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.

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.

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

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.

* * *

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.

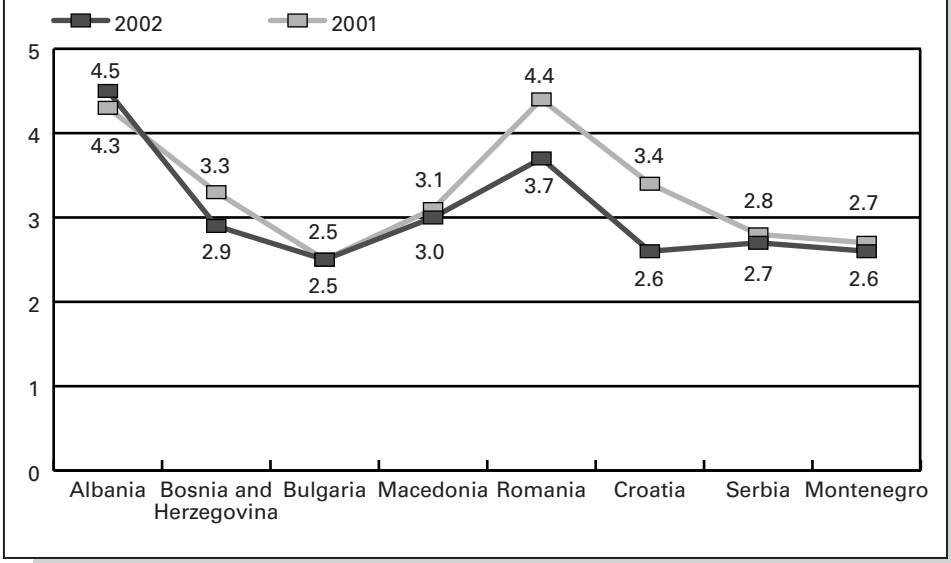
In **Bulgaria** the *Code of Conduct for Civil Servants*, approved by the Minister of State Administration on December 29, 2000, outlines the fundamental principles and rules of ethical behavior for civil servants in their interaction with citizens, in the course of performing their professional duties 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.

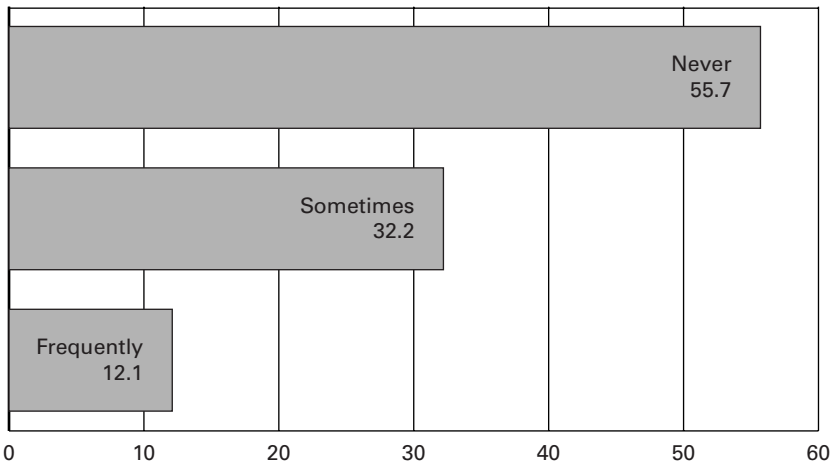
4.2. Administrative Services. Responsibility of the State for Damages Caused by Public Officials

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.

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)

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

[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:

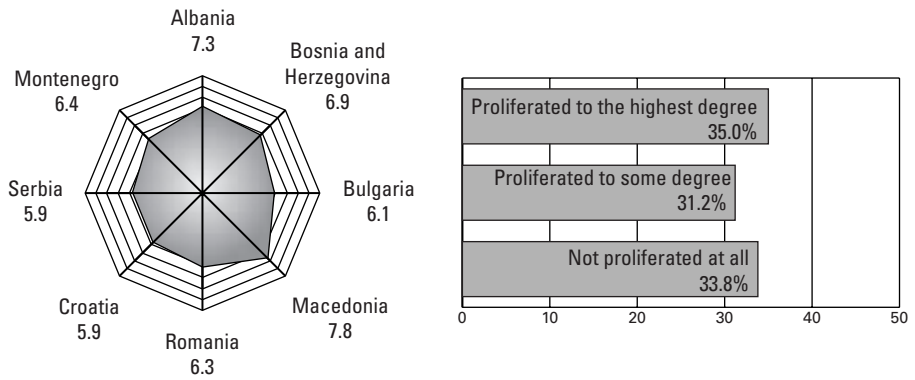
- A report on the implementation of the state budget;
- An opinion on the Council of Ministers' report about the expenses of the previous financial year before it is approved by the Parliament;

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.

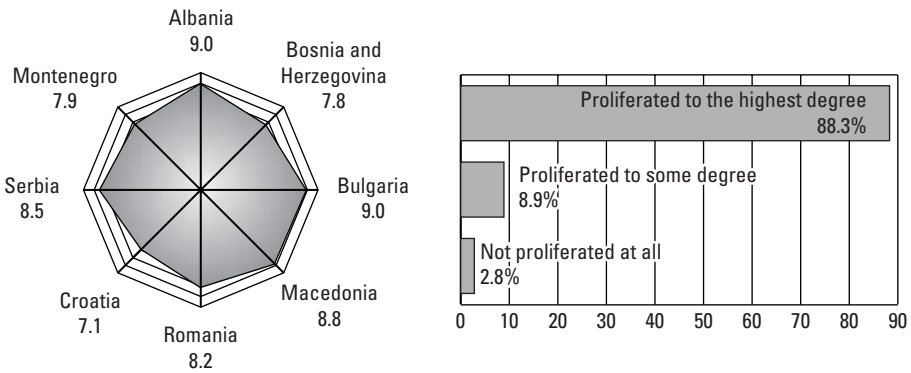
In Customs Administration of Croatia there are no special departments for detecting and proceeding the acts of corruption, neither are applied special measures for combat against corruption. However, with the Article 53 of the *Decree about Internal Organization of the Ministry of Finance*, Department 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.

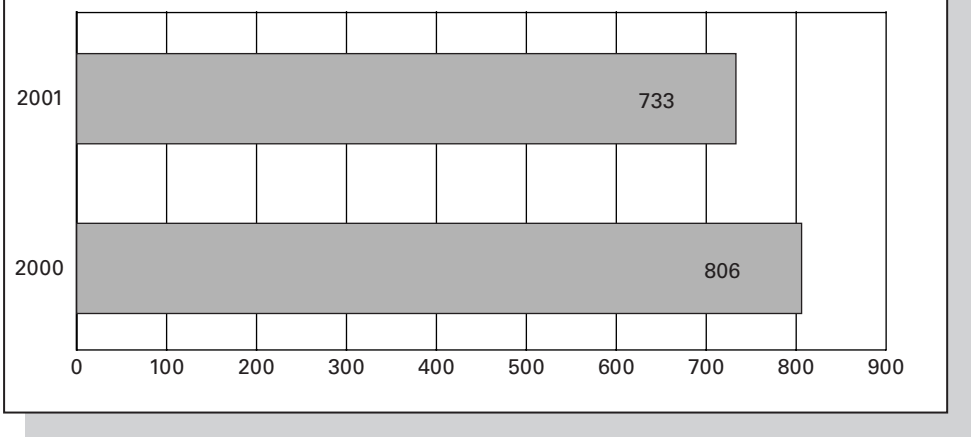
United Nation's Mission to **BiH** is involved in the struggle against human trafficking. More recently BiH has joined Interpol and has launched some prevention activities with its own Entity police capacities, centrally coordinated within the Ministry of Civil Affairs and Communications.

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).

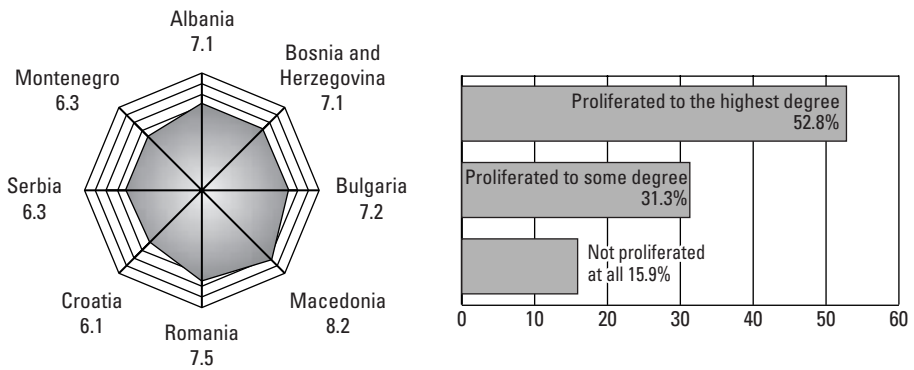
The Minister of Finance completes the budget draft and presents it to the Council of Ministers by October of every fiscal year. After the Council of Ministers gives its approval, it forwards it to the Parliament by the 20th of November of the fiscal year. If the parliament does not approve the budget 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.

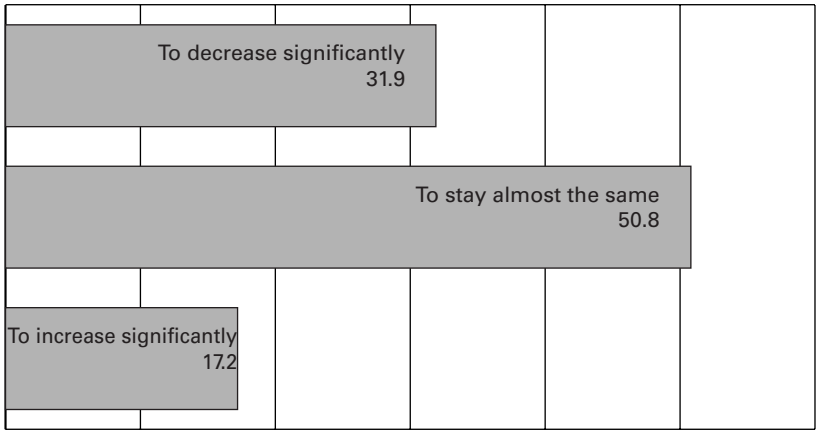
The party system in **Bulgaria** is not yet based on principles and models, which would make it more transparent. The interweaving of political parties with the state apparatus in any society tempts to advance particularistic political interest under the guise of public interests, including through the 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.

Chart 9: Expected dynamics of illegal political party financing in Bulgaria in the next three years (%)



Source: Corruption Assessment Report 2001, Coalition 2000

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 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.

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.

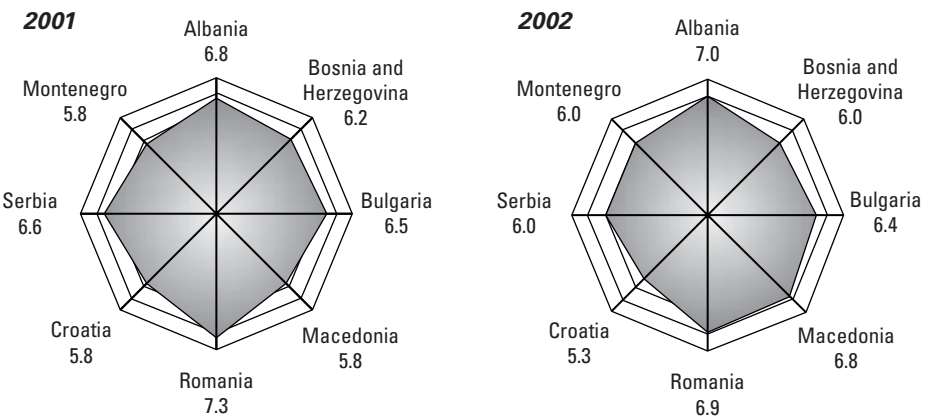
The Financing of Political Parties Law in Serbia was adopted in 1997. Under this law, a political party can acquire funds needed for its operation from membership dues, donations, income from its own property, ownership rights in enterprises and credits, as well as from budget of the Republic of Serbia. 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