears to be a major hotbed of corruption as this area typically gives officials large discretionary power. Yet, the South-east European countries have made recent progress in strengthening the legal framework of the process and its harmonization with the EU Directives, even though law enforcement has continued to be characterized by many problems. The procurement procedures generally remain insufficiently transparent, which creates suspicions of corrupt behavior in the context of a seemingly widespread customization of the terms. With the preselection of the prospective suppliers being apparently one of the typical flaws in the implementation of the stipulated procedures, the legal guarantees for equal treatment of all candidates should be further strengthened together with the mechanisms for control over the preparation of tenders. Adding to the reduction of the existing legal opportunities for corruption and discretion in this sphere could also be an explicit obligation for the procurers to publicly explain the reasons for their choice of winning bidders, as well as a ban on discretionary amendments in the already signed contracts. The enhanced introduction of an electronic system of public procurement seems also an important step in ensuring greater transparency of the process.

6.2.1. Regulation of public procurement procedures

Public procurement is broadly perceived in **Albania** as one of the areas most heavily affected by corruption. On the organizational side, the Law established a National Public Procurement Agency (NPPA) which is reporting to the Council of Ministers as the central government body for co-ordination and development of the public procurement system in the country. Over the past several years, Albania has made significant progress in the development of its public procurement system. The *Law on Public Procurement* was modeled on best international practices and became effective from January 1, 1996. This law offers the simplicity of a single unified law, which decentralizes the authority for conducting procurement to procuring entities at both the central and local government levels of the administration. The law provides for a comprehensive range of procurement methods, which should enable procuring entities to cope with different procurement requirements. One of the strengths of the law is that it established open tendering (OT) as the preferred method of public procurement. In practice, however, the efficacy of this provision has to date been undermined by weak enforcement of legislation. Other advantages of the law are the provisions for a two-stage bidding method for complex procurements, a specific method for consultants' services and a simple request for quotations (RFQ) method for low-value purchases.

In **Croatia**, important efforts have been made in order to enhance public procurement practices and the established system was largely based on the UNCITRAL Model Law. The *Public Procurement Law* regulates the conditions and procedures of public procurement that precede the conclusion of contracts for acquisition of goods and services with the aim of efficient use of budget and available public resources, as well as strengthening market competition. The basic principles that have to be followed relate to the efficiency of procurement, the equal position and non-discrimination of offers, as well as the publicity and transparency of procurement procedures. The Law also defines the range of government bodies and other legal entities that should be engaged in public procurements. The provisions of Law are applied on every public procurement during the budget (fiscal) or business year if its value equals or exceeds HRK 200.000,00 (ca. EUR 26.666,67).

The *Law on Public Procurement* was enacted by the Parliament of **Macedonia** in 1998. According to its provisions, the procurement procedure shall be carried out by a special commission, which is established by the procurer. In cases when the procurer is a user and an individual beneficiary of budget funds, an authorized representative from the Ministry of Finance without a voting right shall participate in the commission in order to supervise the procurement procedure. According to the Law, the procurement may be carried out through open announcement, restrictive announcement, collecting offers and direct agreement. There is an obligation to publish the open and restrictive announcement in the Official Gazette of the Republic of Macedonia and in the local media at the same time, while the announcement for an international procurement tender have to be published in foreign media. The procedure of open announcement is to be launched when the denar value of the procurement exceeds EUR 50.000. When the value of the procurement is higher than EUR 250.000 it shall be carried out through limited announcement by collecting documentation from a limited number of bidders. Procurement by collecting offers shall be carried out when the value of the procurement is between EUR 2,500 and 50.000.

According to Transparency International, **Serbia** is at present the only country in Europe without a separate law on public procurement. The legal provisions regulating public procurement are currently dispersed among a number of different laws. The government of the Republic of Serbia has, however, approved a draft Law of Public Procurement, which was sent to the National Assembly for adoption. The draft regulates the process of public procurement in a very detailed manner with a view to stimulating competition among bidders, increasing the transparency of the procedure and obtaining goods and services under the most favourable conditions for the state. It encompasses all direct and indirect beneficiaries of budget resources, compulsory welfare organizations and public companies. Public procurement is to be conducted by means of open tenders, except in very precisely defined exceptions. There are no restrictions concerning the accessibility to tenders. Since this draft law is developed under the standards of the European Union, it incorporates provisions relating to eligibility and conflict of interest. A distinct feature of the draft is that it provides for the creation of a Public Procurement Agency, which will work within the Treasury department of the Ministry of Finance and Economy. In its Article 14 the draft law also contains particular anti-corruption provisions, stipulating the rejection of a bid that involves attempts to influence the course of the public procurement procedure.

From the beginning of 2002 the government of **Romania** has put in place an electronic system of public procurement and all public institutions are required to start using it in one-year time span. This is the first substantial piece of e-government implemented in Romania so far. The pillar of the system is a web page-cum-database administered by the Ministry of Public Information where the public entities must register all their tender calls. The system has been in use for just about two months, which was not long enough to build a critical mass of clients and suppliers. Moreover, some contracts may by their nature be inappropriate for electronic bidding. Nevertheless, this is a serious effort by the government to institutionalize greater transparency in the public procurement process.

6.2.2. Enforcement of procurement rules

While the organizational arrangement of public procurement in **Albania** is in conformity with the internationally accepted practices, the effectiveness of the NPPA has so far been severely undermined by the weakness of this institution characterized by under-searching, continuing staff changes and susceptibility to political influence. The Agency is included in the government Anti-Corruption matrix but still there are lots of problems to be solved in the future in order to have a competitive procurement system that limits the authority of government officials and influences in curbing corruption. It appears that poor application and enforcement of the rules in Albania are undermining a good procurement law. Put simply, it is too easy for procuring entities to avoid strictly implementing the law because of the weakness of the NPPA. Procuring entities too often employ non-competitive procurement methods, which lead to poor value in terms of money and also facilitate corruption. Therefore, one of the government's top priorities should be to take appropriate measures to combat corruption and strengthen the enforcement of existing legislation.

The continuous lack of a modern and EU Directives-harmonised *Law on public procurement* has played a detrimental role in the loss of public revenues in **BiH**. It is estimated that some 5 percent of the country's GDP relate to direct government procurement of goods and services, while this area remains largely unregulated and subject to serious fraud. For example, the parliament buildings were built without applying any known method of public procurement and in the most non-transparent manners. Simultaneously, that lack of legislation opened the room for growing corruption in the administration and ever more irrational expenditures at all levels. At state level, there is neither a decree, nor a law regulating public procurement, whereas the entities do have a legal framework - a law of 2001 in the case of RS and a decree of 1999 in FbiH, - although it does not correspond to the EU positive practice and is currently subject to review. In 2002, the Ministry of Treasury of the Joint BiH Institutions has proposed a draft Law on public procurement at that level to the BiH Parliament, with its adoption pending. At entity level, the legal changes and amendments are being prepared by the respective ministries of finance with a view to accomplish the process by the year's end.

The legal regime of public procurement in **Bulgaria** is laid down in the 1999 *Law on Public Procurement*, which has not been amended as of yet despite the criticism it provoked. The deficiencies of the law are typically associated with its rather narrowly defined scope of application, the lack of control over the preparation of the tenders, the overall insufficient transparency of the procurement procedures, as well as the slow and inefficient appeal procedures. However, a new law on public procurement is being currently dis-

cussed in the parliament (three separate drafts has been submitted by the end of 2001) with the aim of further harmonizing the procedures and eradicating the legal opportunities for discretion and corruption in this particular area.

The transparency of the procurement procedures in Bulgaria has been also seen as rather insufficient, which together with the existing problems with the enforcement of the 1999 Law created suspicions of corrupt practices. The avoidance of the current regulations has been facilitated by the narrowly defined scope of their application with regard to both the subjects of public procurement and the persons entitled to open the procedures. The proclaimed equal treatment of all bidders has been often infringed due to lack of control over the preparation of tender documentation.

The recent experience in **Croatia** showed some cases of public procurement procedures not being performed according to the Law. They were, however, cancelled by the Ministry of Finance, which is the administrative government body that controls the procurement decisions. Yet, it seems too early to estimate the effect and application of the new Law, although according to an expert's opinion it is an important improvement to the former *Law of acquisition of goods, services, and relinquishment.* The former Law had not provided for enough transparency of public procurement, so that the process had been pretty murky and complex. The rules had also been very often not respected. According to reports of the State Audit Office, the public procurement process had been characterized by substantial disorder. Some bidders had turned to be in advantageous positions, not according to any real criteria and measures, but according to criteria with completely private characteristics. The new Law stipulates much better enforcement procedures. The value of acquisition during the fiscal year should not be divided in such a way that the value of public procurement would be lower than the amount stated in the Law, so that the implementation of the latter could be avoided. Besides, the new Law stipulates the estimated value of acquisition when the exact value is not known. The Law also defines the process of public procurement for the insurance industry, banking and other financial services and project offices.

The adoption of the 1998 Law in **Macedonia** was aimed at meeting the international standards with respect to the procurement and biding procedures, their openness, fair competition, and transparency. However, the public procurement process became subject to criticism from the public, especially on the part of bidders, for abuse of the principles of equal participation and opportunities for all participants by giving privileges to pre-selected bidders. There have been serious indications for non-transparency and infringement of the Law, most notably in the case of larger procurement. Many of the public procurement procedures, especially for large-scale deals, were disputed in the Court. The general public opinion is that, in spite of the proscribed procedure and criteria in the Law, the high-value tenders are agreed before the biding procedure has even been started. Certain unclear provisions in the Law create opportunities for abuse. For these reasons, the Law is being currently examined by domestic and EU experts in order to provide more transparency, efficiency and rationality of the biding procedures in line with the European standards and to limit the opportunities for corruption.

In **Romania** as well, most cases of alleged corruption disclosed by the media were connected with public tenders. The pre-selection of the prospective suppliers appears to be one of the typical flaws in the implementation of the stipulated procedure. As already mentioned, such a pre-selection is done through the customization of the terms of the tender to the advantage of a particular bidder. This practice is generally believed to involve kickbacks for government officials, but the means to expose possible corrupt behavior in the process of specifying the terms of a public tender remain extremely limited.

6.2.3. Control over procurement decisions and public registers of procurement deals

A register for public procurement has been set up in **Bulgaria**, with its database containing currently some 8,000 deals. This is considered by analysts as an important step towards ensuring greater transparency of the process. In **Croatia**, the public register of procurement is at present in the process of implementation. The establishment of such registers is reportedly being envisaged as an important step in strengthening the legal framework in **BiH** and its harmonization with the two Public Procurement Directives of the EU.

The supervision over the use of procurement for beneficiaries of budgetary funds in **Macedonia** shall be performed in compliance with the Law on State Audit. The supervising functions are executed by the inspectors for Budget control and public procurement from the Ministry of Finance. If an inspector finds out an infringement of the procedure, a criminal act or misdemeanor, he/she must without delay inform the competent authorities. Besides, any participant in a procurement

procedure who is not satisfied with the selection of the winning bidder may file an appeal to the Committee of appeals within 8 days from the date of the announcement of the results. The appeal postpones the execution of the decision for the selection of winning bidder. The decision of the Committee of appeals is final. The bidder may, however, dispute the decision of the Committee at the Court.

6.2.4. Foreign participation

The new **Croatia's** Law on public procurement does not contain any provision about privileges for local suppliers and enables a complete opening of the domestic market. Foreign companies participating in local public procurement usually did not complain on decisions, but on some particularities in the required documentation. Opening of the public procurement to international competition and/or favouring Cupertino with foreign contractors, e.g., for rolling stock maintenance/rehabilitation, road maintenance, and the provision of transport services, have the potential to reduce public procurement costs significantly.

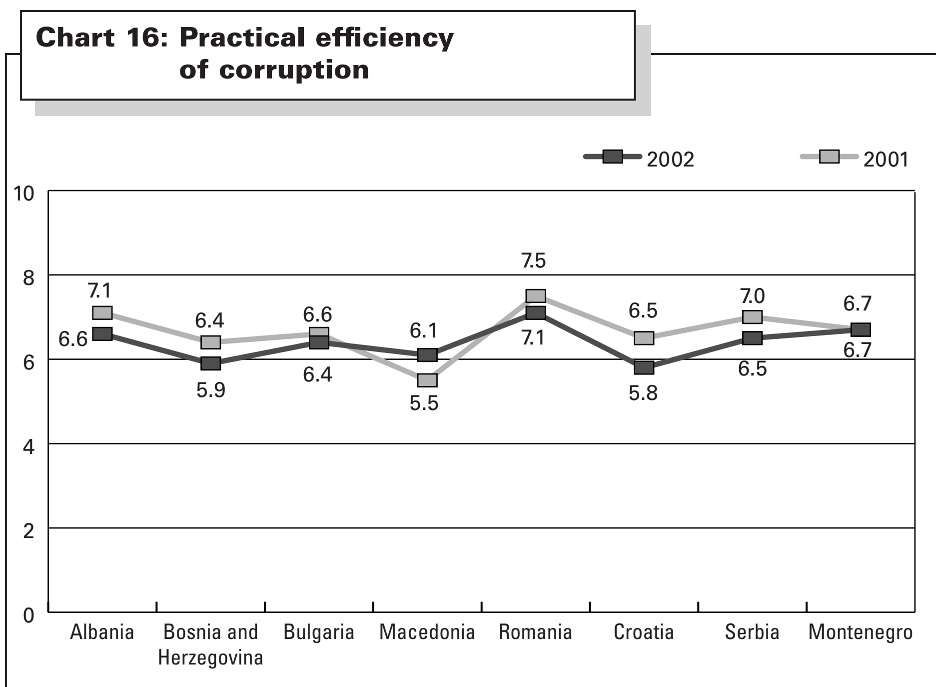
There is a reasonably good framework for public procurement in **Albania**, although some of the provisions of the respective law could be strengthened further with the objective of increasing competitiveness, transparency and enforceability, thereby minimizing corruption. For instance, the Law on public procurement imposes excessive limitations on the participation of foreign bidders by establishing an arbitrarily differentiation between domestic OT and international OT. As the procuring entities are left with the discretion to decide whether to apply OT as a domestic or international procedure, they most frequently limit it to domestic bidders. The choice of domestic bidders in cases where international competition could be more cost-effective leads to waste of budget resources. In this respect, the discretionary power of the procurement entities also leaves room for corruption and the current situation should be corrected by amending the legislation.

The experience in **BiH** with respect to foreign participation in public procurement has been so far rather limited. It relates mostly to the larger projects of the World Bank and to a lesser extent to the European Commission donor projects that are being implemented by the local units (PIUs). While legally the PIUs are agencies of the Entity governments, their public procurement rules are those of the WB and EC respectively. The experience of foreign businesses with those procedures is rather positive and there has been a lasting attempt to transform the PIUs into strategic units for procurement that will be designing, implementing and monitoring the procurement process in the future. With the PIUs running procurement projects worth tens of millions of EURO annually, there have only been a few isolated instances of objections by either the bidders or the donors.

6.3. Taxation and Tax Evasion

The existence of shadow economy in many transition countries is largely associated with corrupt linkages between private businesses and the tax administration. One of the stimuli for corruption in this respect is the opportunity to save money if the size of the bribe is lower than the size of the tax liability. Over the past decade, the South-east European countries introduced new tax systems that have been undergoing rather frequent changes aimed at maximizing the overall collection rate and minimizing tax evasion. The latter has, however, remained a

Chart 16: Practical efficiency of corruption



Source: SELDI Corruption Monitoring System

mass phenomenon, with its forms and mechanisms exhibiting both basic similarities and some country-specific variations. Moreover, tax frauds have apparently important cross-border implications in the context of the existing differences in tax and trade regimes across the region, as well as generally cumbersome custom regulations whose implementation typically lacks transparency, leaving room for corrupt behavior.

6.3.1. Forms and mechanisms of tax evasion

Tax evasion in **Albania** seems to be of high levels. According to a 1999 survey, 75% of businesses stated that fiscal evasion of companies ranged from "often to very often". Tax evasion in the country takes many forms and corrupt practices are allegedly widespread in the tax administration. One of the most notable mechanisms used by many businesses to evade taxes is by operating with double balance sheets. In many cases when tax inspectors find evidence of tax evasion, they accept bribes in return for reducing the amount of taxable revenues. The opportunities for tax evasion and corruption appear to be particularly vast in the sector of small businesses that are taxed at 4% of their annual turnover. Measuring turnover is highly ambiguous due to a lack of documentation and that leads to arbitrary calculations in returns for bribes. VAT reimbursement is, however, the most problematic issue concerning the tax administration. Even though the procedures of the relevant law are clear and thorough, in reality the tax inspectors quite often abuse their powers. Lots of cases related to charges of corruption have been brought to the courts. The penalties have ranged from simple fines to criminal prosecution. It is important to note that since 1998, more than 200 companies have been taken to court on different charges having to do with financial cheating and hiding evidence. Still, for such reasons as unclear accusations, lack of clear facts and procedural irregularities, the tax department has lost about 85%-90% of the cases. A more general problem relates to the fact that the tax administration has a very important but constantly misunderstood attitude towards the methods of achieving its revenue goals. The revenue goals are set, compared and analyzed based on the GDP weight of the tax burden to the economy and its yearly growth. The Albanian tax administration and the Ministry of Finance set their revenue targets based on macroeconomic indicators, and the tax burden to the economy is consequence of the economic growth and, more specifically, of the taxed portion of the economic growth. Setting performance criteria outside of this framework damages the traditional mission of the tax administration. The tax department ends up arbitrarily calculating tax obligations without using the formulas, which are part of the legislation.

After gaining independence in 1992, **Croatia** had adopted a new income and profit tax system effective from 1 January 1994. Following the general elections of 2000, the new government decided to change the existing system and since 1 January 2001 the country has a new system of corporate and personal income taxation, embodied in the new Income Tax Act and Profit Tax Act. It could be argued, however, that the tax laws are not clear and simple. Besides, they are subject to very frequent changes that could make the tax system less transparent, more vulnerable to the misuse of discretionary power and the arbitrary interpretation of the laws. In spite of the experts' advice, some relief and exemptions were introduced in the Personal Income Tax in order to protect certain categories of taxpayers. Given the many changes in the tax system in the last two years, the experts believe that it is necessary to carry out a new reform to ensure a neutral tax system that is not to be used to carry out governmental social, economic and development policies. They also argue in favor of a much broader basis for taxation, with as few exemptions and privileges as possible. The principal causes underlying the tendency towards tax evasion are associated with the rise in the overall tax burden, the inappropriate legislative framework, the existing administrative obstacles, the low credibility of the legal system and the rather poor quality of public services.

The current average income levels in **Bulgaria** imply that for the majority of the taxpayers the notional value of a standard bribe and the amount of money that could be saved by tax evasion should apparently be pretty much the same. People with higher incomes and especially corporations have, however, a stronger incentive to evade taxes through corruption given the bigger difference between the size of the bribe and the amount of their tax liability. The size of the grey sector (it varies between 27 and 35 percent of the GDP according to different estimates) shows that tax evasion is a mass phenomenon. With tax collection remaining a problem, a paradoxical situation is created in which delinquent taxpayers (i.e. economic agents which are better off) live at the expense of conscientious taxpayers (i.e. the lower income groups).

Obviously it is not the tax rates but the tax structure and taxation procedures, which determine what part of the legal economic activities will be taxed in accordance with tax laws. Bulgaria is a

country with an average level of tax burden by international standards, but nonetheless taxes are perceived as being quite high because of the low incomes of the population and the general weakness of private businesses. The creation of a system of taxation which performs both business stimulating and social functions, seems a pre-election priority of any political party running for government, but the attempts to implement this in practice clash with economic reality so that the results are typically rather partial. The ambition to restructure taxes by increasing indirect taxes and decreasing direct ones is believed to have a strong anti-corruption potential as it may help achieve higher rate of tax collection and a decrease of the share of the grey sector. For the last few years the tax administration has been undergoing a process of modernization. The year 2001 saw a lot of positive changes in the organization of the work of tax authorities, as their strategic goal is to both guarantee revenue for the budget and stimulate voluntary compliance with tax laws.

The new tax system in the Republic of **Macedonia** was introduced on January 1, 1994. Since then several changes and amendments have been made in the tax legislation. Tax evasion is a big problem in Macedonia as well as in other transition countries. There are several mechanisms stipulated by the law, which aim at the prevention and sanction of tax evasion. According to the law, the tax inspector has a right to confiscate temporally accounting books, other documents, evidence and materials, being essential for making assessment of tax obligation. The tax inspector has also the right to confiscate goods for which excises and other duties haven't been paid, as well as vehicles used to transport such goods. The law provides for an enforcement procedure with respect to non-paid taxes and monetary penalties for misdemeanor. According to Article 279 of the Criminal Code, large-scale tax evasion is defined as a criminal act. The punishment for tax evasion is from 6 months to five years of imprisonment and monetary penalties. However, in spite of the apparently widespread tax evasion there has been so far no major case brought up to the court. Tax evasion seems to be on the increase during the last years and the Public Revenue Office has been often criticized for tolerating such a situation and ensuring no equal treatment of taxpayers. Besides, tax evasion appears to be closely related to the increased crime in the country, especially in its western part. It is considered that tax evasion is most acute with respect to excises on goods, such as cigarettes and petrol, with the phenomenon being largely the result of corrupt relations between representatives of the tax administration and the taxpayers.

Officially, the **Romanian** laws are quite strict in the collection of taxes and there are few ways to avoid paying. In practice however, tax compliance has always been a problem, as the overall collection rate is slightly below 60% (higher for VAT and lower for other national taxes). Tax frauds to sales taxes and excises are quite common, and they occur either in the small retail sector (VAT non-payment) or in some special areas of business subject to excise taxes (alcohol, fuels, and tobacco). The latter type of fraud has also cross-border implications. Quite often, tax evasion goes hand in hand with the smuggling of excise goods, which implies some sort of regional criminal organization. A more recent pattern of tax frauds has also developed with the use of fake import-export documents for products that actually do not cross the borders but are sold on the domestic market. This second possibility has created a small regional trade in forged documents (fuels production certificates, alcohol and cigarette stamps) that represents a very lucrative smuggling niche in itself.

The existence of trade restrictions and special taxes on certain goods that are not the same in two neighboring countries thus creates strong incentives for traffic and the associated corruption of public officials. Custom officers are the most exposed. The implementation of VAT special regimes and excises, as well as the inspection of origin and quality of imported goods provide opportunity for corrupt practices. Also, the cumbersome custom regulations, sometimes implemented in bad faith by the officials, represent a stimulant for kickbacks aimed at bypassing some regulations or simply accelerating the procedure. There is ample room for administrative improvement in this area. Yet, realistically speaking corruption cannot be completely rooted out as long as tax regimes in the SEE region differ considerably from one country to the other and unnecessary restrictions to trade are still in place.

To start with, the duties and responsibilities of custom officers have to be defined more clearly, and the vague language in the Custom Code should be eliminated (phrases such as "may apply" or "by the decision of the custom officer"). Secondly, the abundant import tax exemptions must be reduced in number and grouped in one single document. Following intense lobbying of interested parties, many such exemptions have been adopted and they are subject to a myriad of special regimes, delays and clauses of applicability. Interpreting and advising on these regulations

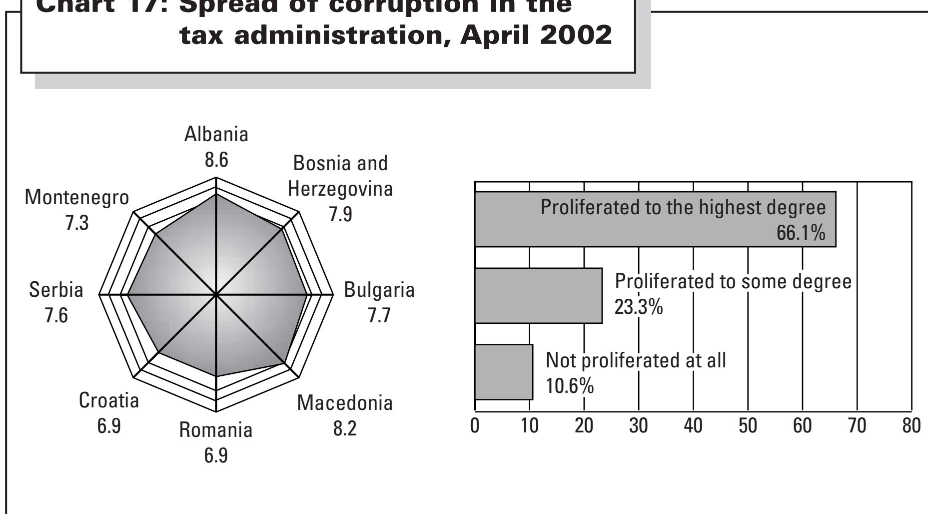
have become a business in itself, which usually employs on a part-time basis the same custom officials that are supposed to administer the system.

Tax exemptions are clearly an area that is far from being transparent and based on well-defined regulations. There is a small circle of top officials in the Romanian Ministry of Finance and the Ministry of Welfare who have the power to grant tax exemptions or rebates upon request, on a case-by-case basis. According to the government, business confidentiality protects the list of companies who have obtained tax relief over time. However, this kind of sensitive information invariably finds its way into the newspapers. Very often, the list included companies for which forced payment or bankruptcy would not have created severe economic or social problems, as the government claimed (private tobacco and alcohol firms, TV stations, some of them with obvious political connection). Leniency in collection execution towards such economic agents can only exacerbate the moral hazard associated with tax relief in general. Yet, in a recent move to improve the business environment, the Ministry of Finance has set up a new system of tax exemptions granting, based on objective criteria. It is being even envisaged that the initial claim and the first step in assessing eligibility will be performed on a new web page to be created by the government in the near future. Among the criteria taken into consideration will be the social relevance (proportion of employees in the population of a community), total turnover, stability of the firm's location, compliance with the current tax obligations. Any default from the rules associated with tax relief will automatically lead to the abolition of the granted status and imposition of high fines.

Yugoslavia does not have a common fiscal system and policy on the federal level. The foundations of the new fiscal system of the Republic of **Serbia** were established in March and April 2001 when the People's Assembly adopted several key laws. The fiscal reform from early 2001 was one of the major steps in the process of economic reforms in Serbia. At the first stage, eight new laws were passed (among them on excises, sales tax, income tax, tax on enterprise profit, property tax, etc.), with most of these acts coming into force on June 1, 2001. With respect to corruption, the major feature of the undertaken reform was the simplification of the whole tax system. Indeed, the former system of 235 different fiscal forms was cut down to 6 main taxes and few fiscal forms. In order to provide better conditions for tax collecting, the Republican Directorate of Public Revenues took an important part in preparing the laws and issued subsequently several decrees on the rules and procedures concerning the collection of taxes and other duties. Thus, according to data of the Revenue Service, revealed tax evasion increased in 2001 compared with the previous year. About 26% of the total revenue was the result of revealed tax evasion, while the ratio for 2000 was 20%.

In **BiH**, the tax rates are not harmonized between the two entities and neither of them has a VAT system in place. Moreover, the existing tax systems appear rather complex and burdened with provisions for different exemptions and rebates. The personal income tax in the Federation is for example characterized by a number rates, brackets and rules for granting exemption and rebates. In RS this complexity has been recently reduced as a lot of more transparent, broader-based and exemption-free system was put in place since 2002. In order to promote inward investment, the Federation grants an annual profit tax exemption for newly established companies with local and/or foreign shares at the level of 100 % for the first year of operations, 70 % for the second and 30 % for the third year. If foreign investment exceeds 20 % of compa-

Chart 17: Spread of corruption in the tax administration, April 2002



Source: SELDI Corruption Monitoring System

ny equity, that company is exempted of profit taxes for the first five years, proportionally to the foreign stakes in the total capital. In RS, the exemption from profit tax is for the first five years.

As in other complex fiscal systems, tax evasion is a widespread phenomenon in BiH, rather than an exception. The tax holidays given to foreign investors have caused a lot of forged FDI to register, i.e. companies that would operate for as long as the period lasts and then close down and register anew. The authorities experienced much of a headache with the infamous Volkswagen deal that sought large exemptions in order to re-enter the country after the war. The same status was then expected by other sizeable investors, which led to a disarray in the overall tax system. The hopes are that this will be overcome with the gradual introduction of VAT in the next three years. Yet, many entrepreneurs find the fiscal system extremely burdensome and see tax evasion as the only way to stay in the market. While the system of social funds indeed represents a large payment problem and the concern may be justified, the smuggling of excise goods is a major issue linked much more to organized crime than to a weak tax system. To deal with tax evasion the authorities have been intensifying the inspections, although the results seem to be far from tangible. The tax inspectors themselves are prone to corruption and would frequently revisit those firms where they would receive larger bribes, irrespective of the genuine outcome of the inspection. This has only increased administrative corruption and helped little to eradicate tax evasion. However, considerable efforts are being made to increase the efficiency of the tax administrations and reduce corruption. The World Bank have sponsored several projects that focus on a less restrictive practice of the compliance mechanisms, i.e. inspectors making their schedules and visits less of a burden on enterprises, reducing corruption and making them control only suspected evasions in a co-ordinated manner with other compliance authorities.

6.4. Informal Economy

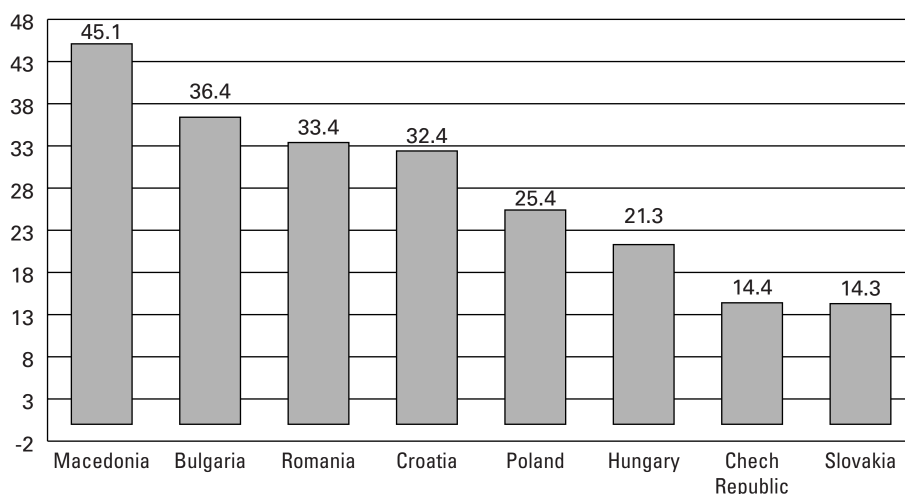
The existence of typically large informal sectors characterizes the economic development of all transition countries, with the region of South-east Europe being widely seen as a rather notorious example for thriving activities of various shades of grey. The estimated size of the shadow economy in the South-east European countries varies considerably, although it generally falls within the range of 25 to 40% of GDP. The studies reveal a considerable similarity in the factors that contributed over the past decade to the expansion of the informal economy across the region. In the context of the overall slow progress in macroeconomic stabilization and market-oriented reforms, informal economic activities appeared to have become deeply rooted largely as a reflection of rising unemployment, the growing hardship of everyday life that forced many to engage in the smuggling of goods to make the two ends meet, the low levels of tax awareness and people's perceptions of the existing tax burden as quite high, the perceived injustice of the legal system and general distrust in government institutions, the lack of fair competition and transparency, as well as the inherently weak institutional settings. Another rather common feature of the informal economy across South-east Europe seems to be its close relationship with the networks of organized crime that has become the focus of government policy efforts in many countries. The fight against money laundering has also gain importance recently on both national and international scale since a considerable portion of the funds involved is believed to serve terrorist organizations and activities.

6.4.1. Estimated scope and networks of informal economy

The informal economy in **Albania** is estimated at more than 35% of the country's GDP. This figure is derived as an approximation based on the model of the power supply consumption and it is widely believed to represent the minimum level of such an economy. It is supposed that this sector is more active in retail trade, transport and construction. The shadow economy appears consolidated to that extent that it has now become one of the main obstacles to the functioning of the formal sector because of the unfair competition. On the other hand, there exists an organized crime, involved in trade and smuggling of drugs, human beings, etc. However, no one knows the real extension of the underworld in the economic activity of the country, even though it is supposedly large.

The results of a recent survey carried out by the Economics Institute on the territory of **Serbia** have indicated a very significant scope of the informal economy. According to estimates, at least one million people have been engaged in the shadow economy. Their share of the total labor force amounted to 30%. Somewhat more than one half of the participants in this black market performs informal activities every month. If the number of self-employed who performed their activities in the informal sector is added, the total reaches 1.2 million people. In the structure of

revenues, the grey economy participates with 18% of total revenues. The results of the survey showed that the hidden economy has become a major survival strategy for a considerable portion of population. Namely, around 90% of the respondents feel materially endangered due to the decline in living standard and the quality of life, as well as the risk of being left out of work. Therefore, it seems understandable that for 80.7% of the respondents with additional activities, the main motive for engaging in the hidden economy is associated with satisfying living necessities, which is a pure survival strategy. If this percentage is added to those participants in the hidden economy who wish to maintain the higher standard of living from the previous period, it becomes apparent that over 90% of the respondents engage in additional activities in order to earn income for sustaining more normal living conditions.



Source: International Conference, "The Informal Economy in the EU Accession Countries: Size, Scope, Trends and Challenges to the Process of EU Enlargement Sofia", April 18-19, 2002 [54]

At least two patterns of informal activities are to be found in Serbia. First, there are large and well-organized criminal gangs performing illegal activities of large scale, including trafficking, contraband, and drug dealing. Second, there is a wide range of petty violators, including petty smugglers, informal labor and hidden economy in trade, crafts and agriculture. While the government has a tacit policy toward the grey economy, much more attention is paid to large-scale criminal and organized crime. Criminal gangs formed in murky times continue to exert their influence after the period of wars and sanctions. Their main activities are trafficking of oil, cigarettes, and narcotics. The Serbian Prime Minister recently stated that he was irritated by the fact that in 50 towns in Serbia everybody knew who was the criminal boss and still nothing happened. Regarding this, it is important to emphasize that the present Minister of Internal Affairs Dusan Mihajlovic was the president of the political party that had been in coalition with Milosevic's Socialist Party during the period 1993-1997, giving him necessary support to stay in power. It is particularly interesting that Mihajlovic's firm "Lutra" succumbed to the Law on extra profit and has already paid the fine.

There are no surveys or official data and analyses regarding the scope of the grey economy in **Macedonia** after 1998. Some analyses carried out by particular experts indicate a very high level of the grey economy, even up to 30% of GDP. Its impact is deemed considerable for the loss of revenue to the budget. The fall in budget revenues, especially from customs duties and other import duties in the last years, appears to confirm this supposition. Namely, the custom revenues fell to Euro 96.7 million in 2001, down from Euro 99 million a year ago, while for 2002 the total amount of revenues from customs and other import duties is projected to decline further to Euro 71 million. Although the official statements of the Customs Administration cited the recent free trade agreements with several countries as the basic reason for the fall in revenue, another important factor for that could be found in the weak and inefficient custom control, as well as corrupt customs officials. Indeed, several low-key customs officers have been already arrested for involvement in smuggling and bribe. Besides, public opinion survey data constantly place tax inspectors and customs officers on the top of the table of corrupted

[54] http://www.csd.bg/news/bert/schneider-paper.PDF

public officials. The inefficiencies in the tax administration, the overall weak tax control and allegedly widespread corruption create ample room for the expansion of the grey economy. Among the social factors for the latter phenomenon the experts point to the high rate of unemployment (up to 35% of the workforce) and the deterioration in living conditions that forced thousands of citizens to engage in the smuggling of goods. The legal aspects are associated with the widespread awareness of injustice in the legal system and distrust in the government institutions, while the moral one reflect the general disapproval of the behavior of public officials who become rich in a short period of time. The most serious reason relates, however, to the improper functioning of the market economy, resulting in the lack of fair competition and transparency, dominant monopolistic structures, different standards for the companies with regard to taxation and benefits, as well as opportunities for corruption with the involvement of high-ranking officials.

The open nature of the **Bulgarian** economy in which between 65 and 75 percent of the GDP is realized through import and export creates opportunities for the existence of illegal cross-border activities. The customs authorities have continued to be one of the basic mechanisms involved in the redistribution of national wealth. The scale of the latter can be assessed on the basis survey data showing that some 25-35% of imports and exports still passed through illegal channels, even though smuggling appeared to have followed a decelerating trend during 1998-2000. In 2001, two opposite trends marked the development of grey imports and smuggling into the country. On the one hand, there was a steady increase in legal imports of goods, semi-manufactured articles and raw materials, with the process being positively influenced by the growing number of multinational companies on the Bulgarian market. On the other hand, last year saw increased pressures over border control authorities to allow illegal and semi-legal imports and exports of goods. In contrast to the initial years of transition, however, the post-1998 prevailing pattern of custom violations involved mainly imports at lower-than-the-actual prices, use of incorrect lists of goods, etc. Squeezed by subdued consumption and the intensified competition from rapidly expanding chain stores, some importers and wholesalers restored the usage of channels for “cheap goods”, which lead to a new search for parallel import-export schemes. The 2001 situation seemed to have been also affected by the constant changes in the customs management. The personnel changes caused disintegration of the old schemes for illegal import and export and seriously hampered smuggling and parallel imports and exports. This positive effect turned, however, to be counterbalanced by the growing chaos and fear among the managers in the customs administration that shortened, in turn, the horizon of the rank-and-file customs officers. The latter started co-operating with grey importers on their own, trying to make the “last quick buck” before an eventual dismissal or “a last favor” in order to get a subsequent job in the private sector.

In 1996, the Institute for Public Finance in Zagreb (IPF) did research into the informal economy in the Republic of **Croatia** for the period 1990-1995. The authors of the study evaluated that the most probable ratio of the informal economy to the country’s GDP was at least 25% by 1995. Sector data were consistent with this estimate as it covered a range from 8% of output in industry to 68% of output in commerce in 1994. In the 1990-1993 period, the proportion of the informal economy to GDP rose. In the 1994-1995 period it was impossible to make any final judgment, because some important indicators actually pointed to an increase in the scope of the informal economy, although most of the other signs suggested a fall. While considering the 25% ratio of the informal economy to GDP as rather high, the authors concluded that it could be expected to stay equally high in the foreseeable future due to the inherited tradition, the ongoing transition with its vigorous sectoral and institutional restructuring, and the continuing great role of the state in the economy, particularly in the field of privatization. They were also of the opinion that the high tax burden, the resumption of growth and the enhanced creation of new enterprises might well support further the expansion of the informal economy.

During 2001, the IPF went on with the previous research and started a new chapter in the investigation of the informal economy in Croatia. The measurement of the informal sector at the level of the economy as a whole was done through the national accounting discrepancy method, monetary methods, an adapted Eurostat method, estimates of tax evasion and an assessment of the informal activities in certain industries, such as agriculture, industry and commerce, tourism and foreign trade. With the use of the national accounting method for the 1996-2000 period, the informal economy has been estimated at an average of 10.4% of output. Such results seem fairly logical, because in the earlier period Croatia had the war, hyperinflation, the beginnings of the transitions and reform, and in the second period stabilisation and the strengthening of the ethical

and legal system. Other methods gave different results, but there is no huge discrepancy. Although it has been reasonably expected that the level of the informal economy in Croatia would to a certain extent decrease given the acceleration in the rates of economic growth, a more important feature seems to be the change in its structure and phenomenology. If the survey results from 1995 and 1999 are compared, one will notice that the level of opportunism has decreased in both diffusion and intensity. The number of those who think that tax evasion and corruption can never be justified has doubled. But the fact still is that 46% of respondents were prepared in certain circumstances to tolerate these phenomena; the age structure of opportunism has remained unchanged – the youngest age group is still most apt to justify tax evasion and taking bribes. This gives ground for concern because it suggests the phenomenon might be of a long-term nature. Moreover, the distrust in institutions has increased, and is once again most pronounced among the young, which is a worrying feature. In contrast, economic traditionalism has ceased to be a relevant factor, which is rather encouraging as people are after all getting used to differences in wages. Rising social security contributions have, however, added to the generally high tax burden that typically pushes economic activity underground.

According to some economic analyses conducted before 1998, the size of the informal sector in **BiH** had been estimated at around 60% of GDP. This figure would appear overstated nowadays due to a number of systemic measures that tried to incorporate some of the informal activities into the formal economy. Therefore, a more accurate estimate would possibly leave the grey economy as high as 40% of GDP. Its most obscure segments seem to be the smuggling of immigrants (particularly from the Islamic countries), prostitution, illicit drugs sales, weapons, racketeering and money laundering. However, measuring their impact would be next to impossible and there have been no such known attempts, although the overall size of the informal sector seems to be larger than in the rest of the region. The informal economy networks appear to be very strong and closely related to organized crime of whose existence the general public is well aware as demonstrated by a recent survey of Transparency International - BiH. Illegal trafficking, mainly of oil, alcohol and cigarettes, was perceived as the most widespread form of organized crime, with respondents' answers resulting in an average grade of 4.57 on the scale from 1 to 5. Following the September events, some of the criminal activities related to the shadow economy were branded as terrorism and the efforts to combat the underground groups have been strengthened with the help of foreign agencies. Apart from being strong nationally, Mafia linked to the excise goods smuggling appears to have well established networks regionally with links in Belgrade, Zagreb, Podgorica, Pristina and Tirana according to press reports. They are mostly focused on oil and cigarettes, as well as other excise goods. It may be assumed that these groups partially, or in total also cover prostitution and human trafficking, although there are no certain validations of this assumption, other than the UNMBIH vague findings.

6.4.2. Government policy

The government policy toward the informal economy in **Croatia** appears to be rather inconsistent. According to the circumstances and situation, it vacillates between varying attempts to make it completely illegal and a policy that would tacitly tolerate the informal economy. The efforts undertaken by the government are not commensurate with the gravity of the problem and there is a lack of determination to confront and limit the informal economy, and to root out corruption. On their part, many researchers have suggested detailed measures of economic policy necessary for the suppression of the informal economy, and particularly stressed that in the attempts to reduce the phenomenon it was more important to do away with the causes than to penalize the consequences. They also stressed the importance of the development of the institutional framework and the relation between the state and the economy. Besides, survey data shows a higher level of opportunism (inclination to break any rules that do not involve high risk of punishment) in Croatia than in such countries as Slovakia, Hungary and Romania. More than two thirds of the respondents seem convinced that the majority of public officials are involved in corruption. There is also a widespread public perception of injustice in the legal system and dissatisfaction with the way government functionaries and state civil servants perform their duties.

The practices of the new **Bulgarian** government concerning the making of rules for the interaction between the state and the private business involve controversial reactions. The intention to set up a Council on Economic Growth with the Council of Ministers including representatives of big business provoked public criticism mainly because a number of these people have been allegedly involved in shady economic activities. This, in turn, raises the question of formulating clear and transparent criteria for participation in

such structures as well as the need to specify what their functions and status should be. The activities of the government have so far reflected a conflict between the political platform of the new parliamentary majority and the existing economic realities. Apart from the declared zero-tolerance to corruption, the authorities will need to make rapid progress in improving the overall business environment and strengthening the institutional framework, increasing thereby the opportunities for incorporating informal activities into the main road of the organized economy. The existence of a considerable grey sector and a large volume of unaccounted for imports of goods means that in addition to the state in the country there exists a parallel system of management of the economy, which controls approximately 1/3 of the turnover. The horizontal and vertical links built by this parallel power will not lose their importance even if there was a fully-fledged market economy. Therefore, the argument that development itself will solve the problems of corruption in the economy is overly erroneous. First, because the symbiosis between the state and the private sector generates the shadow economy that, in turn, hinders the transformation process; and second, the consolidated structures of this parallel power will always try to perpetuate the existing channels of corruption. In this context, priority should be given to the sustained improvement in the conditions for doing business, which seems of key importance for the gradual legalization of the shadow economy.

The **Macedonian** government is tacitly tolerating informal economic activities, and it seems that it does not have a real political will to combat the grey economy, despite some official statements of commitment to the cause.

Until now, the **Albanian** government has not been clearly declared in the fight against informal economy as well. The main tool used by the authorities has been the extension of the tax base of businesses. The legal framework is continuously updated in order to keep up with the new challenges, but weak implementation remains a problem.

While some informal activities appear to be tolerated, the government of Serbia has announced a fight against large criminal groups. Besides, one of the most widespread forms of informal activity in the recent past - the foreign currency dealing - was brought to an end by introduction of convertible Yugoslav Dinar. In order to crack down on oil smuggling, the government issued in March 2001 the Decree on special conditions and procedure of import, process, distribution and trade with oil and oil derivatives. Yet, it is not certain whether such a decree is going to reduce large-scale corruption, although one evident result so far has been the lower number of smugglers caught. In turn, smuggling of cigarettes has been fought through increased border control. According to a Report on the activities on preventing illegal flows of tobacco, 50% of the consumed cigarettes in 2000 was subject of illegal trade, whereas in the first half of 2001 this share has diminished to 17%. A further step in fighting cigarette contraband will be the Tobacco Law whose draft has been recently approved by the government with the aim of regulating the production, processing and trade activities in the sector. While such a strengthening of the legal framework will likely help to reduce the scope of contraband, the new law shall provide government officials with large discretionary power in issuing the necessary licenses, which is a major source of corrupt behavior.

In the context of the political and economic developments in Serbia during the last decade, it could appear that the informal sector was in a sense beneficial for the country. High taxation, government encroaching, huge administration, rent-seeking and rampant corruption had created a discouraging business environment. Given the growing extent of poverty among vast strata of the population, the tolerance towards informal economic activities could be regarded as a social policy. Since legal business environment has not been radically changed after the overthrow of the old regime, it seems that the grey economy still performs some social policy tasks and boosts the whole economy up even now. Therefore, the government appears to continue tacitly tolerating the informal sector of the economy to some extent. Meanwhile, recent survey data have shed light on the prerequisites that would motivate those engaged in the grey economy to turn to the formal sector. Half of the respondents assigned prime importance to a decrease in tax rates, tariffs and other duties, 25% of the interviewed pointed to the necessity to reduce barriers and regulations for doing business, whereas 9% thought that the key factor was state administering. Besides, 25% of the respondents considered sentences as rather soft, whereas 40% found that control was poor, thus creating incentives for the expansion of the grey economy.

Statistical data on economy-related crime in **FBiH** show that the prosecution pressed 13,183 charges in 2001, with another 4,419 being inherited from previous years. The respective figures for **RS** were 11,997 and 2,211. On top of that, there have been continuous efforts to close the smuggling

channels and to clean up the street markets, where goods go untaxed. These activities hurt, however, mostly the "little people", since much of the economy is unregulated and so is their employment status and the sale of their goods. With constant improvements in the tax regime and social benefits, it is expected that this long-term process will be gradually moving towards more formal channels.

6.4.3. International connections

The opportunities for performing illegal and criminal activities in **Macedonia** were markedly boosted in the wake of the 2001 sharp deterioration in the political and security situation in the country. In the context of the subsequent slow process of the government regaining control on a significant portion of the territory, the continuing precarious situation in neighboring Kosovo and the rather weak border control, organized crime appears to have remained widespread in certain parts of the country. Moreover, there are serious indications for well-developed international connections of the criminal activities pursued through smuggling of different goods, drugs, arms and etc.

The economic sanctions imposed on **Serbia** by the United Nations in the period 1992-1995 paved the way to the rapid expansion of the informal sector. At the time of the embargo on all exports and imports it was much more important to provide necessary consumer goods and allow for means of exchange than to enforce rules and laws. Thus, the dominant pattern of informal economic activities during the sanctions was foreign trade supported obviously by established international links. Under the embargo, the authorities were fairly tolerant towards this type of shadow activity, although the same practice continued even after the sanctions were lifted. Large trafficking groups formed during period of sanctions and war stepped into close relations with state officials. The main activities were trafficking of oil, cigarettes and narcotics, with many signs pointing to vast international channels.

With respect to the international connections of informal economic activities a most comprehensive study was conducted by several investigative journalists from the Zagreb's weekly *Nacional*. They uncovered links between organized crime in all countries from the Western Balkans, with many signs also pointing to regular links to the policy-makers in power. That has prompted parliamentary committees to be formed for the investigation of the claims and a growing number of institutions are being drawn into this attempt ever since the first traces sprang up in early 2001.

6.4.4. Anti-money laundering

With the recent adoption of an anti-money laundering law **Albania** made an important step in strengthening its legal framework in the field of financial transactions. The purpose of the *Law on the Prevention of Money Laundering*, enacted in May 2000, is "to prevent the laundering of money obtained through criminal activities and to combat financial crimes", to quote the Article 1. The law also provides for the establishment of a Co-ordination Agency for the Fight against Money Laundering at the Ministry of Finance. The Agency is the government body in charge of collection and verification of all reports on effectuated transactions, and is also entitled to exert control over the observance of the reporting procedures. However, the effectiveness of such administrative arrangements have not yet been tested, since the law has rather recently come into effect and the Co-ordination Agency itself is still in the process of organization and therefore unable to push for better implementation standards. Even though with a limited experience so far, the very existence of a proper regulatory framework is an important element of the fight against money laundering in the country. Meanwhile, the Bank of Albania seems to be the state institution, which have taken the issue most seriously. Its supervisory council has issued instructions to all commercial banks to unify their standards of behavior in the face of suspected money-laundering activities.

In **Macedonia**, the *Law on Prevention of Money Laundering* was adopted in August 2001 but has become effective only from March 1, 2002. According to the Law, there is an obligation for identification of clients for transactions exceeding the equivalent of EUR 10.000. If there is an indication for money laundering, the obligation for identification of the clients is effective regardless of the amount of transaction. All suspicious transactions are to be reported to the Office for Prevention of Money Laundering that has been established within the Ministry of Finance. Its task is to collect, proceed, analyse and keep the received records, and inform the competent authorities in case of an indication for criminal act. The Customs Office is also obliged to register all transferred cash money in and out of the country. However, the law did not incorporate all forty recommendations of FATF, which is obligatory for every country that adopts such legislation. This refers to the provisions for the disclosure of the banking secret, postponing of the suspicious transactions, clear identification of the clients who have an obligation to make a report regarding the indication for money laundering, etc. Moreover, the necessary regulations related to

the law have not been drafted and adopted by the government so far. The banks and other financial institutions have not adopted internal rules of procedures or started with internal training of the staff for recognition of suspicious transactions and implementation of the law. In compliance with the Law the Government established the Office on prevention of money laundering. However, the Office has not started with performing its activities yet. The lack of experience of the staff, including its Director, cannot guarantee successful and efficient implementation of anti-money laundering legislation. The Office has not started with preparations for implementation of the Law, training of the subjects, publicity of the anti-money laundering legislation, and the like. Due to the lack of any control measures so far, Macedonia is especially vulnerable to money laundering. It seems that there is also no political will to deal with these phenomena. Such situation creates potential for laundering of the funds derived by criminal activities through legal banking system and other institutions. Also, the lack of anti money laundering control mechanisms, was used for acquiring companies, business premises, banks, land and other property for enormous amount of cash, without any proof for its origin.

Money laundering in **Serbia** had not been fought at all for a long time, and no relevant estimation on the scope of these activities is available. The *Money Laundering Act* has been adopted at the federal level only in September 2001, and implemented starting from July 1, 2002. This act prescribes the actions and measures to be undertaken for the purpose of discovering and preventing money laundering, although it does not stipulate any provisions regarding the international Cupertino. (Yugoslavia is not a party to the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime.). The Federal Government in Serbia has formed the Federal Commission for prevention of money laundering (Official Gazette of the FRY, No 15/2002), as an independent federal institution. Commission will be responsible for collection, processing, analysis, providing information to competent public institutions (Judiciary, Inspection, Ministry of Interior), keeping record, taking other measures according to the Law and finally keeping data and information received from obligors from Article 5, the *Money Laundering Act* which are:

- Banks and other financial organizations (Post Office Savings Bank, savings banks, savings and credit organizations, and savings and credit cooperatives);
- Post Office units, other enterprises;
- Government agencies, organizations, funds, bureau and institutions as well as other legal persons which are in whole or in part financed from public revenues;
- The National Bank of Yugoslavia – Clearing and Payments Department as the executor of the country's payment operations;
- Insurance companies;
- Stock exchanges, stock brokers and other persons engaged in transactions involving cash, securities, precious metals and jewels as well as purchase and sale of claims and debts; and
- Exchange offices, pawnshops, gambling rooms, betting places, slot machine clubs as well as organizers of commodity and money lotteries and other games of chance.

Commission has a president and four members that are nominated by the Federal Government on proposal of Federal Minister of Finance, given that the president manages its work and is responsible for the performance of the organization.

The general impression is that the ability of Serbia to efficiently co-operate internationally in financial investigations and money laundering cases is very limited. The Federal Ministry of Internal Affairs has direct control over the Federal police but not over the police of the Republic of Serbia. Yet, the head of the Crime Investigation Directorate of the Federal Ministry is also heading the INTERPOL National Central Bureau. The Crime Investigation Directorate's staff serves as a link between the police administrations of the two Republics related to international requests for assistance to and from international police forces. In accordance with the Criminal Procedure Code (Article 535), full data is to be provided to the Federal Ministry of Internal Affairs by the authority before which proceedings are conducted with regard to criminal offences related to counterfeiting of money, money laundering and trafficking.

The **Bulgarian** legislation has made significant progress with respect to measures against money laundering. After the first law of 1996 had proved to be ineffective, a new one was adopted in 1998, based on the principle of self-organization of the financial system to prevent and uncover attempts for money laundering. At the end of 1998, a Financial Intelligence Bureau was established and subsequently transformed into an

agency within the Ministry of Finance. In early 2001 some important amendments to the *Law on Measures against Money Laundering* came in force, with most of them being aimed at harmonizing the Bulgarian legislation with the *EU Directive on prevention of the use of the financial system for money laundering.* The Financial Intelligence Bureau was transformed into an agency - a legal entity within the Ministry of Finance, funded by the state budget and located in Sofia (*Organizational Rules of the Agency Financial Intelligence Bureau*, adopted with Council of Ministers *Regulation No. 33* of February 12, 2001).

The commercial banks reported the highest number of signals of suspicious operations, followed by the tax authorities. This confirms the conclusion that most of the money laundering operations and transactions are carried out through the banking system or through illegal accounting operations. According to the available data for the period October 1998 - April 2001, 43% of the cases involved operations for introducing financial resources of criminal origin into the financial system; 11% represented operations for layering the financial resources aimed at removing their criminal origin; 6% related to privatization deals in which financial resources of criminal origin were invested in the legal economy and the remaining 40% of the cases concerned criminal activities generating the so-called "dirty money". The fact that most of the cases of money laundering are related to corrupt practices with both national and international dimensions and that the funds involved can serve terrorist organizations and activities increases the need for cooperation between the Financial Intelligence Bureau and other state institutions - the Prosecutor's Office, the Ministry of the Interior and the administrative authorities performing similar functions, as well as for international cooperation in this field. The new challenges require to further improve the legal framework and modernize information technologies on a regular basis so that specialized control against money laundering can continue to contribute to the prevention and uncovering of acts of corruption. Further amendments to the Law on Measures against Money Laundering are currently being prepared, aimed at blocking terrorist group's accounts (financial resources) and introducing stricter controls and sanctions.

The anti-money laundering legislation exists in **FBiH** since 1998 and in **RS** since 2001. The OHR has taken a leading role in co-ordinating this activity through its Anti-Fraud Department. The latter has recently organized a conference titled: "Mechanisms for prevention of money laundering in BiH: How applicable and efficient they are". A preliminary action plan was agreed upon during the forum and the principles of work in this area were established. The existing money laundering prevention mechanisms foresee supervision of the bank accounts where suspicions exist and the formation of a department for anti-money laundering within the Ministry of Justice (ex-Financial Police in FBiH) and a new one in RS with the Ministry of Finance. According to the law, a single register of public and private entities should also be set up and a number of related laws are being currently amended to incorporate provisions that would sanction this particular activity.

In FBiH, the role of Financial Police that was an integral part of the Ministry of Finance was restructured and the administrative authority over it has been shifted to the Ministry of Justice with its mandate narrowed only to cover money laundering. OHR was particularly instrumental through its AFD in restructuring the Financial Police and drafting its new curriculum.

In RS this role is now with the tax administration, the Revenue Service, which is a part of the Ministry of Finance and as of 2002 it combines what used to be the Revenue Administration and the Financial Police. Their mandate extends to money laundering and in April 2002 charges were pressed against several companies on merit of money laundering.

6.5. Barriers to Business

The existing registration, licensing and permit regimes are constantly generating two types of problems that appear to be particularly acute in the transition economies of South-east Europe despite generally intensifying policy efforts to deal with the underlying causes. On the one hand, the overregulation of economic activities results in considerable administrative barriers to market entrants and higher costs of doing business, pushing, in turn, many entrepreneurs into the informal sector. On the other hand, the very existence of registration and licensing regimes is one of the main sources of corruption as it typically gives officials large discretionary power, creating opportunities for the abuse of public office for private gains. With respect to the latter, the overall unfavorable institutional environment across the region remains clearly a notable root cause of corruption. Yet, the current enhanced development of market-type institutions is rightly placed into the general context of reforming the government's role in the economy. This broader perspective reveals, among others, the impor-

tance of minimizing the institutionalized opportunity for corrupt practices as a result of overregulation. Furthermore, the alleviation of administrative barriers through streamlining of registration and licensing regimes, simplifying the procedures and making them more transparent will contribute both to a marked improvement in business conditions and a gradual reduction in corruption levels.

6.5.1. Registration procedures

There are two laws regulating the issues related to the foundation, registration, operation, etc. of companies in **Albania**, namely the *Law on Commercial Companies* of 1992 and the *Law on the Business Register* of 1993. The Trade Register is located at the Court of the first instance of the Tirana District for all businesses that operate in the Republic of Albania. The laws prescribe the procedure that should be followed in order to register a company and the necessary set of documents to be submitted to the court, which should take the decision on the request in one-month time. The registration procedure for business entities in **Macedonia** is defined in the *Trade Company Law*. Following the decision of the Court for enrolment of a new company the latter is registered in the Trade Company Register and receives a classification from the State Statistical Office.

The overall operating environment in **Croatia** does not pose significant administrative challenges and the country compares well with leading transition economies from central and Southeast Europe. On the other hand, the process and requirements for acquiring entry visas and work permits – many investors' first encounter with the country – are unnecessarily complicated and burdensome. Also, the process of acquiring land, registering it and building new premises is fraught with difficulty for investors. Although these issues clearly entail a long-term agenda, Croatia needs to take immediate actions where possible to improve its performance. According to the recent expert analyses, the greatest barriers to business, which appear a major source of corruption as well, are created by the lack of detailed zoning plans and the ensuing complicated procedure for obtaining building permits. The quality of zoning plans varies considerably across the country. As things stand, the absence of clear zoning plans in some areas creates opportunities for corruption and confusion amongst investors.

The *Investment Promotion Act* of 2000 regulates the promotion of investments by domestic and foreign legal entities or natural persons with the aim of stimulating the economic development of Croatia, its integration into international trade through the increase of exports and the competitiveness of the Croatian economy. Investment promotion comprises incentive measures, tax and customs benefits. The latter could, however, be granted only to newly established companies registered exclusively for the activities subject to promotion measures. The envisaged incentive measures are divided into three groups. The first one includes leasing, granting of construction rights and sale or usage of real estate or other infrastructure facilities owned by the Republic of Croatia, local government or self-government units under commercial or favourable conditions. The second group of incentive measures refers to assistance granted for the creation of new jobs. The third group comprises incentive measures related to assistance granted for vocational training or re-training. The various authorised state administration bodies, utility companies and other institutions are obliged to provide decisions on consents, permits, certificates or other documents within 30 days of the submission of the outline planning permission application; otherwise, the City Office is empowered to take the decisions.

Today, the costs of doing business in **BiH** are much too high, overloading the operation of private firms. The country is still dominated by a bureaucracy geared to the old socialist system and controlled by officials with formalistic mindsets. Missing are the market-type economic incentives, while some informal remnants of ad hoc wartime arrangements still remain. Costly administrative barriers create opportunities for rent seeking and are particularly onerous for SMEs. Many of the laws critical to business development have not yet been promulgated or are not supportive of private sector development. Ownership rights remain unclear, contract law is difficult to enforce, and the courts are slow, nontransparent and unpredictable. The tax rates on business are high, the whole tax system is complex and corruption is allegedly widespread. These factors combined with perceptions of high levels of political risk impede both foreign and domestic investment. Companies and entrepreneurs with yearly income of more than KM 200,000 are entered in the register of the respective court according to the procedure set by the *Law on Enterprises*. According to the *Law on the Policy of Foreign Investment registration* of 1998, foreign investment must be registered with the authorized entity's body, and also has the permission of the Ministry of Foreign Trade and Economic Relations of BiH. This step may be abolished within the next six months since it is obso-

lete with a view to differentiating between foreign and domestic enterprises. In total it is a 15-step procedure from the commencement of the process, until the firm is able to operate and it includes a number of official institutions and registration requirements.

The procedure of registering enterprises in **Serbia** is clearly defined in the *Company Law*. In practice, however, the procedure of registering firms in the respective courts is so complicated that it seems almost impossible to register a firm without professional help. A number of special acts complicate the process. For example, estimation of the initial capital is required even for brand new things with invoice delivered. The *Law on procedure of registration in the court register* (1994) and the *Decree on registration in the court register* (1997) regulate this procedure. It is required from the firm to report all activities it is planning to perform. The fact that only 37 companies were founded in 2001 may be good indicator of the difficulties of the registration process. Among the greatest problems is the procurement of construction land and obtaining building licenses. Construction land cannot be the private property, but the right to use the land can be granted in the form of concession. The *Law on construction land* stipulates that land can be granted through public tender or collecting bids in response to a public announcement.

Although there are no significant obstacles to the registration of a business in Serbia, the prescribed procedures appear to be rather time-consuming and costly. The G 17 Institute has done a large study based on empirical analyses of the existing regulation and interviews with entrepreneurs, showing that the costs of registering and the time needed were extremely high in some cases. According to the findings of the study, the procedure typically lasted longer than the amount of work needed for its completion. Moreover, 21% of the interviewed entrepreneurs had to bribe an official during the process of registration. The study also found that the overall cost of the licenses required for construction was DEM 7,787.

In **Romania**, new entry in the banking sector has always been fairly easy, though tougher criteria were imposed lately. Romania is still ranked by international agencies as one of the European countries with the lowest barriers to entry and the loosest banking supervision. As a result, many small boutique-banks have been set up just to tunnel funds from public institutions and collapse one or two years later. These were among the most serious examples of state-capture corruption we have seen so far. The completion of the bank sector privatization in 2002 or 2003 will probably reduce the scale of the phenomenon, but loose supervision and standards will make possible for private entrepreneurs with political connections to continue to steal public resources through various schemes.

6.5.2. Licensing regimes and their dynamics

One of the main sources of corruption stemming from the regulation of economic activities is the existence of registration and licensing regimes. Their practical implementation has also proved rather burdensome for the overall business environment in Southeast Europe that remains generally difficult and needs to be improved markedly in order to create the necessary conditions for sustainable growth. In this context, the past several years saw many attempts across the region to revise the existing regulatory framework with a view to both strengthening the institutional settings and streamlining the regimes. However, the attitude toward the licensing type of regulation still seems very contradictory. As a form of state control licensing regimes are one of the ways to reduce corruption by direct (administrative) control over economic activities. Yet, exactly because of the way this control is exercised (direct control protecting public interest but opposing private interests who are subject to control) licensing regimes themselves generate considerable economic interests for side-stepping them through corrupt practices.

In **Bulgaria**, a large number of state agencies (about 1/3 of total) are involved in licensing, registration and issuing permits but it is hard to say how many regimes really exist (the current estimates point to a figure of slightly above 500). Given the numerous laws, which introduce or cancel such regimes, there are no serious obstacles for modification of the existing regimes and even introduction of new ones by various agencies through different procedures. Still, the optimisation of the regulatory framework has long remained a priority of government policy, even though the declared intentions and the actual developments point to considerable discrepancies. Out of an estimated total of 526 licensing, registration and permit regimes 148 had been cancelled in the period 1999-2001, while another 102 had been slated for alleviation. According to most recent estimates, the overall number of regimes that are being currently reviewed is 512, which is indicative of the ongoing developments. The government has, however, reiterated its commitment to alleviate the existing regulations. Out of a total of 360 licensing regimes, the Council on

Economic Growth has proposed the abolition of 74, as well as amendments of 194, with the package of legal changes being reportedly planned for mid-2002. Among the line ministries in Bulgaria, the Ministry of Agriculture is clearly the leader in terms of the number of licensing regimes. It currently administers 62 such regimes of which 9 are to be cancelled, while another 22 are to be alleviated. In terms of the overall number of licensing, registration and permit regimes, however, the Ministry of Agriculture comes second with 75, whereas the Ministry of Regional Development and Welfare administers a total of 88 regimes.

The Bulgarian experience has also shown that the accession process is creating additional difficulties in the attempts to solve the problems in the field of licensing regimes as the provisions of the EU directives and regulations include a significant number of such regimes in the member-states as well. Yet, the problem in Bulgaria is not so much in the existence and the number of regimes but in the clumsy, bureaucratised and badly organized implementation, which creates opportunities for corruption. The issue of overregulation is, in fact, the issue of administrative discretion instead of providing one-stop service for the public. Adding to this, the current legislation is full of contradictory provisions and creates a room for corrupt behavior. Besides, it is possible to introduce in a discretionary manner registration and licensing regimes - not only through laws but also through administrative decrees, ordinances, etc. It proves also possible to keep an existing regime even after the law that initially led to the introduction of this regime was repealed. The lack of clearly formulated requirements for the introduction of licensing and registration regimes obviously raises the necessity for regulating the very process of installing control mechanisms to protect public interest.

The licensing process in **Romania** is used to regulate the access to business areas such as telecommunications, electronic broadcasting, finance and insurance, foreign trade with a selected list of goods (arms, products with quota requirements) and mining. Even though the procedure of licensing should be transparent and more or less automatic, there were many cases in the past when the procedures resulted in suspicion. Moreover, the Romanian national and local administrations in general do not act as accurate providers of public services, but as an annoying structure to be tolerated and dealt with in case of strict necessity. The frame of mind in the public regulatory agencies is to be as uncooperative as possible, by spotting flaws in the business or individual documents and use them as reasons for blocking procedures. By doing so the bureaucrats are rational agents who maximise their status and income.

Advice and assistance from civil servants are in short supply, and often provided in exchange for cash. For example, the Ministry of Finance has not yet organized a service that can provide statements with legal status on request. As a result, different opinions on the same matter can be heard from different offices of the ministry, while an honest business that is seeking advice on a complicated procedure can never be sure it is in compliance with the law. This again expands the decision-making discretion of public officials and opens new possibilities for corrupt practices. Local governments are not immune, either. For private individuals it is so difficult to get a permit to renovate or build a house on private land, that the current practice is to start building first and then apply for permission. In exchange for a fine, which is less than the total administrative costs of getting a legal permit, the construction can be legalized afterwards. Such behavior perversely saves time and money for the private agent, but in time reduces the total welfare in society and destroys the credibility of the public sector.

In **Macedonia**, there is a large number of licenses, approvals, reports or statements as preconditions for opening a business, changing its nature or starting construction activities. The rather long and complicated bureaucratic procedures create opportunities for the abuse of discretionary power and corruption. The system of issuing and obtaining permits, licenses and various approvals for doing business in Macedonia has not changed much during the last years. Its deficiencies have provoked many complaints and initiatives by businessmen aiming at a decrease in the number of existing licenses. The country's preparations for membership in the WTO would also require a streamlining of such regimes within the broader scope of the targeted reduction in barriers to business and functioning of the market economy. Introducing a "one stop shop" is an important step in order to shorten and improve the efficiency of the necessary procedures, narrowing at the same time the possibility for corruption of public officials.

It is estimated that the average enterprise in **BiH** needs to obtain about eight licenses annually in order to function legally. Typically, firms with foreign direct participation need more licenses, while large public companies have, on average, five licenses. In co-operation with the entity governments, the Council of Ministers of BiH has developed a Global Framework of Economic

Development Strategy (GFEDC). The ultimate goal of this effort is to achieve sustainable economy in the context of declining international assistance that would require a marked improvement in the existing business environment in order to stimulate domestic and foreign investment. In this sense, one of the most important tasks is to enhance the development of the private sector and to reduce the sources of corruption. The Strategy makes an immediate reference to the elimination of administrative barriers to doing business, among which particular importance is attached to the simplification of the registration process, streamlining the controls for compliance and decreasing the scope of the licensing regimes. While BiH had seen a deterioration in most of these factors during the initial transition period, it could be reasonably expected that the situation will start to gradually change as much of the foreign aid is being now conditional on the improvement in the overall business climate.

6.5.3. Foreign trade operations

The conduct of international trade business in **Macedonia** is regulated by the provisions of the *Foreign Trade Law*. According to it, the Ministry of Economy issues the necessary licenses, permits and approval for performing foreign trade operations. The law determines all the needed documentation and data that have to be submitted to the Ministry of Economy in order for the latter to make its decision upon it. Thus, the issuing of licenses and approvals is in the discretionary right of the Ministry, which decides whether the criteria have been met. The resulting practice has appeared fraught with irregularities and cases of providing licenses and permits to companies closely related to the ruling parties in a non-transparent way and without fulfilment of criteria. Most notorious was the scandal with a company owned by a close friend of the Minister of Economy that got the license to import sugar irrespective of the criteria and conditions, and brought the deliveries in the country without paying any customs duties. Other examples refer to the import licenses for meat from Croatia, as well as recent imports of sugar free of customs duties.

Business entities wishing to conduct foreign trade in **Serbia** have to register with the Commercial Court and with the Federal Customs Service. The former obligatory report of every import-export transaction to the National Bank of Yugoslavia was abolished in 2001. Out of 8,552 products specified in the Customs tariff nomenclature, 94 require an export license, 142 require an import license, while the exports of 34 products are regulated by quotas. International trade operations with certain goods require also additional approvals from relevant ministries such as the Ministry of Health and Social Policy, the Federal Institute for Measures and Precious Metals or from the Federal Institute for Standardisation. Licenses are necessary for the export and import of goods regulated by international agreements and conventions (arm, drugs, etc.). Many agricultural products are subject to quotas. The Federal Government sets the conditions, criteria and procedures concerning quotas and the Federal Ministry for Economic Relations issues authorisations. Since May 2001, quotas on imports have been abolished. Thus, the country has recently made notable progress in liberalising foreign trade operations, reversing the situation under the previous regime when foreign trade had been almost exclusively organized on the license system. Most of the licenses were abolished by the end of 2000, while additional measures were undertaken in May 2001 to significantly simplify the import and export procedures. As mentioned earlier, however, the Serbian government sometimes tries to solve corruption problems by granting monopolies to the state. There is a state monopoly on imports of oil and oil derivatives since April 2001 and the draft Tobacco Law provides for a monopoly on the import of tobacco and cigarettes.

In **Romania**, a small circle of top government officials, who follow some rules that are not always transparent, administers import-export quotas, licenses and standards. The sheer complexity of this activity makes the abuse hard to prove as bureaucrats make use of very subtle means to favour their business associates. For example, the introduction of new quotas and licenses may be done on official short notice, while those who are well-placed are informally notified in advance so that they have time to prepare all the cumbersome documentation. Or, new quality standards may be imposed overnight (ex. in the food trade) as a competing firm has a large quantity ready for import of export. The use of non-tariff instruments may not only be bad for the domestic business environment, creating uncertainty and uneven playing ground, but also detrimental for the whole society, since many such measures are often just national protection against competition for rent-seeking business groups (another example of state capture).

Considering that many companies in **BiH** need to obtain several export licenses annually, the licensing procedures could be a source of corruption, if they are not clear and transparent, and hence create obstacles for doing business. Yet, almost all respondents in a survey carried out

under a World Bank project (90% of firms that applied for export licenses and 93% of those who had experience with obtaining import licences) found the procedures clear and transparent. 60% of the surveyed firms got all the export licenses they applied for, and another 29% received almost all of them. Out of those firms that applied for import licenses, 69% received all import licenses they applied for, another 22% received most of them. Overall, the analysis shows the process of obtaining licenses being seen by the respondents as clear, transparent and efficient. The time spent by firms on obtaining licenses depends, among other things, on how many signatures are required for each license. According to respondents' experience, the number of required signatures is low – three on the average for either export or import licenses. However, a considerable number of enterprises reported paying bribes that equal, on the average, 2.6% of the export license value and 2.8 % of the import license value. 85% of the respondents who answered this question put the size of the bribes at 2% of the license value, suggesting that the amount of the needed bribes is fairly well known.

6.6. Corporate Governance

Against the background of the existing supply-demand interface within the corrupt relations, the need to strengthen corporate governance in the transition countries from South-east Europe appears to be another key area of reform efforts that should contribute to lower levels of corruption. The demand for kickbacks on behalf of representatives of the administration is determined in general by the nature of the relationship between government and private business, as well as by the state of public morality. Viewed from the supply side, the phenomenon is a function both of the existing interests and of the inner structure and rules of corporate decision-making. The experience clearly demonstrates that the principles of sound corporate governance and its practice in the leading companies over the world reduce considerably the opportunities for corruption. Therefore, the enhanced introduction of sound corporate governance practices across the region can have a strong anticorruption impact on the supply side and help the South-east European countries in casting off a corrupt reputation.

Corporate governance culture in **Albania** is at its initial stages of development. Although the private sector has been growing up dramatically during the last decade, its corporate mentality is far from being developed. Corporate governance is a very powerful tool for curbing corrupt behavior. The bribes offered to public officials by companies' managers would drastically fall, should better corporate governance practices be in place. Thus, improving corporate governance means reducing the opportunities for corruption practices. The current managers (who in the majority of cases happen to be the controlling shareholders) of the private sector have a large authority on the way the business is conducted. Establishing a healthy corporate culture and strengthening the legal framework with respect to publicly disclosed information should reduce the opportunity for the top management of a company to act in an abusive way and engage in bribery practices.

Given the negative past experience in **Croatia**, the necessity to promote efficient corporate governance has been clearly recognized. An important step was made in the autumn of 2000 with the establishment of the Corporate Governance Council within the Croatian Employers' Association. This consultative body seeks to engage in intensive dialogue to find answers for some burning issues of corporate governance in Croatia, and it is hoped that it will make itself heard in the preparation of the new legislation in that domain. On the other hand, on the level of the state, the policy-makers have at their disposal a series of measures that might improve the general corporate culture, as well as the governance and restructuring of companies. Such measures would include the removal of all obstacles to a greater participation of foreign investors in the domestic economy, as well as the adoption of the necessary legal amendments in order to make possible the sale of land and real estate to foreigners. Another key area of policy efforts relates to the effective judicial protection of ownership and contract rights, the strengthening of the legal mechanisms for owners' control over the management of the company and streamlining the procedures for exit from the market (winding up and bankruptcy). Particular attention should be given to the enhanced development of financial and capital markets that is very important for raising the standards of corporate governance and increasing financial transparency. At the same time the authorities have to abandon the practice of salvaging non-viable companies at the taxpayers' expense as the rescue operations are weakening the incentives for corporate restructuring and efficient governance.

Looking at the supply side of corruption, **Bulgaria** still lacks adequate regulation in the field, especially with regard to disclosure of conflict of interests, which creates strong potential for corrupt practices. In other words, the apparently tolerated non-compliance with the rules of

sound corporate governance leads also to tolerance of opportunities for corruption. Yet, thanks to the Corporate Governance Initiative and civil society in general, anticorruption efforts are directly related to the issue of legislating and practising sound corporate governance that undoubtedly is a novelty for central and east Europe. Multiple measures for solving the existing problems have been proposed, although they failed to attract sufficient attention on the part of legislators and regulators during 2001. The legal changes deemed necessary include restrictions on the simultaneous personal participation in several governing bodies, an explicit ban on the participation of state employees and representatives of the government in the boards of private companies, as well as clear rules for disclosure and avoidance of conflicts of interests. With the goal to establish high professional standards for the members of the governing bodies of joint stock companies in Bulgaria and to improve communication between investors and the management of the companies, a draft law on amending the *Law on Public Offering of Security* was prepared in 2001. It envisages important changes in the requirements for selection and in the functions of the members of managing and controlling bodies of publicly traded companies, specific requirements for disclosing conflicts of interests, as well as the introduction of the position of company director for investor relations. The preparation of a *Code of Best Practices*, which is supposed to be completed in the near future, is also expected to induce Bulgarian companies to voluntary comply with principles of sound corporate governance, induce discipline and discourage corruption.

VII. CIVIL SOCIETY AND THE MEDIA

7.1. Non-governmental organizations (NGOs)

The involvement of NGOs from SEE countries in anti-corruption activities is conditional to three mutually related processes: 1. Developments within the third sector in each country; 2. The availability of foreign funds, and 3. The prevailing attitudes of national authorities vis-a-vis anti-corruption efforts by civil society.

7.1.1. Involvement of NGOs in anti-corruption activities

Throughout the region the NGOs are still in a process of defining their fields of interest and social role against a wide range of transition priorities and problems. Anti-corruption, as a relatively novel priority in public's democracy and civil rights agenda, is one of the topics, which involve a growing number of NGOs. This involvement is facilitated by the fact that anti-corruption projects increasingly attract the attention of potential Western donor organizations (both international bodies and national agencies).

In **Albania** it is believed that there are currently between 400 and 800 NGOs, approximately 200 of which are active. The strongest NGOs are those engaged in advocacy, youth issues, civic education as well as women's organizations. It is worth noting that even the stronger NGOs remain donor driven and dependent. The sector is very weak, particularly when one compares its resources to those of the state and of the informal economy. This dependence is related to the constricted Albanian economy, as well as a to the lack of continued technical assistance in organizational development. A few months ago the Parliament passed a new NGO law, which is considered as a very positive step forward. Another positive step forward is the increasing involvement of NGOs in service providing. This is very important taking into consideration the fact that the government is unable to provide a sufficient level of basic services to its citizens. This recent involvement of NGOs has somewhat enhanced the public image of the sector. At the same time, it has exposed local NGOs to more public scrutiny than they have experienced before, which could increase NGO accountability in the future.

Thus, leaders of civil society organizations look toward foreigners rather than fellow, perhaps suspicious, Albanians for support. Some successful multi-institutional investments by USAID have shown that long-term sector-strategic commitments can develop effective partnerships across domestic political and economic barriers. Examples include USAID projects in rural agricultural development and the agribusiness sector, where coalitions have succeeded in legislative reform and public education activities. Hence, the Albanian stage was set for a coalition to fight corruption to enter.

The anti-corruption activities in Albania developed as a *top-down* initiative, as it is the government which initiated them.

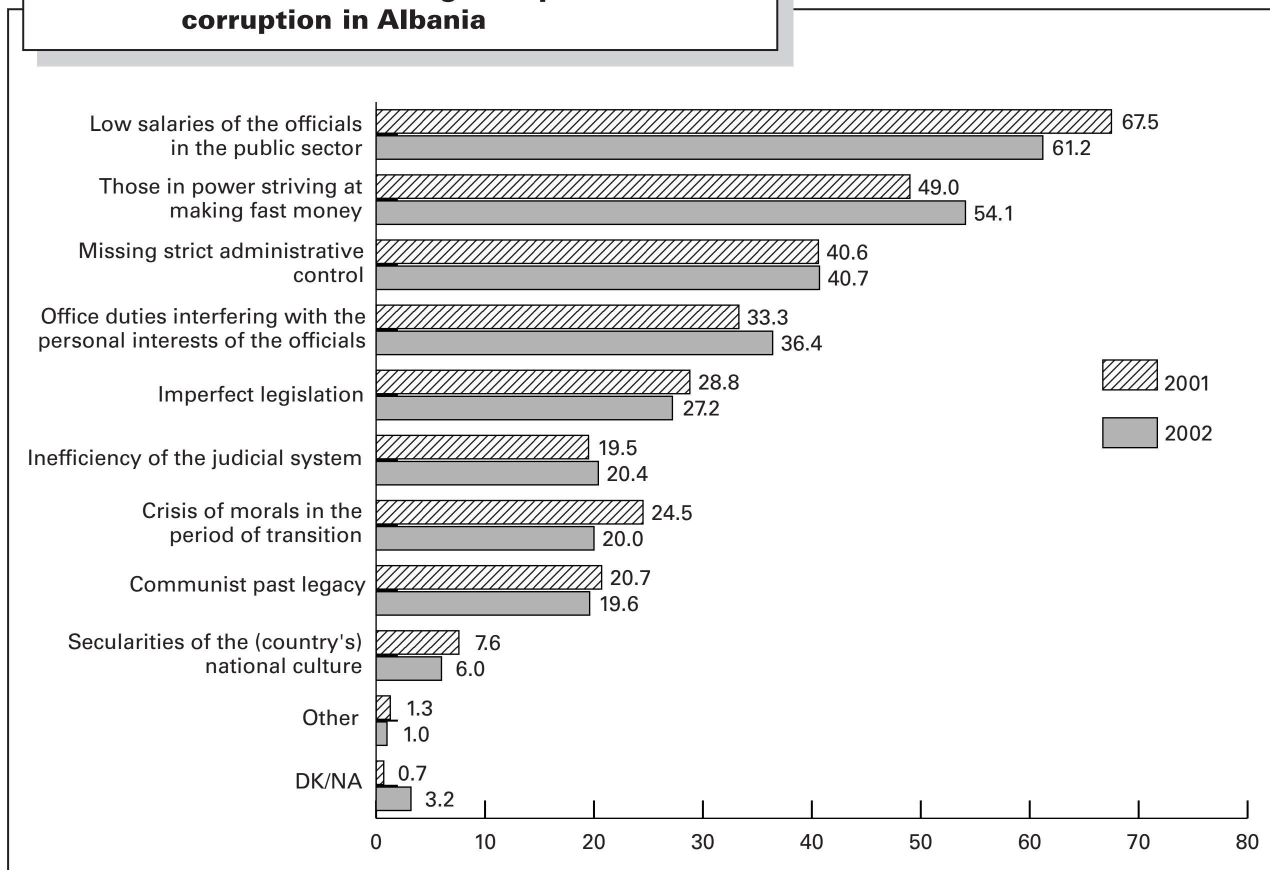
Gradually, with the assistance of the USAID, other foreign organizations and the Institute for Contemporary Studies (ICS) over 100 Albanian NGOs were able to join the Albanian Coalition Against Corruption (ACAC www.acac.info). The members have worked together to develop a strategic framework and to create an action plan in order to "reduce corruption throughout Albania in a non-confrontational manner by strengthening the role of civil society and working in coordination with governmental authorities where appropriate." (USAID Strategic Framework)

In addition to monitoring the Government's implementation of its revised anti-corruption matrix, ACAC members have crafted an Action Plan to address their priorities in the following areas, which also serve as the working group identities:

- Public Procurement, Privatization, and Property
- Freedom of Information
- Budget and Legislative Processes
- Public Service Delivery
- Judicial Reform
- Taxation and Customs

ACAC will increase the awareness of Albanian society regarding the causes and costs of corruption and to transform that awareness into advocacy for reforms to reduce and combat corruption. It will promote as integrity, transparency, accountability, and the rule of law in government and society and monitor the progress of the

Chart 19: Factors influencing the spread of corruption in Albania



Source: SELDI Corruption Monitoring System.

reform process, focusing on the adoption and implementation of transparent and clear rules of law and the participation of citizens in governmental decision making.

Monthly Forums, hosted alternately by IDRA and ICS, stimulate public debate on current corruption issues and related events. These widely publicized events involve high-level public officials.

In the wake of Summer 2001 elections in Albania, ACAC members participated in an USAID anti-corruption project, which included organizing a number of televised debates by youth, roundtables on campaign finance ethics, distributing flyers and brochures about anti-corruption topics.

A member of ACAC drafted a plan to supplement its legal aid clinic with a Citizen's Anti-Corruption Advocacy Office in Tirana. The office has already opened and is available to anyone seeking help.

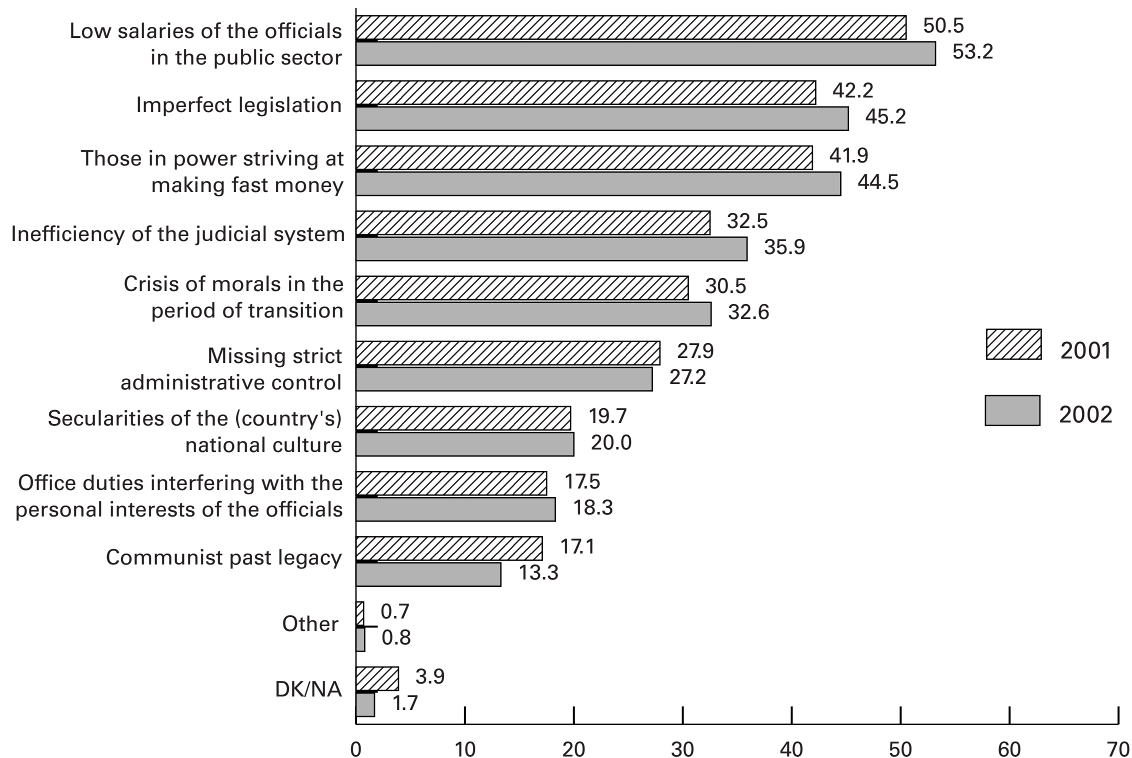
Despite the fact, that there are no **BiH** NGOs with an anti-corruption background, the OSCE-sponsored NGO anti-corruption meeting that took place in December 2000 signaled the readiness of the third sector to become involved in both monitoring and awareness activities. The BiH Chapter of Transparency International was launched in March 2001 and has been operating since countrywide. It is also a rare instance that a domestic NGO operates across the inter-Entity boundary line with a single central office and it includes individuals from throughout BiH, of all nationalities.

Work undertaken thus far mostly focused on awareness raising, either through reports produced, or a vivid media campaign on a broad range of issues as well as seminars, workshops and lectures given to students, general public or parliamentarians.

Through the TI network a number of model laws was acquired that were passed on to the authorities for consideration. Some of these are being built in the draft legislation, such as the prevention of conflict of interest, public procurement etc.

More recently, as a continuation of the awareness-raising campaign, TI BiH has undertaken a large study of perception of corruption and its results are currently being processed which will mark another major pre-election attempt to place corruption high on the political agenda and influ-

Chart 20: Factors influencing the spread of corruption in BiH



Source: SELDI Corruption Monitoring System.

ence the future executive and legislative power to combat this major social problem.

As a part of the internationally-led effort, involving primarily World Bank, but also EU and others to a lesser extent, a dialogue was launched between the public and the private sector to analyze various administrative barriers business faces when operating in BiH. The initial efforts were undertaken at the local level, but now the Entities in particular and the State to a limited extent are joining, according to the scope of responsibility within their mandate. This effort is at an initial stage. The stimulus for the process is the financial support of the WB, which conditioned some of its business infrastructure programs by a progress in this area.

Where such dialogue was undertaken at the municipal level, certain advances were noted, such as a quicker and less complex access to land, clearer and more transparent and less bureaucratic procedures to register sole proprietorships in the municipality as well as information on other type of business registration available on the spot (sometimes organized as one-stop-shops) and a less demanding compliance mechanisms management-wise.

The relative success of these initiatives at the local level have now prompted the higher levels of authorities to launch the same initiatives, but this time focusing on more substantial issues, such as taxation, business registration process, customs reform etc.

Once the bulk of humanitarian activities were over, in the immediate war aftermath, certain irregularities were noted in the work of the international and national NGOs dealing with the refugee crises. Waste disposal was often organized in the form of medical supplies etc. being the most obvious illegal practices in BiH. The accounting standards and the accountability of such NGO was disputable and it may never be known what

Independence of NGOs

A TI BiH public survey showed that only 11.1 percent of respondents think that corruption is widespread in NGO's sector. In answering the question "Who should combat corruption" respondents pointed in the direction of State agencies, the IC as well as the non-political NGO sector, which displays little confidence in the official authorities and a growing one for the non-profit sector.

extent of money laundering etc. was present in BiH during and after the war.

Lately, equipment and books of four NGOs financed from the High Saudi Committee for Refugees were seized in a FBiH police-led operation with a strong presence of International Police Task Force – IPTF and SFOR, following US intelligence reports of money laundering and illegal terrorism-linked activities.[55] This is more a result of the momentum reached for the global anti-terrorist campaign, than a continuous BiH and international efforts to combat corruption in the country.

Anti-corruption initiatives launched by **Bulgarian NGOs** generally face an essentially ambivalent attitude on the part of the state to the problem of corruption and to anti-corruption efforts. Both government and the National Movement Simeon II parliamentary majority are split between their eagerness to present themselves as the champions of anti-corruption and their understandable uneasiness about "intrusive" civic efforts to assess the seriousness of their own efforts and the effectiveness of transparency programs.

When compared to the previous parliament, however, both the Simeon Saxe Coburg-Gotha government and the 39th National Assembly appear more open to public-private partnership in countering corruption. In this context, a number of areas in the ongoing public-private partnership were intensified and have produced specific outcomes:

- First steps were made towards **successful anti-corruption cooperation between the executive and non-governmental organizations**. Experts from *Coalition 2000* took part in drafting the National Anti-Corruption Strategy. It contains a section devoted to anti-corruption cooperation among state institutions, non-governmental organizations, and the mass media. The document stresses the importance of "building up mechanisms and sound practices of partnership among state institutions, non-governmental organizations, and the private media in spheres such as public control over the activity of the administration; civil rights safeguards; self-regulation through the practical implementation of effective codes of conduct; initiating independent monitoring, and launching anti-corruption public awareness campaigns". The importance of the activity of anti-corruption initiatives such as *Coalition 2000* and Transparency without Borders is also noted. The improved communication between non-governmental organizations in the sphere of counteracting corruption and key representatives of the executive favors the creation of a sustainable mechanism for consultation and cooperation on a number of governance-related issues of public concern. However, at the present stage **public-private partnership in this area still tends to be of a sporadic nature** and largely depends on the good will of the respective ministers and their teams.

- The principle of **public-private partnership in reforming the Judiciary** is assuming increasing importance. This has reinforced the efforts of the Judiciary to intercept and sanction corrupt practices. One illustration of the possibilities in this respect is the Judiciary Reform Initiative, which joins the efforts of eight non-governmental organizations /see www.csd.bg/jri/.

- Within the frames of the third sector itself there emerged an even more pronounced **emphasis on the preventive function of civil society in addition to the awareness-raising component,** which was the initial focus of anti-corruption efforts. Thus a number of projects of non-governmental organizations are establishing specific mechanisms of private-public partnership aimed at curbing corrupt practices in various sectors of social life.

At a municipal level negotiating public-private partnership mechanisms has produced mixed results. Indeed, there was an even clearer differentiation of the attitudes of the local government representatives who had initially expressed readiness to participate in the *Coalition 2000* Local Government Transparency Program. The pre-election commitments made in this respect proved politically motivated and failed to bring about the creation of permanent mechanisms of public-private partnership or tangible anti-corruption measures within the frames of local government.

The shape and nature of civic participation in counteracting corruption continued to be largely determined by the activities of *Coalition 2000* and its founder NGOs together with representatives of state institutions and independent experts.

The **chief areas of activity** in this respect can be summed up as follows:

[55] Media articles in February-April 2002: *Dnevni Avaz*, *Glas Srpski* and *Oslobodjenje*, Sarajevo, 2002

- The **civic monitoring of corruption** continued, most notably through the regular publication of the *Coalition 2000* Corruption Indexes. Notwithstanding the absence of dramatic fluctuations in public attitudes and perceptions, the Corruption Indexes are increasingly perceived as important and are a commonly consulted source of information about the spread of corruption.

- Within the frames of the **anti-corruption public awareness campaign** non-governmental organizations and their experts continued to take an active part in fostering the proper public attitudes to help prevent corruption and reinforce the new values of transparency and accountability.

- The **consulting and expertise-sharing activity** of *Coalition 2000* on anti-corruption issues in cooperation with various state and private institutions and companies assumed growing importance. Representatives of foreign state and non-governmental organizations increasingly consult with *Coalition 2000* experts. Regional anti-corruption projects drawing on the experience gained in Bulgaria are also under way. An example is the South-East Europe Legal Development Initiative, which draws on the experience of *Coalition 2000* in corruption monitoring and assessment and enlists non-governmental organizations from a number of states in the region. In other words, ***Coalition 2000* is increasingly perceived as a model of successful mobilization of the efforts of the public and private sectors in the fight against corruption.**

- There was continued cooperation between non-governmental and business organizations in the process of working out joint mechanisms for assessment of the shadow economy and of trafficking, which are damaging both to society as a whole and to legitimate business.

- Efforts were sustained to build up a **consultative mechanism for the assessment and measurement of the gray sector generated by illegal trafficking practices and the related corruption of public officials** by initiative of *Coalition 2000.* These involved *Coalition 2000* experts, experts from private companies with a vested interest in curbing the shadow economy and more specifically, competition through illegal import of goods, and representatives of state institutions (customs, Ministry of Internal Affairs, Ministry of Finances, and others). With the help of comparative studies and a specially developed methodology, various data compilations are being compared, thus measuring the dynamics of the illegally imported goods and the approximate value of the corruption deals taking place during these operations.

- The **anti-corruption education courses**, introduced as experimental lecture series within the curriculum of Sofia University and New Bulgarian University, are gaining a permanent place in the curriculum. A number of other educational establishments have shown interest in this initiative.

- A number of **anti-corruption initiatives on a municipal level,** under the common motto Local Government Transparency, continued to develop by way of trial and error. The introduction of the local ombudsman institution and the alternative position of civic observer in a number of municipalities had mixed results, largely depending on the attitudes of the local government representatives and the local institutions of central power. The following conclusions can be drawn from these efforts:

- The most ambitious attempt was the joint initiative of the Sofia Municipality and the independent Center for Social Practices, which participates in the activities of *Coalition 2000,* to introduce the **local ombudsman** institution. The actual commencements of its activity, however, was delayed by a complaint filed in court. This came as further evidence of the vulnerability of such initiatives, which are unprotected by proper legal regulations.

- Definite progress was made in the implementation of other local anti-corruption projects (for instance in **Shumen** and **Varna**), despite the initial doubts, the activity of the **civic observers** in identifying the zones of non-transparency within the municipal administration assumed a more regular character and yielded identifiable results. Attention was drawn to the bureaucratic barriers impeding citizens from monitoring the course of their complaints and reports, as well as the lack of proper coordination between the various branches of local government. These problems lead to unregulated relations between citizens and officials and to increased corruption risk. Specific recommendations aimed at enhancing the accountability of municipal administrations were made.

- The attempt to introduce local mediators in **Pleven** proved unsuccessful. The newly elected mayor appeared committed to the goals of the anti-corruption campaign and Pleven was declared a corruption-free city, with the municipal administration allegedly supporting the introduction of the local ombudsman. Subsequently, however, the proper mechanism for interaction between the municipality and the local civil society structures was not established.

The civic observer institution is novel to the Bulgarian practice. Its activity and functions consist of the exercise of civic control and in providing independent expert assistance for the further development of local government reform and for guaranteeing the transparency and accountability of local government institutions. Its advantage is derived from the fact that it does not require additional regulation through legal or other instruments and can make the most of current laws on local self-government and the practices of openness and accountability of the various forums of local government that are already in place.

Coalition 2000 has highlighted the following priorities within the local anti-corruption initiatives:

- Providing assistance to intensify the work of the municipal councils and to make use of the existing legal framework to limit the possibilities for corruption pressure in the municipalities.

- Focusing efforts to institute real control over municipal council decisions on the part of permanent and ad hoc municipal committees.

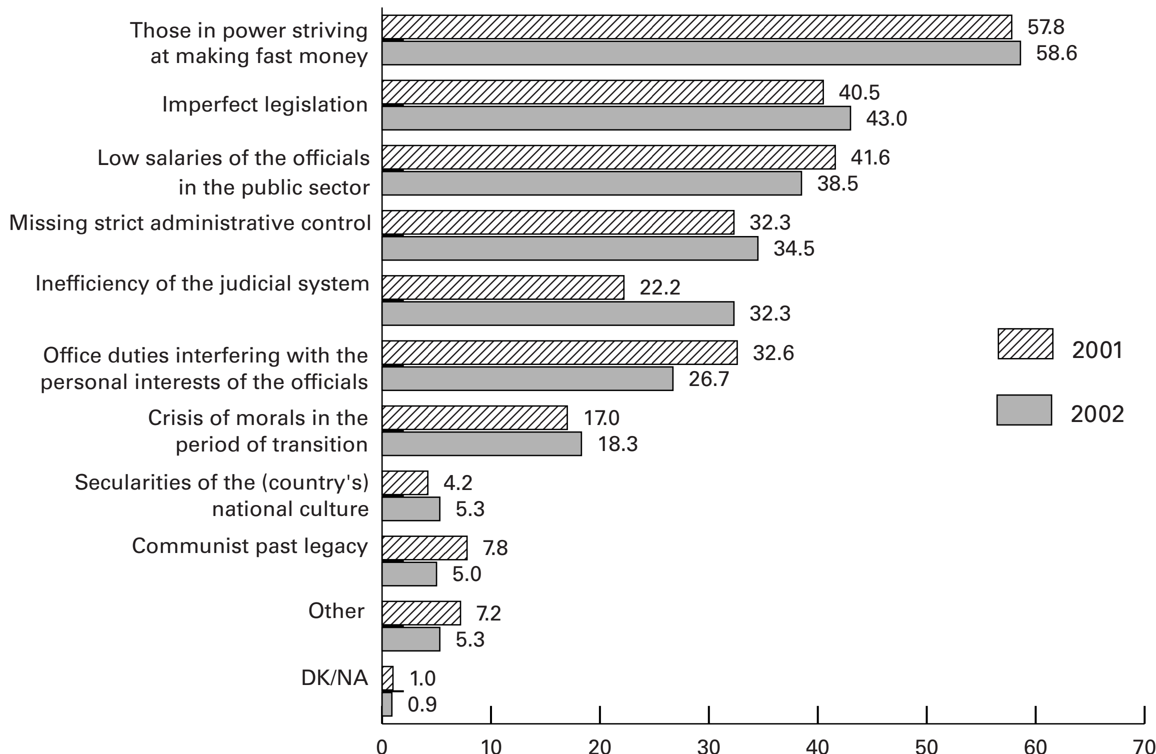
- Exercising civic control over the activity of municipal council members, including through the extension of regulations allowing for their removal from office in the case of abuse of power.

- Improving the ability of the municipal PR and information services to work effectively.

- Drafting proposals to eliminate ineffective mechanisms in the municipal administration, as well as the duplication of functions, and the blurring of the responsibilities of central, district, and local authorities.

- Supporting the adoption of legislative measures providing clear-cut legal and financial guarantees that ensure equal standing and

Chart 21: Factors influencing the spread of corruption in Bulgaria



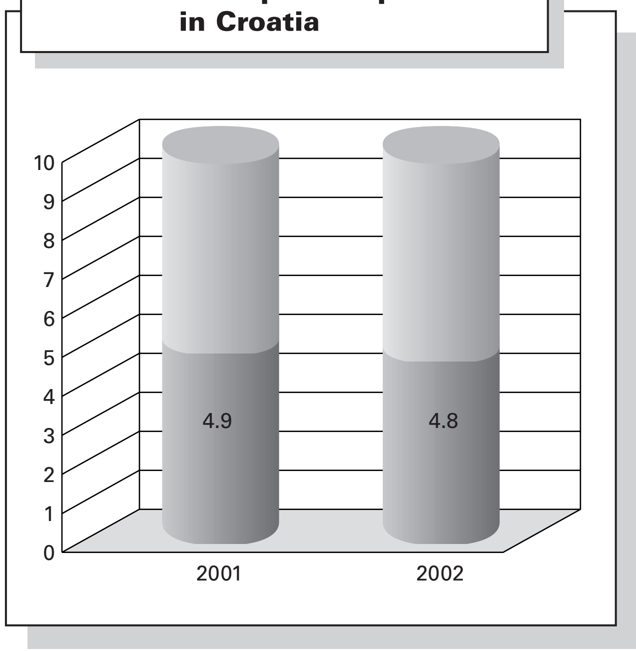
Source: SELDI Corruption Monitoring System.

independence of local government in line with the principles of the European Charter on Local Self-Government.

It must also be noted that **non-governmental organizations themselves continue to be liable to corrupt practices.** Little progress has been made in introducing codes of ethics in the third sector, which sustains public criticism of the activity of certain non-governmental organizations that enjoy forms of political protection and privileges.

The most important NGO-led anti-corruption activities in **Croatia** are related to awareness-raising NGOs like TI-Croatia and are active in informing the public about corruption threats, publishing and distributing leaflets, brochures, appearances of the members in the media.

The Croatian Government Office for Cooperation with Non-Governmental Organizations was established in October 1, 1998, with the goal of establishing confidence and promoting cooperation between the Government of the Republic of Croatia and non-governmental organizations operating in the country as two essential prerequisites for modernization and the development of civil society in Croatia. In order to democratize the relations and make its work transparent, the Office has: introduced a model of solicitation for tenders to provide financial support for NGO programs, published the results of the tender and organizes other important activities. One of the goals of the Office is to help any NGO that will deal with the fight against corruption.



Source: SELDI Corruption Monitoring System. This index registers citizens' assessments of the capacity (potential) of their societies to cope with the problem of corruption. Scores close to 1 correspond to optimism, those close to 10 to highest degree of pessimism and doubts about the potential of the society.

In year 2000, Transparency International Office Croatia was founded and one could be proud of the development it has made over this period. TI Croatia is preparing promotional leaflets and materials to explain briefly the notion of corruption, the mission of TI and suggest how every individual can help in its activities. Office experts have drafted law proposals (for example, Conflict of Interest Law), they have established contacts with governing and public bodies, with the international community as well as cooperating with similar NGOs (Association for Democratic Development - news on the road project and a TV show on national television). This all was and still is very important for this organization and for the Republic of Croatia. The continuous positive movement of Croatia on the Corruption Perception Index illustrates this rather well.

There is an NGO Association for the Protection of Victims of Corruption and Loan Sharking (Udruga za zastitu zrtava korupcije i lihvarenja).

A Regional Conference on Civil Society was organized by SPAI on 17-19 September, 2001 in Cavtat, Croatia. It brought together representatives of local civil society organizations, including media, businesses and trade unions, senior officials of participating countries, donor countries, as well as most of the major international NGOs and bilateral agencies having technical assistance programs related to anti-corruption issues and civil society. The main objective of the conference was to involve local civil society organizations, international NGOs and donors in a constructive dialogue and co-operation and to fully engage them in SPAI activities. The objectives of the conference were: 1) to discuss the involvement of civil society in the fight against corruption in countries; to this end, the US Government is currently holding consultations with local civil society experts in order to prepare an assessment report to be examined at the conference; 2) to address good practices in terms of patterns of interaction between the government and civil society organizations, including trade unions, business associations and media, and to share experience and ideas on formulating anti-corruption measures applicable to SEE countries; 3) to discuss the funding of specific projects for strengthening the involvement of civil society in the fight against corruption.

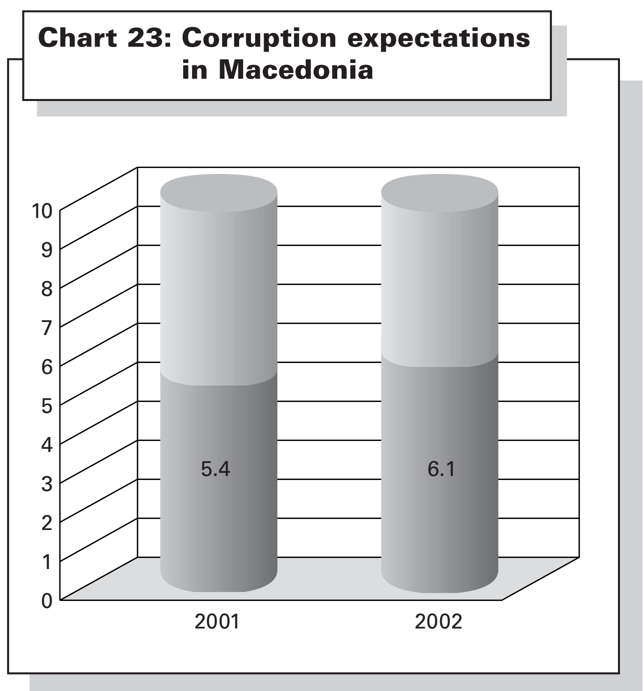
Very important (indirect) impact in fight against corruption was made by NGO GLAS '99 (Vote '99). GLAS '99 was formed when four major NGO coalitions, representing women, youth, ethnic minorities, and the environment, agreed to develop the campaign using democratic processes. Beginning in September 1999, the GLAS coalition coordinated a sophisticated and comprehensive campaign urging Croatians to vote (which would increase voter turnout) and creating the conditions for free and fair parliamentary elections in Croatia.

Anticorruption is one of the issues that the **Macedonian NGO** sector has worked the least on in the last ten years since the independence. The think-tank organizations that work on the reforms of the social and economic system and the achievement of standards of the European Union, from time to time tackle the issue of corruption, but do not treat the corruption phenomenon.

The reasons for the insufficient dealing with the corruption in the Republic of Macedonia by the NGOs (or at least not at the level it deserves) are numerous:

- until recently Macedonia lacked broader and sufficiently mature society consciousness for the need to curb the corruption;
- a small number of developed and profiled NGOs capable of taking on a treatment of as complex phenomenon as the corruption;

Chart 23: Corruption expectations in Macedonia



Source: SELDI Corruption Monitoring System

- insufficient number of highly professional personnel engaged in the work of the NGOs who could contribute in dealing with the corruption;
- avoiding the corruption issue which should be treated in the projects because of the "distinctiveness" of the topic and the possible reactions by the authorities;
- insufficient co-ordination and co-operation between the NGOs in the country;
- the donors' interest in financing projects is more oriented towards the interethnic relation, the human rights and the democratisation, and during and after the crisis towards projects related to displaced persons, reconstruction and confidence building.
- public opinion was mainly preoccupied with the international and interethnic relations, the economic transformation, the crisis in the region and in the country;
- the big absorption of personnel which could work in the third sector from the side of the foreign organizations.

An exception to the general rule is Forum - Centre for Strategic Research and Documentation within which framework also functions Transparency International - Macedonia. Until now these two NGOs have been the only ones in the Republic of Macedonia, which work on projects, which specific topic of interest is corruption as well the measures for its prevention.

In the last two years they have carried out or are still working on the following projects in the area of corruption:

- 2001 and 2002 public opinion polls within the framework of the Regional Corruption Monitoring System in cooperation with the Center for Study of Democracy from Sofia, Bulgaria;
- The need for the Drafting of the National Anticorruption Strategy in the Republic of Macedonia in cooperation with the OSCE Secretariat - the Office of the Coordinator for Economic Activities and Environment;
- The triangle cooperation among the Government, the international community and the NGOs on enhancing the anti-corruption activities in the Republic of Macedonia in cooperation with the Council of Europe;

One of the fundamental premises for a successful confrontation of corruption is the intensive and open public-private cooperation that in Macedonia is on a lower level than required. The reasons for that basically come down to the attitude of all the governments towards the NGOs that varies between ignoring up to insufficient readiness for cooperation as well as insufficient capacity of the civil sector, which need to impose itself as a partner to the Government.

However, there are grounds for optimism, because in the last few months part of the establishment shows signs of readiness for cooperation with the NGO sector, even on sensitive issues, such as corruption. Hence, the Ministry of Finance of the Republic of Macedonia on its own initiative asked Transparency International - Macedonia to monitor the examination of the authorized public accountants - audits. In doing that the Ministry provided the representatives of Transparency International - Macedonia with open access to monitor the process in each of the phases and with no limitations.

Apart from that there is a possibility Transparency International - Macedonia to monitor the privatization of the biggest public company in the Republic of Macedonia - the Electric Power Company of Macedonia. The Government shows certain readiness for this to happen. Having in mind the assessed value of this company - about 2 billion Euros, the experience from the privatization process in the country as well as the great political investment in the time of the elections, one could expect that the monitoring will be the key exam for the maturity of the civil sector in that kind of cooperation with the establishment.

Even greater reason for optimism is the fact that one may really expect that corruption and its prevention will soon become one of the leading topics of the public debates in Macedonia. The reasons are the lower threshold of tolerance of the citizens towards the illegal activities and the more clearly expressed pressure by the international community in regard to corruption prevention. Hence one could expect greater readiness of the establishment for corruption prevention and greater cooperation with the NGO sector, the media and the scientific circles.

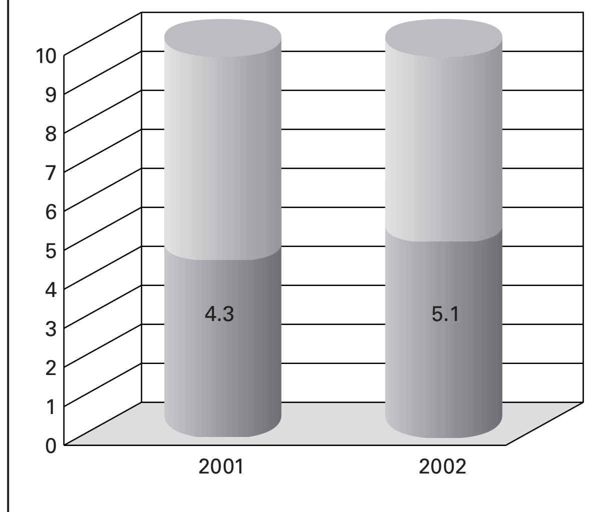
Since only the Government and the Parliament have direct authority in fighting corruption, the NGOs will have to impose themselves as partners and monitors of this process. In order to be able to do that, the NGO sector will need the support from the donors' community. Its support of the projects in the area of anticorruption, especially of those that would be focused on the preparation of the anti-corruption strategy of the country and the plan for its implementation should be greater and more courageous that it is now.

There are more than 2,000 non-governmental organizations in **Serbia**. At the end of the Milosevic regime, there was a real boost of establishing new NGO's. It was a form of gathering most of the anti-Milosevic oriented citizens, which played the major role in overthrowing the regime. Since democratic government came to power cooperation with the NGO sector has been considerably improved, which was not unexpected given that there was substantial cooperation among them while they were in opposition.

Anti-corruption office to the Ministry of Finance and Economy cooperates with the NGOs that are in one way or another, involved in fight against corruption. Their aim is to achieve higher cooperation of anti-corruption activities. There is approximately more than twenty NGOs that visited meetings organized by this department.

Most relevant NGOs that deal with the anti-corruption topics are "OTPOR" movement, Center for Liberal and Democratic Studies, Center for Management, Transparency International, European Movement and Center for Policy Studies, which have, so far, organized tangible anti-corruption activities.

OTPOR organized large anti-corruption campaign last year to increase the awareness on corruption issues. Campaign was followed by various activities on more than eighty locations throughout Serbia. Center for Liberal and Democratic Studies, has published the most complete analysis of corruption in Serbia, and presented both quantitative and qualitative results.(Corruption in Serbia, CLDS, 2001). Center for Management has focused on education and training activities as well as publishing and round table discussions on corruption. Center for Policy Studies is devoted to research and analysis of corruption problems. European Movement published various studies on corruption in specific institutions such as customs, police, health protection system etc. It has been active since 1992. There is no need for special presentation of the Transparency International since it has been a part of almost every anti-corruption activity in Serbia. It operates within the European Movement. TI has published National Integrity System study, which gives a different approach to analyzing corruption since it compared the opinions of independent experts and Government, and faced them on a round table discussion in addition. TI is especially



Source: SELDI Corruption Monitoring System

interested in development of the public procurement system, and it significantly participated in the improvement of the Public Procurement Law.

7.2. Media

As a general rule, the freedom of information and the freedom of expression are safeguarded under the post-communist constitutional and legal arrangements in the SEE countries. The new media in the Balkan region are more or less independent from the state, but dependent financially on their owners and sponsors. Political pressures on journalists, and more specifically on the media editorial staff still persist. Nevertheless, throughout the past few years private media and above all independent newspapers in a number of Balkan countries have developed a keen interest in exposing corruption scandals, often involving political figures.

Article 22 of the **Albanian** Constitution sanctions the freedom of speech, of the press, of the radio and television, and since 1999, Albania has also modern legislation concerning the freedom of information. In June 1999, the parliament adopted Law No. 8503, "On the Freedom of Information on Official Documents". Article 23 of the Constitution of 1998 has established the citizen's right to freedom of information. That Article provides the following:

- The right to information is guaranteed;
- Every citizen has the right, under the law, to receive information about the activity of state organizations and persons who exercise state functions;
- Every citizen can follow the meetings of collectively elected bodies

The basic principle of the law is that if a public official declines to provide a citizen with the requested information, such official should issue a statement explaining the legal basis for such decision. The law also envisages specific timeframes for refusal of a request for information, the satisfaction of the request, and procedures for the reinstatement of deadlines to be respected.

However, poor implementation has been a problem for the Freedom of Information Act. Several scholars argue that this is because no government agency has been vested with the specific and exclusive task of overseeing the implementation of the law. We believe that Ombudsman can do a lot in terms of raising public awareness as to the existence of the law and enable the people to avail themselves of the guarantees provided therein.

The Albanian press and media in general have made considerable progress during the transition years. Many newspapers, radio broadcasting and TV stations have been established. Although the number of the media entities has increased dramatically, their quality has not. It is important to mention that what is hurting media with respect to denouncing corruption is auto-censorship. Journalists are afraid to make public embarrassing documents because they are afraid that that might displease their publishers (who do not want to have trouble with politicians) who might fire them. The media in Albania are totally dependent upon financing, i.e. upon their owners. What is lacking in the sector is an investigative journalist capacity.

The current state of the media can be described as follows:

- Most of the actors are technically underdeveloped (in reference to the professionalism of journalists and the technology they use);
- The media remains financially dependent upon certain business lobbies;

- Media is a subject of political instrumentalization (which rises the issue of credibility of media)

The following steps are needed to create stronger, more credible and professional media in Albania:

- Establish and enforce a Professional Code of Ethics for Journalists. The ethics of the journalists is lacking, and corrupted people exploit them by encouraging distrust in media. One day, "facts" are fabricated for sensational sales, and the next day, the "facts" are denied in a small corner of the newspaper. For this reason, associations of journalists and their trade unions must collaborate to establish professional ethical rules in their activity.

- Train journalists in investigative journalism, especially on a **regional basis**. In this manner, the investigative journalists can create regional strata that strengthen their own channels of information and cooperation.

- Train journalists with basic economic concepts. Evidence in journals proves the need for journalists who cover the economy in media to learn fundamentals in macro and microeconomics.

- Conduct joint public-private training modules on the Freedom of Information Law. The advantages of training both sectors together cannot be overestimated. The Government Offices of Public Information continue to demonstrate their lack of awareness of the law. Strategically training them alongside the journalists who have tried to exercise the law may bridge some misunderstandings.

- Monitor the media for cases of corruption presented in them. Other members of civil society should work in a partnership fashion to ensure accuracy and to respond accordingly.

The International Community has been very instrumental in the reform of **Bosnia and Herzegovina's** broadcast media structure and regulation. The Office of the High Representative has considerable powers in relation to formulation of legislation, as well as overturning laws. The Independent Media Commission (IMC) was created in June 1998 by the then-High Representative Carlos Westendorp to introduce international standards into a post-conflict environment comprised of a deeply divided society where the broadcast media was traditionally dominated by the state and its associated factions. At the beginning of March 2001, the IMC was superseded by the Communications Regulatory Authority, which combines the competencies of the IMC and the Telecommunications Regulatory Agency (TRA).

Intimidation and harassment of journalists continue largely unabated in BiH. So too have attacks against them and their premises. Structural shortcomings also contribute to thwart vigorous journalism and the audiovisual sector is by no means exempt from such problems. Broadcasting outlets, for instance, suffer from endemic institutional susceptibility to political interference and various financial pressures. Politicians frequently use their clout to try to interfere with personnel decisions and other related matters, with varying degrees of success. A harsh economic environment has broadcasters struggling for survival.

Financial problems arising from the vagaries of a transitional economy are exacerbated by high levels of taxation and poor job security for those employed in the media sector. As in most former Communist countries, a major concern is the prevalence of self-censorship by journalists and the need to raise professional standards in general. Furthermore, some commentators have advocated judicial reform in order to depoliticize the courts in BiH and to make the judiciary more favorably disposed to freedom of expression issues.

BiH ratified the International Covenant on Civil and Political Rights (ICCPR) in 1993 (by succession). It is about to become a full member of the Council of Europe in May 2002, but it has enjoyed the status of Special Guest to the Parliamentary Assembly of the Council since 1994. It ratified the Framework Convention for the Protection of National Minorities in February 2000 and this Convention entered into force in June 2000.

Paragraph 3(h) of the Constitution of BiH (1995) explicitly mentions freedom of expression as one of the human rights and fundamental freedoms enjoyed by all persons within the territory of BiH. This right is underpinned by a number of other constitutional provisions. Paragraph 7, for instance, states that BiH shall remain or become a party to the international agreements listed in Annex 1 to the Constitution. These Conventions include several with provisions on freedom of expression, such as the ICCPR, the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities.

Access to public information – legal provisions and current practices

Freedom of Information Act was adopted by the State and the Entity parliaments in 2001. It allows for a public access to a wide range of information and the journalists have since been receiving training, both in legal terms (as provided by ABA-CEELI) and in practical, investigative research (supported by the BBC School of journalism, USAID's IREX and Open Society Fund).

Nevertheless, much work remains to be done particularly in training the journalists, since there is a clearly visible lack of professionalism and understanding of the media processes. Most journalists had no prior training and are only just starting in this field. This is why the reports often lack in-depth analyses, coverage beyond the official statements and press conferences and other ready-served materials.

Provisions for disclosure of financial standing of officials is also a subject of the election legislation, which was described earlier in the text.

Libel laws and other sanctions used to restrict the independence of journalists

In addition to the lack of professionalism, various other restrains are present in the work of journalists. It has little legal foundation, except for the ownership of the state media, particularly TV and radio, where their influence is still exercised. In case of all other media, they are mostly restricted either by the owners, or financiers or often combined. As journalists themselves often claim, the foreign donor that funds a magazine, does not like seeing any damaging reports on the government of its origin. More often even, they pay for articles, i.e. advertisements for certain parties that are considered to their liking. This is mostly not on a article-by-article basis, but by permanently funding certain publications, periodicals with a particular political current.[56] There are articles that will never see the light of the press, which are being dismissed much before their publishing.

Trends in corruption coverage in the media; exposure of grand corruption in the media

Rather vague and often counterproductive, due to the lack of clear evidence and in-depth examination. It is not uncommon that the media from another regional neighbor and primarily Croatia and Serbia write about cross-border affairs that are grand in scale and as a rule involve the BiH politicians. Then certain superficial follow-ups are being composed by the local press.

It is rather unfortunate that media as a useful anti-corruption tool is rather impotent and not adequately staffed, trained and paid and it is from this perspective one should observe lack of decent grand corruption coverage in a country where it clearly exists.

Reprisals against journalists and editors caused by corruption exposure and publications.

Monitoring has proven that old habits die hard. One of the innovations of the work of the OSCE Department of Media Affairs in BiH has been the establishment of a help-line for journalists to report threats against them or threats to media freedoms. The OSCE Free Media Help Line was launched in November 1999 and in the first year of its operation, it registered a total of 138 cases. Forty of these cases were from RS and 98 from the FBiH. The category of people from which most of these threats or perceived threats originated was government/public officials (35.5 per cent). Anonymous threats constituted 20.3 per cent of the reported cases.[57]

Measures to curb corruption in the Media/Codes of conduct for journalists

Codes of conduct for journalists have not yet been introduced and at present there are no efforts to provide for these in practice.

With the political changes resulting from June 2001 parliamentary elections, the **Bulgarian media** face a new situation:

- There has been a **rise in public and political interest in the exposure of political corruption among the representatives of the former government of the country**. In this new context the media have largely concentrated their efforts on carrying out into public information.
- The media are making a major contribution in **interpreting the specific disclosures incriminating high-ranking government officials**. In this respect the leading journalists are giving credibility to deep-seated public concerns and moods by publicly showcasing issues of corruption, and therefore allowing

[56] Interviews of TI BiH with BiH journalists conducted in July-August 2001

[57] Web site: (http://www.seenapb.org/legislation/default.htm)

knowledge of past abuse to rise to the level of mass consciousness.

- At the same time, **investigative reporting still confronts serious financial, political, and legal obstacles in the pursuit of its mission.** Reason for hope is found in the efforts of the 39th National Assembly to adopt a new Law on the Access to Public Information, which is to allow greater transparency of state institutions and to therefore facilitate the work of reporters.

The considerable rise in media interest in corruption-related issues had the following characteristics:

- The subject of **"political corruption" was at the center of public interest.** What is more, the publications dealing with this phenomenon revealed specific situations and referred to familiar public figures. Dozens of publications in the national press referred to the initiated investigations, initiated against former ministers and MPs under charges of various forms of abuse of office and discretionary power. Interest in corruption-related issues is sustained by the new government's resolve to shed full light on the acts of the former ruling majority, including though the publication of a White Book on instances of abuse in the respective state agencies and institutions.

- Recent developments following from media disclosures have occurred over the past few years concerning corrupt government officials. Preliminary court proceedings were initiated following several journalistic investigations, cases which have **boosted public appreciation of the journalistic contribution to the efforts to counteract corruption.** The first half of 2002 was marked by an increasing number of **publications/broadcasts focusing public criticism on the "soft" forms of corruption: trade in influence, conflict of interests, and other forms of abuse of public office.** Clientelism has become a key term, especially in the period since June-July 2001. The frequency of its recurrence is about four times higher compared to the same period of the previous year. Kinship terms ("cousins") are also highly recurrent in the press publications with reference to the same phenomenon.

Specific schemes of legal, but unethical, privileging of those in power have been exposed:

- The system of selling state-owned apartments to high-ranking government officials at prices far lower than current market ones, which has been inherited from the communist past.

- The practice of including high-ranking government officials in numerous boards of enterprises in which the state has a stake.

- Improper lavishness and excessive official expense accounts of public officials.

A **new "balance of power" between the government and the media has appeared,** which has the following dimensions:

- The media did not abide by the rule demanding three-months of tolerance and started criticizing certain pro-corruption actions of representatives of the new ruling majority from the very first days of its formation. Thus there was not any initial tabooing of critical publications and programs, as had been the practice upon each previous power shift during Bulgaria's transition.

- The **public debate, which took place in, and through, the independent media, was ideologically unencumbered and largely perceived as an expression of civic rather than political, interest.**

- The anti-corruption subject is increasingly considered in the context of the debate on the **need for a new political and governmental culture and further administrative reform** aimed at overcoming the etatist model.

- This context favored **a more active role of the civic organizations specializing in the safeguard of the freedom of journalism** and they declared their resolve not to allow the reemergence of clientelism in government/media relations. Once more the emphasis fell on the prevention of political abuse rather than free speech and the public interest.

- The above considerations, however, do not rule out the risk of renewed restriction of the access to public information coupled with censoring in the public electronic media, as the

new government consolidates its position in power and takes over the levers of information control. The reticence and/or inability of certain representatives of the new majority to communicate with the media demonstrated so far sustains **concerns about a possible establishment of a new status quo in government/mass media relations which may not be conducive to transparency and accountability**.

It can be noted in conclusion that the tendency towards intensifying anti-corruption pressure by the media over the public sphere for greater transparency and integrity will in all likelihood remain as a permanent characteristic of journalistic behavior in the coming months and years. This trend is positive because it will lead to greater accountability for those in power.

Among many other existent weak points in **Croatia** is the lack of a Freedom Of Information Act, which urgently needs passing. The drafting of a law on Freedom of Information, foreseen in the Transparency Croatia action plan, has been completed and a series of seminars are being organized by TI-Croatia on corruption and the role of the media to raise public awareness and strengthen media involvement in the fight against corruption.

The multiparty system, democracy and the fall of former socialist political regimes have brought a kind of liberalization for most print and electronic media. On the one hand, numerous lively, independent, private print media started to increase circulations, capturing the market; at the same time, the highly influential electronic media are still in the hands of the ruling parties or coalitions in almost all transition countries, and the term "public radio and TV stations" is used instead of the term "state run radio and TV". In their competition for readers, strengthened by the survival instinct, the editors of weeklies and/or some dailies have resorted to certain always-timely journalistic practices in presenting reality. Such practices are far from the professional standards of decent journalism and ethical norms and codes, careless of the protection of human dignity, far from facts – and, finally, close to untruth. The use of long headlines (for example, even more than 29 words), "fast investigative journalism" with numerous unchecked facts, stories that have nothing in common with the headlines, all these are a product of new democracy that followed the fall of communism. The media scene split into two parts: one part in which most media were completely under government control and thus supportive of the ruling party, and the second part that featured a few media in opposition to the HDZ (in power in the previous Government). The first group of media comprised almost all the national dailies, Croatian Radio and Television and some weeklies; the other group of independent media were represented by the weekly *Feral Tribune*, the monthly *Arkzin* and the daily Novi list. In between these two main groups were the strong independent weeklies *Globus* and *Nacional*. The owners and editors of these weeklies started a new trend in Croatian journalism – sensationalism, exclusive news, and the so-called "fast investigative journalism". *Globus* and *Nacional* both became very popular because they both published sensational news from political life and uncovered numerous cases of corruption. These two privately owned magazines have been publishing stories based mostly on "sources close to government" or "sources that wanted to stay anonymous" or gossip. Their circulations are still pretty high, somewhere between 70,000 and 90,000 copies each. Under present conditions – the battle for circulation, an unshaped public opinion, and the lack of a civil society – it is impossible to expect real investigations. It is better, then, to use the terms *fast investigative journalism* and sensationalism.

Readers mostly believe the mass media and the many articles about corruption, but the effects of these investigations have been almost negligible. Nothing serious in Croatia ever happened after any sensational story on corruption in the former Croatian government, none of the highly positioned politicians has been under any real pressure of public reaction, after the published story, to leave his or her post or well paid state job. Very often anonymity of sources and some evidently unchecked facts ruined the entire effect. In short, there has been a shortage of quality journalism. But, it is also true that numerous facts have been publicly revealed to the people about the dirty jobs and corruption in the Croatian state during the Tudjman period. At the elections on 3 January 2000, the former party lost its political power. The media surely helped in this historical change. Probably due to the rigid Tudjman political system in the last ten years, the journalists of the independent newspapers practiced a journalism similar to that of their colleagues in the controlled press. These authors believe that the Croatian journalists who worked for independent weeklies offered one-sided stories and looked for a chance to attack the ruling party by investigating their misdeals, scandals and failed decisions. Linger-

ing state pressure even on the privately owned media is still a serious problem. Journalists who criticized the regime of former President Tudjman found themselves faced with surprise tax inspections, shut out of the national distribution monopoly, or cut off from the national airwaves (World Bank, 2000). The media situation in Croatia has changed a little after the change of government after the election of 3 January 2000. Still, Croatia is faced with similar approach to fast investigative journalism, but instead of the numerous state media from the Tudjman era, now there is only the most powerful state medium - Croatian Television. At the moment, Croatian Television is passing through the painful and slow process of transformation into a genuinely public television. Croatian Television has a monopoly among the electronic media: there is no single other strong television able to compete with it. Most of journals and public televisions have accepted the ethical norms in written form.

The media in **Macedonia** is characterized by a significant legal freedom in its operating, relatively big number of media in regard to the size of the population, small and linguistically divided market. As a result most of them are faced with problems in the area of profitable operating and some of them hardly manage to survive. Some of them depend on additional financing by the political parties and the business community.

The right to freedom of speech and expression are guaranteed in Article 16 of the Constitution of the Republic of Macedonia, which among others in the area of information unambiguously guarantees freedom of speech, public address, public informing and free establishment of institutions for public informing. Having in mind that there is no law on media or any other law that could be limited to that right, the media in the Republic of Macedonia enjoy relatively great degree of freedom of speech and expression. In 2001 the government drafted a law on media that was assessed as restrictive and as a result incited harsh reactions among the media and the intellectual circles after which it was withdrawn and until today there has not been another attempt for legal regulation of this area.

The freedom of information is significantly limited with the lack of access to information that creates conditions for non-transparent operating of the state and public services. Regardless of the constitutional guarantees for free access to information and the freedom to receive and pass information, this right cannot be easily achieved since it is not regulated by law. The openness of the state institutions often depends on the will of the leading persons of the state institutions, their personal qualities and democratic orientation. Generally viewed the institutions in the Republic of Macedonia are not open enough for cooperation with the media. There are always favored media and the selection depends on the closeness to the ruling parties.

The Constitution forbids censorship, but this does not prevent the attempts to influence the media that are not inclined towards the authorities. In the ten years of independence there were cases of financial control in the media or pressures on their owners by creating problems for their other businesses. A special kind of gaining inclination by the media is the allocation of financial means to assist the independence of the printed media, which is carried out by a commission appointed by the Government of the Republic of Macedonia. The funds are allocated once a year with no strict criteria and it regularly incites disapproval among the media, which did not get any or enough financial assistance. Some of the unsatisfied media consider this allocation of funds as kind of reward for the media close to the authorities or “soft” pressure.

Corruption, especially the so-called “grand corruption” occupies significant space in the media, especially related to the corruption affairs that involve the higher circles of the establishment. Because of the race for a greater auditorium, in greater number of media the sensational articles dominate, which lack analytical approach, supported by facts and documents. That trend is due to the insufficient access to information, based on indirect sources of information, as well as on lack of experience and tradition in research journalism. The reason for that is the editing policy of some of the media, which because of the dependency on a direct or indirect (through ads) support are influenced by political and business circles.

That orientation means insufficient principality in the treatment of the corruption activity - some media keep quiet about the activities of the political option to which they are close or they harshly criticize similar activities when the other political party was in power. Of special concern are the “ordered” articles - writing about corruption topics for the needs of the political and the business circles that makes space for the development of one of the most negative things in the media - “racket journalism”. There are media that base their editing policy on the “market logic” - com-

promising articles on those persons and companies that are ready to pay and vice versa.

One of the tickling topics in the journalists' circles is the influence on the journalists and the media. The low salaries of most of the journalists, the uncertain future of some of the media on one hand and the power and the finances of the politics and business on the other create an opportunity for corruption in the media circles. Until now apart from the unconfirmed speculations of small number of media, there are no specific information or affairs on corruption of the editors or journalists.

What could improve the situation in the media regarding all these - a well organized professional association, that would process and take care of the compliance with the journalists' codex, is not on the required level. The journalists' community lacks unity and consensus on many important issues and in such a situation the corruption in the media is not on the highest level of priorities of the journalists associations.

The main shortcoming in the treatment of corruption conduct of the media is the one-sided treatment of this phenomenon - they report only about corruption and not the anticorruption, i.e. the ways it could be prevented. In reality the media lack journalists that are able to write about corruption. Neither the Government, nor the civil sector has organized until now education of the journalists for better coverage of corruption that would help go beyond the current superficial treatment by the media.

Such coverage of corruption - without sufficient facts and expert knowledge - does not create a feeling of familiarity of the establishment for deconspiracy of the corruption activities. The public debate still does not have the crucial influence on starting political or criminal responsibility. These are the main reasons because of which there has been no registered cases of undertaking measures against the journalists or the editors because of their coverage of corruption.

The media together with the NGOs will play a key role in preventing corruption in the Republic of Macedonia. Hence the media will have to redirect their editing policy more towards the essential analytical and expert treatment of corruption, by offering specific solutions on its prevention and pressuring their implementation.

The Constitution of **Serbia** guarantees the freedom of speech and press (Art. 46). However, before October 2000 a severe Government oppression of media was obvious. There is no official data about media in Serbia. Only valid source of information is the Guide through the Yugoslavian Media, which has been done by the Public Agency for Media Research and PR. According to them, Yugoslavia has 1,371 media, but unofficially Serbia has 1,200 electronic media.

One of the pre-election promises was: guaranteed media independence, and development of new legal frame for media operations. This includes development of Public information and Broadcasting Law. Drafting of new Public information Act and Broadcasting Law was transferred to the non-government sector.

Broadcasting Act is in the final phase of preparation. Discussions about this law are finalized and it is expected that it will be discussed in the Parliament. Law draft supposes the establishment of the Serbian Broadcasting Council (SBC), which will monitor the freedom of the media. "In legal terms, the SBC shall be a separate entity, functionally independent from any state body whatsoever, as well as of any organization or person involved with production and broadcasting of radio and television programs and/or related activities". General competences of the SBC described in Art. 7. are:

- Observe that the provisions of this Act are respected;
- Plan a strategy for broadcasting enhancement in the Republic of Serbia;
- Grant broadcasting concessions;
- Pass by-laws and other general rules binding on the broadcasters, and aimed at defining and implementing the broadcasting policy in the Republic of Serbia;
- Monitor operations by broadcasters in the Republic of Serbia;
- Appoint members of managing boards of the public broadcasting service institutions in the Republic of Serbia and its autonomous provinces;
- Decide on complaints submitted by common and legal persons, and broadcasters' objections related to broadcasting operations;
- Provide its opinions to competent state bodies concerning the FRY's joining international broadcasting conventions;

- Pronounce sanctions on broadcasters pursuant to this Act;

- Carry out other duties it has been assigned under this Act;

As far as Public Information Act is concerned, the draft is ready. Public discussion about this draft is ongoing. Independent union of journalists participates in the development of this Act. It is expected that this Act will be adopted in a period of two months. This Act regulates rights of citizens to public information as a part of the freedom of expressing opinions, as well as rights and obligations of journalists.

Serbian Government through its project "Open Government" posts all documents on its web site www.srbija.sr.gov.yu (except for secret ones), in attempt to increase the transparency of its work.

There is almost no investigative journalism present in Serbia. Most of corruption articles that are published are connected to the activities of the previous regime. The reasons are insufficient funds and deficiency in training. Alongside with the Serbian Government and Secretariat for Information, an SOS line has been created for journalists receiving threats.

VIII. INTERNATIONAL COOPERATION

A succession of regional conflicts in the past eleven years has brought the countries in the Southeast Europe to the pressing necessity to rethink not only their strategies for development but also their relations with neighboring countries in a region-wide context. The commitment of the international community to a radical and comprehensive long-term program for stability and development in the Balkans provides a unique historic opportunity for the local communities. The regional crises of the past few years obviated the importance for comprehensive regional measures in two major ways:

- By emphasizing the need for going beyond country-specific efforts towards region-wide cooperation networks, particularly as regards issues of democratic governance. The importance of the NGOs in such networks in addressing cross-country problems in a comprehensive manner has further expanded the role of civil society;
- By emphasizing the need for a regional mechanism for assessing the effectiveness of international stabilization and recovery assistance. The success of reconstruction efforts depends to a large extent on the ability of national governments and their public administration to implement stability and reform policies. A high level of inefficiency and corruption of public administration may jeopardize the provision of large-scale financial assistance to the region by distorting its impact.

A number of reasons have kept corruption low on the priorities of international organizations prior to the mid-90s. Among these, and relevant to our analysis, is the consideration of corruption as an issue closely linked to domestic politics and thus not appropriate for development of assistance targeting. This is important to note, as similar considerations could still compromise the effectiveness of growing momentum of international anti-corruption cooperation.

Once there is universal international consensus that a particular issues belongs to the core of development concerns, diplomatic considerations of non-interfering in domestic politics seem to diminish. In the field of corruption this process has been spearheaded through the adoption of a number of international conventions – notably those of OECD and the Council of Europe. Good governance has emerged since as a preoccupation for both developed nations, concerned with maximizing economic growth, and thus sensitive to corruption in international trade, and for developing countries tackling poverty and weak institutional capacity. Nevertheless, there is still little – with the notable exception of US assistance in Yugoslavia – anti-corruption conditionality in international donor help to the countries in the region.

Common programs between international organizations and encouragement of public-private partnership – both locally and between international institutions and local NGOs - are a way of circumventing the traditional diplomatic considerations facing international agencies when addressing politically sensitive issues of corruption in the national administrations. Even the best government assistance program by international donors is no substitute for developing the country's institutional infrastructure, enhancing the public's trust in institutions and empowering civil society.

It is notable that there are no regional efforts initiated by and prioritizing cooperation among the countries in SEE on development of joint measures to address cross-border corruption. Little effort is also made at the governmental level to encourage linkages between national anti-corruption programs.

Further, national anti-corruption programs need international assistance to be effective but equally, if not more importantly, they need to generate and respond to local civic demand. Thus international institutions, governments and civil society should all be considered when evaluating the impact of international anti-corruption cooperation in SEE.

The understanding that the adoption and implementation by the SEE countries of international legal instruments and their inclusion in the work of international fora in this area is largely sufficient at this stage of development is shared by both international agencies and regional governments. These efforts are, however, sometimes compromised by "variable international institutional geometry" in the region – countries belonging to different international organizations and processes which determine varying levels of engagement and interests.

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On the wake of 1997 social unrest, the government of **Albania**, which came out of the mid-year elections, launched an anti-corruption initiative with donor support, the World Bank being the lead organization. First, it was designed as a program to fight corruption. This government's program was broad and comprehensive, including more than 150 specific measures in the areas of economic policy, rule of law, public administration, procurement, audit and public awareness. Implementation of the program to date has been mixed at best, due to a variety of factors. The political leadership itself was not free from the charges of corruption. The public sector was one of the only sources of patronage for the newly elected Socialist Party coalition, creating political constraints on the reform. There was no unbiased forum of "last resort" since enforcement agencies and the judiciary were incapable of functioning properly and were themselves burdened by allegations of corruption. The Prime Minister changed three times within a two-year period. Another problem was the Kosova crisis in 1999. The crisis made corruption issue a second hand priority for both the government and donors.

There also is in place an anti-corruption initiative under the Stability Pact. On 18 and 19th of December 2000 in Strasbourg the first meeting of the leading team for the Anti-Corruption Initiative of the Stability Pact for Southeast Europe was held. Albania presented in that strategy the revised Anti-Corruption Matrix as a governmental strategy.

Bosnia and Herzegovina's unique constitutional status determines a special type of relation to international anti-corruption cooperation. Both Entities have prepared a set of anti-corruption legislation and large-scale alterations of the existing laws, which is a continuous process. These laws are being prepared in close co-operation of the Entity Ministries of justice and the international institutions together. The aim is to ensure their mutual compatibility.

All legislation should engulf the provisions of the relevant international conventions, as well as the recommendations of the Ministers of Justice Conference (1994) and the Programme of Action Against Corruption adopted by the ministers of the Council of Europe (1996). Support of international institutions is expected in seeking the adequate solutions and their harmonization with the internationally recognized practice.

The UNMIBH Mandate Implementation Plan (MIP) is a consolidated strategic and operational framework for the completion of UNMIBH's core mandate in Bosnia and Herzegovina by 31 December 2002. On the basis of the relevant Security Council resolutions (SCR), the MIP identifies the objectives of the mission and the programs and modalities that will be used to achieve those objectives. UNMIBH's mandate is derived from the following SCR's and is extended to:

- monitor, advise and train law enforcement agencies;
- monitor the investigations of, or to independently investigate human rights abuse committed by law enforcement agents/agencies;
- implement civilian law enforcement aspects of the Brcko Arbitral Award;
- provide specialized training to the local police in areas of drug control, organized crime and incident management;
- monitor and assess the court system and contribute to overall judicial reform efforts coordinated by the Office of the High Representative.
- continue with the tasks set out in Annex 11 of the GFAP, as well as the Conclusions of the London, Bonn, Luxembourg, Madrid and Brussels Conferences and agreed by the authorities in Bosnia and Herzegovina.

UNMIBH's role is to assist the parties to establish the foundations for effective, democratic and sustainable law enforcement agencies. This requires action at three levels: the individual police officer; the institutions of law enforcement; and the relationship between law enforcement agencies and civil authority and society. The specific and realizable goals UNMIBH has established for its work constitute a comprehensive approach to all three levels.

UNMIBH's goals take into account the legacy of the war, current political conditions, rational expectations of the population, local policing traditions and the aspirations of BiH to join the European family of nations. Progress towards attaining the goals is bound to be affected by the actions of other members of the international community, pursuant to their respective mandates. However, overall success in meeting and sustaining the goals will be determined by the cooperation of the local leadership and, especially, the willingness of police personnel to perform their duty.

At the PIC Conference in Bonn in December 1997, the PIC called on the OHR to design a strategy to combat corruption, fraud and diversion of public funds. There was growing concern about the level of corruption in Bosnia and Herzegovina. As a result, the Anti- Fraud Unit was established, which later became the Anti-Fraud Department (AFD).

The AFD assists local authorities in identifying and prosecuting illegal activities, following court cases through all phases of the judicial process, and strives for the resolution of systemic problems through reforms of the legal and judicial systems. Additional priorities include the drafting and passage of anti-corruption legislation in accordance with international standards, increased transparency in government procedures, and a strengthened civic society involvement in anti-corruption initiatives.

The AFD has drafted a comprehensive Anti-Corruption Strategy for Bosnia and Herzegovina, which was approved by the Steering Board in March 1999 and is being implemented by the AFD and a dozen international organizations in cooperation with the BiH authorities. The supporting international agencies include IMF, the World Bank, the European Commission, CAFAO, USAID, IMG, INL, OSCE, IPTF, and SFOR.[58]

The World Bank approved a US$11 million equivalent (SDR 8.7 million) credit for the Trade and Transport Facilitation in Southeast Europe Project (TTFSE) in Bosnia and Herzegovina (BiH) that will foster trade by promoting more efficient and less costly trade flows across the borders in Southeast Europe and provide European Union-compatible customs standards on February 22, 2001.

The project will reduce non-tariff costs to trade and transport and reduce smuggling and corruption at border crossings. The project is the sixth to be approved in a regional program for TTFSE that will strengthen and modernize customs administrations and other border control agencies in BiH as well as in Albania, Bulgaria, Croatia, FYR Macedonia, and Romania. The program is a result of a collaborative effort among the governments of these countries in association with the Southeast European Cooperative Initiative (SECI), assisted by the World Bank, the European Union, and the United States.

Bulgaria's attitude towards international anti-corruption cooperation in the region of SEE has been marked by its effort to separate EU accession efforts from the regional context. Thus, the previous government tried to play down the importance of such cooperation, while the succeeding one is indicating its appreciation of the international dimension of domestic anti-corruption efforts.

Admittedly, there was a proliferation of international initiatives aimed at monitoring the progress of transition countries, particularly those in Central and Southeast Europe to combat corruption. Most of these initiatives did not account for other existing mechanisms or the other international institutional affiliations of a given country and there has consequently been little in terms of coordination among these initiatives.

The UDF government (1997-2001), however, misinterpreted the enhanced international concern with corruption in Bulgaria and distanced itself from a number of initiatives. Notable examples were its attitude towards the Stability Pact Anti-Corruption Initiative and its failure to send a government delegation to the Second Global Forum on Fighting Corruption and Safeguarding Integrity held in the Hague in May. The Forum was a follow up to the first meeting hosted by the then US Vice President Al Gore in 1999 in Washington. The country also did not participate in the consultative meeting of the countries of Central and Eastern Europe and was not included in the Joint Position of the Participants at the Consultative Meeting of CEE Countries on Fighting Corruption, adopted in preparation of the Forum.

The apprehension of the government reflected a particular dilemma that it faced in 2001. On the one hand, it was rightly concerned about the international image of the country and the promotion of the success of its reforms. To be sure, there is a possibility that what is domestically an awareness campaign aiming to sensitize policy makers and increase public intolerance by emphasizing corruption issues in the public debate, internationally could be interpreted as deteriorated governance, thus mistaking the symptom for the disease. Nevertheless, the Corruption Perceptions Index published annually by Transparency International, points that enhanced corruption awareness in Bulgaria has had exactly the opposite effect –Bulgaria climbed from 67 (out of 85 countries) in 1998, to 47 in 2001, and 45 in 2002 (above the Czech Republic).

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[58] OHR's website on AFD (http://www.ohr.int/ohr-dept/afd/)

The UDF government, however, failed to appreciate that mainstreaming corruption both into public debate and government policies is an important condition for building trust among the international community towards the country. Although the government might have had some legitimate concerns about the approach of the international community in this area, its diplomatic awkwardness was counterproductive in trying to persuade Bulgaria's international partners in its anti-corruption credentials.

In particular, during the first half of 2001, the Bulgarian government voiced concerns both about the general role of the Stability Pact and its effectiveness, as well as about the role of Bulgaria. Several arguments were put forward:

- That Bulgaria needs to participate as a "resource", rather than a "beneficiary" country in the Stability Pact Anti-Corruption Initiative (SPAI);

- That there is a contradiction between the scope and genesis of the problem – corruption bred by political instability (meaning that this pertains to area of the so called Western Balkans) – and the platform for solving, namely all of SEE countries, including those on EU and NATO accession track;

- That the Pact and SPAI do not account for the widely varying levels of development and do not distinguish between countries contributing to and those undermining stability;

- That Bulgaria is already participating in a number of monitoring procedures that include assessment of corruption (GRECO, EU regular report, OECD convention, etc) which makes SPAI monitoring redundant. For example, in July the government pointed out that Bulgaria should be part of SPAI only through the fulfillment of the criteria of the Justice and Home Affairs chapter of its accession to the EU. Whether these arguments had aimed at exerting additional pressure with respect to lifting the Schengen area visas for Bulgarians, is a matter for another discussion.

Thus, the government faced a dilemma with the anti-corruption efforts of the Stability Pact. On the one hand, it worried that being linked to the stabilization agenda of the Western Balkans, including in the field of anti-corruption, could slow it down on the road to the EU because of shifting priorities and diverted resources, particularly in the public administration. This was particularly relevant from the point of view of the tangled web of overlapping monitoring procedures the government was referring to. On the other, the Stability Pact is an important platform for dealing with continuing instability and security risks, which undermine democratization and diminish already low investor confidence. More importantly, the Pact was a very good opportunity for attracting support and investment for crucial regional infrastructure projects which Bulgaria's future depends heavily on.

Balancing involvement in regional cooperation initiatives, particularly in sensitive areas such as anti-corruption, with an accelerated EU accession process would not be an easy task for any Bulgarian government. The government will, however, always bear the burden of responsibility for convincing Bulgaria's international partners that EU accession is not being used as an excuse for disengagement from joint measures against problems with as many cross-border roots as those present in the Balkans.

Croatia has been putting significant efforts into joining international anti-corruption cooperation. The country has acceded to the Global Programme of the United Nations against corruption (UN Global Programme Against Corruption). A delegation of Croatia has been actively participating in the work of the Ad Hoc Committee of the General Assembly of the UN for Drafting the Convention Against Transnational Organized Crime since its establishment. Croatia has also agreed to the implementation of 40 recommendations of the Financial Action Task Force on Money Laundering (FATF). In the implementation of the internal criminal law order, Croatia has tried to implement as extensively as possible the so-called guiding principles for fighting corruption and safeguarding the integrity between justice and the security officials (these were signed at the Global Forum on Fighting Corruption, Washington DC, 1999).

Croatia has joined the Stability Pact which, even though it does not have the force of a treaty, imposes a political obligation. "The Anti-Corruption Initiative for Southeast Europe" and the "Ancona Declaration" (1999) encourage the cooperation of police and judiciary bodies in fighting corruption and organized crime. The OECD Convention on Fighting Bribery of Foreign Public Officials has special significance. The convention envisages a range of obligations towards candidate countries: the obligation to criminalize the bribing of foreign officials, the obligation to provide legal assistance, etc. The Convention

came into force on February 15th, 1999. The Convention envisages the possibility for the accession of countries that are not OECD members, so the RC has announced its intention to join the Convention. Practically all significant international forums – ranging from interparliamentary associations, employers' associations and trade unions, to banking institutions (the World Bank, the IMF), and even bishops' synods – have emphasized the need to fight corruption.

The intention of the European Commission to enhance co-operation in the development of democracy and civil society and institutions is welcomed in Croatia. The intention of the initiative to establish co-operation in the field of judicial and internal affairs is also welcome and considered necessary, especially in the context of more effective border controls and combating organized crime and corruption, which rank among the priority tasks in Croatia.

With a view to raise awareness about the costs of corruption in business transactions and promote private sector pro-active strategies to reduce bribery, in line with the SPAI objectives, the Integra Foundation (Slovakia) recently published, in partnership with the Ruke Association (Croatia) and Kulturkontakt (Austria), the "Coping with Corruption Toolkit" for small- and medium-sized enterprises (SMEs) in Croatia. The report, which is available in English and Croat, can be ordered free of charge at: http://www.integra.sk. The report is the result of a survey conducted among small businesses in Croatia in 2001 and aimed at determining the nature and costs of corruption for Croatian SMEs and at identifying pro-active strategies to enable SMEs to reduce corruption within their stakeholder circle. Among the most striking results of the report is that 82 % of the surveyed SMEs support anti-corruption initiatives initiated at the national (Croatian) and international levels. The Croatian SME anti-corruption research project is part of a larger project carried out by the Integra Foundation in Eastern Europe which aims to identify corruption-related problems faced by SMEs in the region and efficient strategies to cope with them.

In addition to the technical expertise delivered in the field of the rule of law the Council of Europe is currently providing technical assistance to the Croatian authorities on the issue of international co-operation and mutual legal assistance. Further technical assistance could be provided with regard to the revision of criminal legislation, especially in the area of the use of special investigative means and confiscation of proceeds of crime.

Within the framework of harmonization of the domestic legislation with the international, **Macedonia** accepted most of the relevant international instruments for fighting corruption. Accepting the international documents the Government did not show any reservations in regard to the content of the documents, which provides a solid basis for building a contemporary anti-corruption legislation designed in accordance with the international standards.

Macedonia is at the very bottom of the list of countries in the region in regard to the quality of domestic anti-corruption legislation. The different governments did not have the political will to pass the necessary laws and sub-legal acts for efficient prevention of corruption.

The basic law, which should implement all the international standards in regard to corruption – the Law on Corruption Prevention - has not been passed yet.

In March 1997 within the framework of the joint project between the European Union Commission and the Council of Europe – Corruption and Organized Crime in the Countries in Transition (Octopus), the government of Macedonia was addressed with recommendations and guidelines for action, which include several directions of action:

- enhancement of corruption and organized crime estimation;
- enhancement of public knowledge about the threats coming from corruption and organized crime and similar acts;
- corruption and organized crime prevention;
- increase in the efficiency of the policy on crime control;
- increase of the efficiency of the regulatory policy in corruption and organized crime control;
- modernization of the investigation means in a way which is in compliance with the European Convention on Human Rights and Fundamental Freedoms and other international document;
- enhancement of the efficiency and the effectiveness of the international cooperation;
- formulation of the codex of conduct of the civil servants;

- legal regulation of the conflict of interest and the access to information.

The bilateral and multilateral donor's organizations have poor record supporting the anticorruption programs in Macedonia. This is due to two basic reasons:

- The donors' community for unjustifiably long period of time and with an enormous percentage of funds was oriented towards projects in the field of interethnic relations and civil society, mostly on a grass-root level, while anticorruption until a year or two ago was not on the agenda of most of the donors. As an illustration the Institute Open Society - Macedonia regardless of the concrete program efforts refused the request for support in establishing the Macedonian National Chapter of Transparency International.

- The NGO sector in the country that is mostly supply driven did not succeed in advocating its agenda by pressuring the donors' community to include the anticorruption programs in their agendas. This is among others due to the fact that the civil sector until now did not have sufficient capacity to overcome the subordinate role in regard to the executive power and to get involved in the treatment of a complex and sensitive phenomenon like corruption.

The developments during and after the crisis in the Republic of Macedonia as well as the analyses showed that one of the fundamental reasons for the crisis was the absence of rule of law and the high level of corruption in the country and the region. The representatives of the international community more and more openly point out the issue of anticorruption, which is treated more openly on public debates and in the media in the country. This has contributed for the anticorruption to climb a bit higher on the agenda of the bilateral and multilateral donors. For now, the issues like the building of confidence, reconstruction of the destroyed homes, returning of the displaced persons and organizing fair and democratic elections will continue to dominate.

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As noted in the introduction, one of key challenges facing regional anti-corruption cooperation is broadening the responses to cross-border corruption factors by enhancing public-private partnerships. This has been the main objective of the Southeast European Legal Development Initiative (SELDI). SELDI is an effort of leading not-for-profit organizations, representatives of government and intergovernmental institutions and experts from the countries of Southeast Europe aimed at **public-private coalition building** for legal development in the countries of Southeast Europe.

SELDI is a joint initiative of the Center for the Study of Democracy (CSD), a Bulgarian policy institute and the International Development Law Institute (IDLI) (www.idli.org), an inter-governmental organization based in Rome, to build upon the success of the *Coalition 2000* process in Bulgaria (www.online.bg/coalition2000), the *Judicial Reform Initiative for Bulgaria* (JRI) (www.csd.bg/jri), and other previous efforts in Bulgaria by these two organizations aimed at promoting the rule of law and a institutional environment beneficial to the transition process and economic development.

SELDI is distinguished from the other region-wide initiatives as being the **first NGO-led effort to encourage public-private cooperation as an instrument for regional development**. The Initiative provides a forum for cooperation among the most active civil society institutions, public figures and government and international agencies in Albania, Bosnia & Herzegovina, Bulgaria, Croatia, Macedonia, Romania, and Yugoslavia.

For the past two years coalition building for anti-corruption has been the most active area of work for the Initiative. The overall objective of the SELDI anti-corruption component is to introduce a region-wide institutional framework for **public-private cooperation in countering corruption** in the countries of Southeast Europe.

It is proceeding through a two-step process: **diagnosing corruption** and assessing the institutional environment followed by the development and endorsement of a **Regional Anti-Corruption Action Agenda** supported by an awareness campaign.

The results so far of SELDI include **enhancing civic capacity** throughout the region to maintain a watchdog role as well as to engage public institutions in the design and implementation of anti-corruption policies. The achievements in this area so far include three unique products:

- The first ever **region-wide corruption diagnostics**[59] carried out in Albania, Bosnia & Herzegovina, Bulgaria, Croatia, Macedonia, Romania, and Yugoslavia on the basis of a uniform methodology.

- **Training for watchdog capacity** for a critical number of civil society organizations in SEE.

- An **assessment of the institutional environment**, contained in this report, as regards public administration, the judiciary, economy, civil society and media and international cooperation against corruption in the SEE countries.

59 http://www.seldi.net/indexes.htm

Membership in Major International Organizations of SEE Countries

Organization / Country	Council of Europe (CoE)	World Trade Organization (WTO)	European Union (EU)	Organization for Security and Cooperation in Europe (OSCE)	European Bank for Reconstruction and Development (EBRD)	Euro-Atlantic Partnership Council (EAPC)	World Bank (WB)
Albania	Member	Member	Negotiations for Stabiliza- tion& Associa- tion Agreement (SAA)	Member	Member	Member	Member
Bosnia and Herzegovina	Member	Observer	Negotiations for SAA	Member	Member	No	Member
Bulgaria	Member	Member	EAA	Member	Member	Member	Member
Croatia	Member	Member	SAA, 29 Oct 2001	Member	Member	Member	Member
Macedonia	Member	Observer	SAA	Member	Member	Member	Member
Romania	Member	Member	EAA	Member	Member	Member	Member
Serbia	Guest	Observer	SAA	Member	Member since April 2001	No	Member since may 8, 2001

Organization / Country	Central European Free Trade Agreement (CEFTA	Central European Initiative (CEI)	Black See Economic Cooperation (BSEC)	Stability Pact for Southeast Europe (SPSEE)	Anti-corruption Initiative for South Eastern Europe (SPAI)	South East European Cooperation Process (SEECP)	Southeast European Cooperative Initiative (SECI)
Albania	No	Member	Member	Member	Member	Member	Member
Bosnia and Herzegovina	No	Member	No	Member	Member	Member http://www.seecp.gov.mk/par-liaments/gen-eral_info.htm	Member
Bulgaria	Member	Member	Member	Member	Has not partici- pated since 2000	Member	Member
Croatia	No	Member	No	Member	Member	Observer	Member
Macedonia	No	Observer	No	Member	Member	Member	Member
Romania	Member	Member	Member	Member	Member	Member	Member
Serbia	No	Observer	No	Member	Member	Member	No

Accession to major international anti-corruption legal instruments

Legal Instrument	Country	Date of signature	Date of ratification	Date of entry into force
Civil Law Convention on Corruption, Council of Europe	Albania	04-04-00	21-09-00	-
	Bosnia and Herzegovina	01-03-00	30-01-02	-
	Bulgaria	04-11-99	08-06-00	-
	Croatia	02-10-01	-	-
	Macedonia	08-06-00	-	-
	Romania	04-11-99	23-04-02	-
	Serbia and Montenegro	-	-	-
Criminal Law Convention on Corruption, Council of Europe	Albania	27-01-99	19-07-01	01-07-02
	Bosnia and Herzegovina	01-03-00	30-01-02	01-07-02
	Bulgaria	27-01-99	07-11-01	01-07-02
	Croatia	05-09-99	08-11-00	01-07-02
	Macedonia	28-07-99	28-07-99	01-07-02
	Romania	27-01-99	11-07-02	01-11-02
	Serbia and Montenegro	-	-	-
Convention on Combating Bribery of Foreign Public Officials in International Business Transactions - OECD Status as of January 2002	Albania	-		
	Bosnia and Herzegovina	-		
	Bulgaria	-	22-12-98	20-02-99
	Croatia	-		
	Macedonia	-		
	Romania	-		
	Serbia and Montenegro	-		