

Serbia - building integrity in defence

An analysis of institutional risk factors

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Preface

At the request of the Norwegian Ministry of Defence, the Agency for Public Management and e-Government (Difi) has prepared this assessment of institutional risk factors relating to corruption in the defence sector in Serbia. The report was prepared within the framework of the NATO Building Integrity (BI) Programme.

The current report was written as part of a study covering 9 countries in South-Eastern Europe, 8 of them as a Norwegian contribution to the NATO BI Programme and 1 on a bilateral basis. Difi has prepared a separate methodological document for the study. The latter document provides an in-depth description of the content of international anti-corruption norms and includes a list of close to 300 questions that were used to identify the extent to which the 9 countries in the study had, in fact, institutionalised the norms. The document also provides a rationale for why each of the norms is considered to be important for reducing the risk of corruption.

A national expert in each of the countries involved has collected data in accordance with Difi's methodological document. Three principal types of data sources were used:

- Official documents/statutory texts.
- Interviews with relevant decision-makers and other local experts, as well as representatives of international organisations.
- Analyses and studies already available.

The national experts presented the results of the data collection in a separate report for each country, each one comprising 75-200 pages. The documentation they contained provided a direct response to Difi's approximately 300 questions. A representative for Transparency International UK/Defence and Security Programme (TI/DSP) provided comments to the reports. They were further discussed at three meetings where all of the local experts participated together with representatives from TI, NATO, the Norwegian Ministry of Defence and Difi. At one of the meetings an expert on the topic of corruption/good governance in the EU's expansion processes contributed.

Based on the reports from the national experts, Difi has prepared, with considerable assistance from the EU expert on corruption/good governance, an abbreviated and more concise Difi Report for each country, including recommendations for the Ministry concerned. These reports were then submitted to the Ministry in question for any comments or proposed corrections. The received answers have largely been included in the final reports. However, all evaluations, conclusions and recommendations contained in the reports are the sole responsibility of Difi.

Oslo, October 2015

A handwritten signature in blue ink, appearing to read 'Ingelin Killengreen', written in a cursive style.

Ingelin Killengreen
Director General

Abbreviations and acronyms

ACA	the Anti-Corruption Agency
BIA	the Security Information Agency
CHU	the central harmonisation unit
EC	the European Commission
FMC	Financial Management and Control
GRECO	the Group of States against Corruption
HRM	human resources management
HRMS	the Human Resource Management Service
IA	internal audit
LSAI	the Law on Supreme Audit Institution
MIA	the Military Intelligence Agency
MSA	Military Security Agency
NCS	the National Security Council
NPM	the National Preventive Mechanism
PIFC	public internal financial control
PPL	the Law on Public Procurement
PPO	Public Procurement Office
RoP	Rules of Procedure
SIA	the civilian Security Information Agency
VBA	Military Security Agency

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1 Executive Summary

The established mechanisms of civilian control of the defence sector are quite new and need time to be fully implemented in Serbia. Due to the federal arrangement of Yugoslavia until 2006, the Federal Parliament had limited authority over military and security services, while the Serbian Parliament had authority over police and civilian security service. Only after 2006, did the Serbian Parliament gain broader competences for control and oversight over the defence sector, but regular and full use of these competences, however, has not yet followed suit. The result is that the resulting parliamentary control is still weak and perfunctory.

The accountability mechanisms for the intelligence and security services remain rather weak and unclear and their activities are a source of concern in the eyes of specialist observers.

The Ombudsman institution has established itself well in the Serbian politico-administrative landscape and is producing good results in terms of public governance, but there are still a number of societal challenges to overcome in order for the Ombudsman to achieve its full institutional potential and effectiveness.

Concerning external audit institutions, the State Audit Institution (SAI) is well established by now. Its greatest obstacle is the lack of adequate premises, which does not allow it to hire additional staff and operate effectively. The second problem is a very lengthy procedure for processing misdemeanour cases, which are instituted by the SAI and processed by misdemeanour courts. This weakens the personal liability of public bodies' personnel in charge of financial management. The SAI does not have any particular problems in effectively auditing the accounts of the MoD since the level of cooperation with the MoD is satisfactory. More generally, the political will to enforce effective audit arrangements in Serbia is mixed. Managers of a number of public bodies repeatedly breach financial management rules in spite of the fact that they are called to account for irregularities in financial management before misdemeanour courts. The situation could be improved by strengthening the functions of financial management and control and internal audit in individual institutions. The Ministry of Finance has a key role in coordinating the efforts of individual public bodies in strengthening their financial management and control and internal audit functions.

The conflict of interest legal regime is well established, but the asset declaration obligations affect too many personnel, a fact which renders sound verification

impossible and weakens the system. The exemption of top military personnel from that regime is unjustified. Enforcement of sanctions is weak since the cooperation of the prosecutors and judiciary with the Anti-Corruption Agency (ACA) needs improvement.

The right to access to public information is well guaranteed by the Law and the Commissioner, who wields significant enforcement powers even if facing resistance stemming from governments and state bodies attached to a culture of secretiveness. The success of the current institution is closely linked to the personality of the Commissioner. The lingering secretiveness culture and the lack of clear legal definition of what constitute state secrets in a democracy may be conducive to reversing the achievements of the transparency policy conducted by the Commissioner.

Public Internal Financial Control is well established, but needs some strengthening. In the MoD it seems solidly introduced and working well.

The Defence Inspectorate seems to be an acceptable counterbalance to the MoD and Armed Forces management, but this cannot be fully ascertained because of the general opaqueness of its performance.

The public procurement system has improved dramatically in recent years, even so there are justified concerns that purchasing entities do not prepare public procurement terms of reference based on proper market research and as a result purchase unnecessary goods, services and public works. Enhancing professionalism and transparency during the planning phase seems necessary in order to carry out a precise needs assessment for procuring different goods, works and services, as well as the provision of more detailed explanations and justification. Military asset disposal schemes for both movable and immovable property have improved in recent years, and there does not seem to be major concerns.

In the case of Human recourse management (HRM) the argument is heard that legal framework does not fully support the development of the merit system in HRM neither in the civil service nor in the military. Meritocratic arrangements are said to have been bypassed by members of the political leadership. This is the case particularly as regards the provisions of the Civil Service Law prescribing that all senior civil service positions should be filled by competition. Specialist observers argue that these provisions have been largely ignored by all governments since the Civil Service Law was adopted in 2005. It is unclear to what extent promotion in the military is based on merit.

Security clearance of personnel carried out by intelligence agencies has been criticised by the Commissioner for Free Access to Information and Protection of Personal Data because the security checks are carried out in an inconsistent manner. The legal foundation for security clearance is to be found in secondary

and tertiary legislation passed with little or no public scrutiny. The manner in which the security clearance is performed is prone to abuse and violation of privacy rights. The Commissioner launched an initiative to adopt primary legislation on personnel security checks. This initiative is supported by the Ombudsman.

Anti-corruption strategies have been adopted twice, but the notion of strategy as soft law is little understood. The policy coordinating mechanisms at the centre of the government are weak for a number of reasons including the way in which coalition governments work in Serbia. This has jeopardised the implementation of anticorruption strategies and policies.

The Anti-corruption Agency (ACA) is consolidating its position as a preventative anti-corruption body with comprehensive competences, but some political forces have attempted to undermine the role of the Agency for several reasons. These include its real activism against certain aspects of the status quo, particularly in the case of politicians, such as conflicts of interest and incompatibilities which may lead to corrupt practices. The ACA needs to reinforce its cooperation and coordination with judges and prosecutors as well as to enhance its internal capabilities.

2 Introduction

This report evaluates the public governance capacities of Serbia in the security and defence area from the standpoint of their resilience to corruption. This requires scrutinising the main institutional settings and working arrangements that make up the public governance architecture in general, and in the domain of defence in particular.

Methodologically, a whole-of-government approach to security sector reform is increasingly called for. Pro-integrity reforms internal to the defence sector should be set in a wider reform perspective including appropriate instruments within civilian policy sectors. Nonetheless, the current report mainly focuses on the Serbian Ministry of Defence (MoD), not the armed forces. It treats the ministry as part of and as embedded in its politico-administrative environment and takes into account legal and administrative arrangements cutting across the national system of public governance impacting on the MoD as on any other ministry.

To a large extent the report concentrates on checks and balances in the public sector; i.e., mechanisms set in place to reduce mistakes or improper behaviour. Checks and balances imply sharing responsibilities and information so that no one person or institution has absolute control over decisions. Whereas power concentration may be a major, perhaps the major corruption risk factor, a system of countervailing powers and transparency promotes democratic checks on corruption/anti-integrity behaviour.

We look at the integrity-promoting (or integrity-inhibiting) properties of the following main checks and balances:

- a. parliamentary oversight;
- b. anti-corruption policies;
- c. specialised anti-corruption bodies;
- d. arrangements for handling conflicts of interests;
- e. arrangements for transparency/freedom of access to information;
- f. arrangements for external and internal audit, inspection arrangements;
- g. ombudsman institutions;

In addition to examining the checks and balances, this gap analysis focuses on two high-risk areas susceptible to corruption/unethical behaviour:

- h. public procurement (or alternatively: disposal of defence assets);
- i. human resources management (HRM).

Both areas are of particular importance in the defence sector. Defence sector institutions are responsible for large and complex procurements that may facilitate corruption. In most countries, the MoD is one of the largest ministries in terms of number of staff and is responsible for a large number of employees outside the Ministry. Human resources are central to the quality of performance of defence sector bodies.

The report takes inspiration from and concentrates on the same areas as those listed in NATO's Building Integrity Programme launched in November 2007, whose key aim is to develop "practical tools to help nations build integrity, transparency and accountability and reduce the risk of corruption in the defence and security sector". This approach may be useful for Serbia regardless of the interest of the country on joining the Alliance.

The report identifies a number of areas in need of reform in order to strengthen the protection of integrity in public life and to reduce vulnerability to corruption. The report is action oriented: it proposes a number of recommendations for reform action to be undertaken by the government.

3 Parliamentary Oversight over Defence Bodies

The Parliament's power to scrutinise the security sector is enshrined in the 2006 Constitution (Article 99-6) and in the power to initiate legislation and amend laws (Article 99-7). The Constitution entrusts the parliament with adopting defence strategies and the overall budget of the Republic (Article 99, items 7 and 9).

The Parliamentary Committees' power to summon and hold hearings of government members was introduced for the first time by the Law on Parliament adopted in 2010. The hearing mechanism is further elaborated by the Parliament's Rules of Procedure allowing the committees to "organise public hearings for the purpose of ...the realisation of the oversight function of the National Assembly" (Article 83 of the Rules of Procedure). Any committee member may table initiatives to hold public hearings. The committee's chairperson summons committee members, MPs, and other persons, including civil servants, members of the executive, representatives of civil society organisations and the public at large to attend the hearings, in order to obtain all necessary information for carrying out the oversight over the executive.

Until recently, the government was not obliged to provide parliament with any kind of information regarding procurement procedures nor was there any formal regulation requiring it to submit procurement decisions. The 2012 Public Procurement Law (article131), which entered into force in April 2013, requires the government to submit an annual report to the competent committee of the National Assembly before 31 March of the current year on public procurements in the field of defence and security for the preceding year. Such a report has to contain data on the subject of procurement, the way in which the procedure was conducted, which bids were submitted, the criteria for the selection of the most advantageous bid, the concluded contract, and the identity of the supplier.

These new provisions of the Public Procurement Act represent an important improvement with regard to parliament's legal powers to monitor public procurement in the defence sector, and they appear to be sufficient to identify possible malpractices. The way in which these provisions will be implemented in practice still remains to be seen. No reports regarding defence procurement have been discussed by the Parliament's Defence and Internal Affairs Committee so far.

The parliament is to control the MoD's expenditure primarily through the Committee on Finance, State Budget and Control of Public Spending. This committee is in charge of discussing the overall state budget proposal and the Final Account of the Budget as well as the Annual Report submitted by the

State Audit Institution. However, it has not shown interest in the financial oversight of the defence sector.¹

Government and ministerial accountability to parliament is enshrined in the Constitution (Article 105). Parliament appoints the members of the government and terminates the mandates of the government and ministers. In this way it holds the government politically answerable for its operations. Furthermore, the Law on Government (Article 7) prescribes that the government is responsible to the parliament for the formulation and implementation of policies, for the implementation of laws and other general acts of parliament, for the state of affairs in all the areas within its competence and for the performance of the state administration.

Since early 2000s, the Parliament's Rules of Procedure allowed the setting up of ad hoc committees for special inquiries on specific cases. These committees can summon the civil servants involved in the case. However, over the past decade ad hoc committees were created fairly rarely, and were unrelated to the defence sector.

In 2010 the parliamentary oversight function was advanced by the Law on Parliament and the new Parliament's Rules of Procedure, which established new accountability mechanisms:

- a) MPs questions to individual ministers or the government, which are posed on the last Thursday of every month;
- b) MPs questions on specific topics, which are posed at a special parliamentary session convened at the request of any group of MPs, at least once a month;
- c) Obligation of the government to submit a report to parliament on the implementation of policies, execution of laws and other general acts, implementation of development and spatial plans, and execution of the State Budget, at least once a year;
- d) Obligation of ministers to submit quarterly reports to relevant parliamentary committees and attend sessions at which members of the committees will pose questions to Ministers in relation to the submitted reports.²

Because the new accountability mechanisms are recent, it is difficult to assess their effectiveness in practice. Overall, it may be argued that their effect has been positive, especially in relation to parliamentary questions that are posed to the government and its members each Thursday, and which are broadcasted live on public television nationwide (Television Belgrade Channel 2). The questions

¹ F. Klopfer *et al.* (eds.) 2012, *Almanac on Security Sector Oversight in the Western Balkans*, The Belgrade Center for Security Policy and Geneva Centre for Democratic Control of Armed Forces, pp. 198-199.

² Article 56 of the Law on Parliament, "Official Gazette of the RS" No 9/10, adopted on 26 February 2010; Articles 204-216 and 228-229 of the Rules of Procedure of the Parliament.

are also widely disseminated by private media and the press. However, although the use of parliamentary oversight tools has evolved, it remains largely formalistic.³ The European Commission (EC) in its Opinion on Serbia's application for membership of the European Union concluded that although there has been a gradual improvement in parliament's oversight and control of the government, the use of oversight tools was insufficient and the parliament still had to enhance its oversight over the executive.⁴

The existing accountability mechanisms are rarely used to oversee the defence sector. MP's activities have mainly been focused on law bills in the defence sector (e.g. Law regulating the methods and requirements for exports, imports, transit and transport of arms and military equipment and providing brokerage services, which was discussed at a parliamentary session in October 2014). MPs rarely pose questions concerning the defence sector to the Prime Minister or Minister of Defence. As the parliament seldom uses the available accountability mechanisms to oversee the defence sector, there have not been any concrete parliamentary recommendations or instructions on defence given to the government or the MoD.

Until the 2012 parliamentary elections, the main parliamentary committee in charge of the defence sector was the Defence and Security Committee, which had quite a weak oversight remit. This was due partly to the provisions of the previous parliament's Rules of Procedure which did not require the MoD to submit regular reports to Parliament and the Defence and Security Committee.⁵ The Committee's oversight roles were also limited by a lack of initiative on the part of MPs, a lack of clearly defined procedures for reporting on inspection field visits carried out, as well as the lack of an annual work plan that would set the priorities of the Committee's work.⁶ The new Rules of Procedure (RoP) adopted in 2010 addressed this issue and established a new Defence and Internal Affairs Committee, which has stronger oversight power. These new parliamentary powers include supervising the production, trade in and transport of weaponry and military equipment, and the participation of the Armed Forces' in multinational operations abroad; adopting the National Security Strategy and the Defence Strategy; overseeing issues regarding the realisation of parliamentary control of the Armed Forces and the defence system; making proposals on budgetary resources necessary for the activities of the Serbian Armed Forces and control of budget spending; screening the reports submitted

³ Commission Staff Working Paper, *Analytical Report Accompanying the document communication from the Commission to the European Parliament and the Council, Commission Opinion on Serbia's application for membership of the European Union*, Brussels, 12.10.2011, SEC(2011) 1208.

⁴ *Ibid.*

⁵ F. Klopfer *et al.* (eds.) 2012, *Almanac on Security Sector Oversight in the Western Balkans*, The Belgrade Center for Security Policy and Geneva Centre for Democratic Control of Armed Forces, pp. 198-199.

⁶ *Ibid.*, p. 201.

on a quarterly basis by the Minister for Defence to the Committee during sessions of the National Assembly; other public and state security issues.

The implementation of these provisions was, however, postponed until 2012, by the transitional provisions of the RoP which envisaged that “until the constitution of the new legislature, the existing committees shall continue operating in accordance with their present scope of work”.⁷ For this reason, the MoD did not submit any reports to Parliament from 2006 until mid-2012. This was considered to be the biggest deficiency in the system of democratic civilian control of the military in Serbia.⁸

In spite of the improvements of the RoP, the oversight of the Defence and Internal Affairs Committee over the defence sector has remained rather weak. Similar to its predecessor (the Defence and Security Committee), over the past two years the Defence and Internal Affairs Committee has been mainly focused on its legislative role. In the period from 2012–2014 the Committee did not exercise its authority to discuss the regular quarterly reports of the Ministry of Defence or carry out any other noticeable oversight function. The 2010 Parliament’s RoP introduced a new Committee on Control of the Security Services, which has been provided with large, sufficient and specific legal authority (article 66 of the RoP) to oversee the security services, namely the Security Information Agency (the BIA) and two military security services.

Unlike the old defence and security committee, the new parliamentary committee on control of the security services has been rather active in the supervision of the security services. In March 2013, the committee adopted a decision regulating in detail the direct oversight of the security services through control visits, inspections and reports to the plenary. Control visits were made to all three security agencies in the course of June and July 2013, and the committee in particular inspected the legality of the use of special measures for the secret collection of data.⁹ Upon the request of the committee, the State Audit Institution for the first time audited the civilian state security agency (BIA).¹⁰ The committee also regularly discusses reports from the security services. In 2014, the committee extended its regular review of activities to the reports of the Inspector General of the Ministry of Defence, in addition to those of the BIA and military services, which is also a positive development.¹¹

⁷ Article 295 of the Parliament’s Rules of Procedure.

⁸ F. Klopfer *et al.* (eds.) 2012, *Almanac on Security Sector Oversight in the Western Balkans*, The Belgrade Center for Security Policy and Geneva Centre for Democratic Control of Armed Forces, pp. 198-199.

⁹ EC Commission, *Serbia 2013 Progress Report*, Brussels 16/10/2013, SWD (2013) 214 final.

¹⁰ *Ibid.*

¹¹ EC Commission, *Serbia 2014 Progress Report*, Brussels 8/10/2014, SWD (2014) 302 final.

In January 2015, the Committee on Control of Security Services discussed the dispute that had arisen between the Ministry of Defence and the ombudsman on whether the members of the Military Security Agency had violated the law in the course of an incident during the Gay Pride Parade. The ombudsman suspected that Military Security Agency members had illegally taken video and audio footage of the incident during the parade and requested the MoD to provide him with all the information regarding the incident, which was refused. The Director of Serbia's Military Security Agency (VBA) refused the ombudsman's request on grounds that the documentation had already been sent to the prosecutor. The committee's inquiry concluded that the Military Security Agency had not violated the law.

The parliament has a Section on Defence and National Issues within its Sector on Legislation. It has staff providing professional support to the Defence and Internal Affairs Committee. It appears that in fact only around five staffers have been providing professional support to the Defence and Internal Affairs Committee in addition to their other duties (providing support to other committees). These staffers do not seem to be sufficiently trained to be able to offer quality support to MP's in their efforts to oversee the defence sector. The staff members were selected in accordance with the provisions of the Civil Service Law, and they have the status of civil servants.

The civil service legal framework does not provide sufficient guarantees for merit-based recruitment of parliamentary staff. First, although the vacancies are publicly advertised, a written exam is not a mandatory requirement for the selection, as it is possible to use other methods such as an interview or another appropriate method.¹² After testing the professional qualifications, knowledge and skills of the selected candidates, the Competition Committee proposes to the Speaker of the Parliament a shortlist of a maximum of three candidates.¹³ The head of the state authority (Speaker of the Parliament) chooses one of the candidates from the list,¹⁴ and cannot reject the selected candidates and call for a new open competition. However, the fact that there is no requirement for a written examination and that the Speaker of the Parliament is free to choose any candidate among the three best-ranked candidates irrespective of the score obtained by the chosen candidate with no obligation to give reasons for the choice, does not provide sufficient guarantees for the respect of the merit principle.

In its opinion on the Serbian application for EU membership, the European

¹² Article 56 of the Civil Service Law, Republic of Serbia.

¹³ Article 57 of the Civil Service Law, Republic of Serbia; Article 16 of the Rulebook on Expert Capacities, Knowledge and Skills which are Tested in the Selection Process, the Methods Used and Criteria for Selection, "Official Gazette of the RS", No. 64/2006, 81/2006, 43/2009, 35/2010.

¹⁴ Article 57, para 2 of the Civil Service Law, Republic of Serbia.

Commission concluded that the Defence and Security Committee did not have the resources, expertise and specialised staff to deal with its wide range of jurisdiction which currently covers defence, internal affairs and security issues, a fact which makes its work mainly reactive and limited to routine periodic hearings as required by law. This view was also shared by the Belgrade Centre for Security Studies, which claimed that the number of the Defence and Security Committee's support staff was inadequate, and that they did not have sufficient knowledge on the oversight function of the parliament.¹⁵

Although the legal framework for parliamentary oversight has been strengthened, there is still little actual parliamentary scrutiny of the defence sector and the overall government. Serbian parliamentarism is rooted in the continental parliamentary tradition, where MPs mainly focus on passing legislation while the substantive supervisory and scrutiny role of the executive is accorded secondary importance. This is in contrast to the Westminster parliamentary tradition in which parliamentary scrutiny calling the government to account for its actions is a key means of controlling the executive, rather than designing detailed rules and regulations to which the executive must adhere.¹⁶

The established mechanisms of civilian control of the defence sector are new in the system and need time to be fully implemented. Due to the federal arrangement of Yugoslavia until 2006, the Federal Parliament had limited authority over military and security services, while the Serbian Parliament had authority over police and civilian security service. Only after 2006, did the Serbian Parliament gain broader competences for control and oversight over the defence sector, but regular and full use of these competences, however, has not yet followed suit. The result is that the resulting parliamentary control is still weak and perfunctory.

3.1 Control of the Intelligence Services

As mentioned, the 2010 Parliament's Rules of Procedure introduced a new Committee on Control of the Security Services, which was provided with sufficient legal authority. In order to enhance this control even further, the Rules of Procedure requires parliament to control the security services both directly and through the designated committee. To achieve this objective, the Rules of Procedures require the Committee on Control of Security Services to submit annual reports on its work during the preceding year together with

¹⁵ F. Klopfer *et al.* (eds.) 2012, *Almanac on Security Sector Oversight in the Western Balkans*, The Belgrade Center for Security Policy and Geneva Centre for Democratic Control of Armed Forces, pp. 198-199.

¹⁶ C. Pollitt, G. Bouckaert, *Public Management Reform – A Comparative Analysis*, Oxford University Press 1999, p. 53.

conclusions and proposed measures to the parliament by the end of March of the current year for the preceding year. The Committee started to be operational only after the 2012 elections and the results of its work have been presented in the section on parliamentary oversight.

There are three security-intelligence services: the civilian Security Information Agency (SIA), which is organizationally independent and subordinated directly to the government; the Military Security Agency (MSA) and the Military Intelligence Agency (MIA), both of which are part of the MoD and hence report to the Minister of Defence. The key executive body for coordinating the work of the intelligence services is the National Security Council (NSC). Members of NSC include the President of the Republic, the Prime Minister, the Minister of Defence, the Minister of the Interior, the Minister of Justice, and the Chief of the Army. NSC meetings are chaired by the President of the Republic and the President's Chief of Staff serves as the Council's non-voting secretary. The NSC plays a key role in the exercise of executive control, setting priorities for the security- intelligence agencies and monitoring the implementation of those priorities. The NSC also offers opinions to the government on organisational plans and the proposed budgets of the agencies, as well as on proposed appointments and dismissals of agency directors.¹⁷

The intelligence services in the defence sector are governed by the Law on the Military Security Agency and the Military Intelligence Agency that were adopted in 2009.¹⁸ The SIA is governed by the obsolete Law on Security-Information Agency.¹⁹ The Law on the Serbian Armed Forces regulates the way in which members of the intelligence staff in the MoD are recruited and their rights and responsibilities. The Law on Police governs the status of employees of the SIA. These pieces of legislation would need a deep overhauling.

The Ministry of Defence has appointed an Inspector General for Military Security Services, the MSA and MIA. MSA and MIA employees, as well as ordinary citizens, can file complaints to the Inspector General if they have knowledge of irregularities in the work of the agencies or if their rights have been violated. On the advice of the Minister of Defence and in consultation with the National Security Council, the government appoints the Inspector General of MSA and MIA for a five-year term. The Inspector General is a civil servant. In order to promote the independence of the office, the law makes the Inspector General of the Military Security Services answerable not to the

¹⁷ P. Petrovic, "Intelligence Governance in Serbia", *Strengthening Intelligence Governance in the Western Balkans*, DCAF, available at: www.dcaf.ch/content/download/104944/1617879/.../SERBIA_ENG.pdf.

¹⁸ Law on the Military Security Agency and Military Intelligence Agency, "Official Gazette of the Republic of Serbia" No. 88/2009.

¹⁹ Law on Security-Information Agency, "Official Gazette of the Republic of Serbia", No. 42/2002, 111/2009, 65/2014- Decision of the Constitutional Court and 66/2014.

directors of the agencies, but to the Minister of Defence. In addition, the Inspector General shall report at least once a year to the Parliamentary Committee on Control of Security Services.²⁰

The Security Information Agency and the Military Security Agency can use special investigative measures that temporarily limit certain human rights and freedoms. The agencies use such measures primarily for two purposes: criminal investigations and preventive security operations. A separate legal system exists to approve the use of some special measures in each of these areas.

As regards criminal investigations, intelligence agencies have to observe the Code on Criminal Proceedings. In order to be able to use highly intrusive special measures, which can only be used to identify suspects and collect criminal evidence, SIA and MSA must request prior approval from the competent judge, specifying the crime involved and the scope and duration of the special measures. The initial duration of the special measures cannot exceed three months, and they may be extended only twice for an additional three months each time.

With regard to preventive security operations, the use of more intrusive special measures requires the prior approval of the President of the Supreme Court of Cassation or a judge authorised by that court. Once approved, the measures can be used for a maximum of six months. On the basis of a new application, they can be renewed once more for a maximum of six additional months. Some authors argue that the existence of two separate approval regimes can have a negative effect on the legal safeguards put in place to protect citizens' rights, both with regard to the use of special measures and with regard to security-intelligence activity as a whole. For example, because no central database of approved and applied measures exists, individuals may be subjected to wiretapping for the legal maximum of twelve months under the excuse of national security and then subjected to another six months of wiretapping on criminal investigative grounds.²¹

The media, civil society and international organisations have occasionally raised concerns about the control of the intelligence services. One of the most publicised related to provisions of the Law on the Military Security Agency and the Military Intelligence Agency (MIA) that allowed 'secret surveillance' on the basis of a warrant issued by the MIA director or an individual authorised by him. In April 2012, the Constitutional Court ruled that this provision was unconstitutional. The unconstitutionality complaint was jointly filed by the ombudsman and the Commissioner for Information of Public Importance and

²⁰ *Ibid.*

²¹ *Ibid.*

Personal Data Protection. They challenged the legal provisions on secret information gathering falling under the Military Intelligence Agency's jurisdiction. These refer to secret electronic monitoring of telecommunications and information systems to collect data about telecommunication lines and users' location without insight into their content. These provisions were also strongly criticised by experts, internet service providers, journalists and the general public.

Furthermore, on the occasion of the controversial re-appointment of judges in 2009, suspicions were raised as to whether the personnel files of judges, prepared by the intelligence services (primarily SIA), were used in the re-appointment process. The then Minister of Justice had stated to the media that the High Court Council had obtained and used data provided by the SIA for the judges' (re)appointment. Although this was later denied by the Minister as being a misinterpretation of her statement, it stirred a heated public debate on the criteria used for judges' re-appointment. The ombudsman and the Commissioner for Free Access to Information also reacted and carried out a supervision of the re-appointment process through inspecting the correspondence of the High Judicial Council, which was in charge of the re-appointment process, its minutes and personnel files. Although they concluded that there was no proof that the SIA was involved in the re-appointment process, the suspicion of their involvement in this controversial procedure remained.

In conclusion, there is reasonable doubt as to whether intelligence and security services can be said to be fully under proper civilian control. Their accountability mechanisms seem to be rather weak and unclear and their activities are a source of concern in the eyes of specialists' observers.

4 Independent bodies reporting to Parliament

4.1 The Ombudsman Institution

Serious attempts to establish an ombudsman began with the democratic changes in 2000 to improve the institutional system for protection of citizens' rights, but the ombudsman (protector of citizens) was formally created on 16 September 2005 by the Ombudsman Law and started operations at the end of 2007.²² Although the Law prescribed that the National Assembly would elect the ombudsman within six months after the Law coming into force, it was elected only in July 2007 after the dissolution of the State Union of Serbia and Montenegro in June 2006, the adoption of the new Constitution in October 2006 and the parliamentary elections of January 2007.

In July 2007, the first ombudsman was elected and he is still in office after having been re-elected in 2012 by unanimity of the parliament. The Ombudsman Office was established on 24 of December 2007. Ombudsman's deputies were elected in October 2008. The OSCE Presence and the Council of Europe, in co-operation with the UN Office of the High Commissioner for Human Rights, provided expertise for drafting the Law on the Ombudsman and supported it in the first years of operation. The Council of Europe continued to support the ombudsman with relevant human rights training and documentation.

The Ombudsman is enshrined in the Constitution. Article 138 prescribes that the ombudsman shall be an independent state body to protect citizens' rights and monitor the work of the following institutions: public administration bodies, body in charge of the legal protection of property rights and interests of the Republic of Serbia, as well as other bodies and organizations, companies and institutions to which public powers have been bestowed. Article 1 of the Ombudsman Law states that the ombudsman is an independent body to protect the rights of citizens and control the government agencies. The ombudsman's legal powers are wide.

The procedures for appointing and dismissing the ombudsman and the highest-ranking staff are clear and transparent. According to Article 138 of the Constitution, the ombudsman shall be elected and dismissed by the parliament. The parliament, by majority vote, shall appoint the ombudsman upon proposal of the Parliamentary Committee on Constitutional Issues. There is a possibility of holding a committee hearing where all candidates can present their

²² The Law on Ombudsman, adopted on 14 September 2005, "Official Gazette of the Republic of Serbia", No. 79/2005 and 54/2007.

programmes for the implementation of the ombudsman's function. The ombudsman is appointed for a five-year term with one possible re-election for the same duration. The procedure for the appointment of the ombudsman has to start at least six months before the incumbent leaves office.

To avoid "inflation" of special ombudsmen on particular categories of citizens or vulnerable social groups, the Law states that the ombudsman should have four deputies to help him in performing the tasks established by this Law, and in doing so, the ombudsman should pay particular attention to providing certain specialised skills required for the position, particularly when it comes to protecting the rights of people in detention, gender equality, the rights of children, the rights of members of national minorities and the rights of disabled persons. The ombudsman deputies are appointed by the assembly through majority vote upon proposal of the ombudsman. This legal provision serves a good purpose, for in this way the ombudsman is given the opportunity to choose the "team" that will protect human rights in the most efficient way. The ombudsman's deputies are elected for a five-year term with possible re-election for two more terms. Candidates to deputies must fulfil certain conditions, similar to those required for the election of the ombudsman.

Lower level staffers at the ombudsman's office are civil servants, appointed in accordance with the civil service legislation. In January 2015, the ombudsman's office staff was 78-strong, which represents an increase from the previous years (in 2011, it was 69). In the ombudsman's view the institution needs some 20 persons more. Indeed, taking into consideration the number of incoming complaints and subsequently initiated proceedings, together with all other activities of the ombudsman, it may be argued that the institution is understaffed.²³ Ombudsman's staffers enjoy the same remuneration package as other civil servants in ministries and agencies. In the ombudsman's view this remuneration package is not sufficient to prevent undesirable turnover of staff.

Systematic training is provided to the ombudsman's staff both by national government and external donors. Training and other educational activities are a result of the intensive international cooperation which the ombudsman's office carries out multilaterally and bilaterally. Cooperation with regional and European international organisations and institutions, as well as their specialised bodies, was further enhanced over the last two years.

The funds for the ombudsman are provided separately in the state budget. It

²³ Commission Staff Working Document, *Serbia 2012 Progress Report accompanying the document Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2012–2013*, Brussels, 10.10.2012, COM(2012) 600 final, p. 8-9.

enjoys a quite clear funding and a satisfactory degree of autonomy for planning and implementing the budget.²⁴ However, it is questionable whether the budget is sufficient for the effective delivery of the ombudsman's mandate. Whereas the current institutional framework sufficiently ensures his independence, in his opinion the funds are insufficient, the premises are inadequate and the institution is understaffed while the number of citizens' complaints is steadily increasing. These limitations jeopardise the institutional performance of the ombudsman.²⁵ Because the ombudsman's normative framework meets the highest standards of "independence" described in the Paris Principles, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights granted an A-Status Accreditation Certificate to the ombudsman for the protection and promotion of human rights. Unless withdrawn for some reason, this accreditation will be valid until end 2015.

The Ombudsman Law outlines that it is the duty of the administrative authorities to co-operate with the ombudsman and to ensure access to its premises and information of importance for its proceedings. This includes the right to interview any employee in the administration when it is of significance for the proceedings. The ombudsman has access to classified information, in accordance with the provisions of the 2009 Law on Classified Data. The ombudsman shall ensure confidentiality as regards the information acquired during his term of office as well as post appointment, and is subject to the pledge of confidentiality. He can freely access institutions and other places where persons deprived of liberty are held, and to speak in privacy with those persons. Finally, the President of the Republic, the Prime Minister and Members of the Government, the Speaker of the National Assembly and officials in administrative agencies are obliged to receive the ombudsman at his request.

Public administration bodies generally comply with the ombudsman's requests and increasingly tend to heed its recommendations. In 90 per cent of cases they provide the information requested by the ombudsman's office within the prescribed deadline (15 days) and an increase in the implementation of the ombudsman's recommendations is observable, even if it is still unsatisfactory especially in situations not clearly regulated. These legally unclarified issues are, for example: 1) in which cases should special protection measures be

²⁴ Commission Staff Working Paper, *Analytical Report accompanying the document Communication from the Commission to the European Parliament and the Council, Commission Opinion on Serbia's application for membership of the European Union*, Brussels, 12.10.2011, SEC(2011) 1208, p. 15.

²⁵ F. Klopfer et al. (eds.) 2012, *Almanac on Security Sector Oversight in the Western Balkans*, The Belgrade Center for Security Policy and Geneva Centre for Democratic Control of Armed Forces, p. 196.

provided for the complainant, 2) how can the implementation of recommendations be ensured when public authorities show resistance to the ombudsman's requests.²⁶ These issues are expected to be addressed by amendments to the Ombudsman Law.

Pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Serbia established the National Prevention Mechanism against Torture on 28 July 2011. The Law on Ratification of the Optional Protocol²⁷ provides that the ombudsman shall perform the tasks of the National Prevention Mechanism against Torture. The first six months were used for organising the complex model of the National Prevention Mechanism against Torture and necessary preparatory work. In exercising these new competences, the ombudsman particularly cooperates with the Provincial Ombudsman of the Autonomous Province of Vojvodina and nine associations with which he signed a cooperation agreement on systematic monitoring of the position of persons deprived of liberty and the occurrence of torture in certain areas. Until the end of 2012, there were 53 control and preventive visits to the institutions accommodating persons deprived of liberty. In these institutions, the ombudsman identified the problems faced by those suffering from mental disorders – particularly excessive or unauthorised restriction of liberty and deprivation of legal capacity.

Although protecting equality before the law and respecting the right to equal treatment of all human beings are the responsibilities of all public (and private) institutions in the country, the Law of 22 March 2009 created a Commissioner for the Protection of Equality. For this reason, the ombudsman is not in charge of monitoring anti-discrimination in public administration. However, the creation of the Commissioner for the Protection of the Equality may be a source of confusion for the general public because of the overlapping responsibilities of the Commissioner and the ombudsman. The ombudsman has jurisdiction in two main areas: human and minority rights and freedoms (it is in this area where overlaps and conflicts of attributions with the Commissioner for Equality may occur) and the functioning of the administration in all areas dependent on the executive branch of the government. The Commissioner for Equality has weak executive competences, as he can only recommend action to the relevant authorities, attempt reconciliation, “name and shame” publicly the authority or individual who committed the discriminatory act, and lodge a lawsuit in court on behalf of the party supposedly aggrieved by a discriminatory act.²⁸

²⁶ Annual Report of the Ombudsman, 2011, available at:

<http://www.ombudsman.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>, p. 19.

²⁷ *Official Gazette of RS - International Treaties*, No. 7/2011.

²⁸ SIGMA Assessment Serbia, April 2011, available at:

<http://www.oecd.org/site/sigma/publicationsdocuments/48970654.pdf>, p. 21.

The ombudsman's competences cover the defence sector, in which there have been many cases during the last two years. The most recent case was the incident with the military police during the Gay Pride Parade of September 2014 referred to above.

As for other cases, the majority of the complaints on the defence sector come from either armed forces personnel, or military pension beneficiaries. Active armed forces personnel have lodged complaints to the ombudsman with regard to breaches in their statutory rights. Military pension beneficiaries were dissatisfied with the level of pension benefits which was less than the levels promulgated in the respective laws and corresponding regulations. Other areas of complaint included failure to act in accordance with final and enforceable decisions; inconsistent and unequal treatment of citizens in the same or similar situation; inefficient actions and failure to undertake measures for the calculation and payment of contributions for every part of year service.²⁹ The failure of the MoD to pay military pension beneficiaries correctly led the latter to approach the ombudsman claiming that the Military Social Insurance Fund of the MoD had not acted in accordance with its own decisions to adjust their pensions for the period 1 August 2004–2030 November 2007. Since these decisions remained applicable for four years, the military pension beneficiaries were instructed to exercise their rights to complain using court procedure. On the basis of the complaints lodged, the ombudsman initiated a procedure against the MoD. After obtaining all the information about the case, the ombudsman issued a recommendation to the MoD to execute, without any delay, the decisions related to the adjustment of the pensions. In its response, the MoD informed the ombudsman that it did not dispute the merit of the complaints, but that due to lack of funds (since they were not provided by the national budget) it was unable to pay the military pensions determined. In order to solve this problem, the Military Social Insurance Fund drafted legislation prescribing the way of settling the debt to the military pension beneficiaries. The ombudsman continued monitoring the activities of the MoD concerning the exercise of the military pension beneficiaries' rights. Such monitoring provided fruitful results, as the Government submitted to the National Assembly the proposals of the Law covering Converting the Unpaid Military Pensions into the Republic of Serbia's Public Debt, under a fast track procedure.³⁰

Based on the ombudsman's request for protection of legality (2010) the provisions of the Law on Military Security and Military Intelligence Agencies, which allowed sensitive data related to citizens' communications to be monitored without a court order, were ruled unconstitutional by the Constitutional Court in April 2012. Overall, it seems that the ombudsman's

²⁹ Ombudsman Report for 2011.

³⁰ *Ibid.*

approach towards the protection of citizens' rights and the monitoring the work of public administration bodies is proactive.

According to Article 33 of the Law, the ombudsman has to submit a regular annual report to parliament by the 15 March. The report should contain information on activities carried out in the preceding year, irregularities in the case of public bodies, and recommendations on how to improve the relationship between citizens and the public administration. The reports are published in the Official Gazette, as well as on the ombudsman website and are also circulated by the media. In addition to the regular annual report, the ombudsman may submit special reports on specific topics.

The ombudsman's reports are quite extensive. The regular report usually contains an overview of the key activities of the ombudsman while addressing the following topics: rights of persons deprived of liberty; protection of the rights of the national minorities; children's rights; gender equality and statistical overview of citizen's complaints concerning maladministration. The report also provides information about the cooperation of the ombudsman with public authorities, civil society, the academic community and international cooperation and projects. It has a specific section devoted to an analysis of the nature of the complaints by the type of violations. It also includes the number of inquiries and the number of resolved cases and recommendations, establishing whether they were followed or not.

From his initial appointment in 2007 until the end of 2013, the ombudsman received a total of 18 993 citizens' formal complaints, more than 40% of which concerned violations of rights due to disregard for the principles of good governance. Out of the 1 086 recommendations issued by the ombudsman to public authorities (1 579 if the recommendations issued under the National Preventive Mechanism (NPM) are included, 386 recommendations (35.54%) related to failures in good governance (or 24.45% if the NPM recommendations are included). Out of that number, by the end of 2013 approximately 28% of the recommendations had not been followed, which means that two-thirds of the recommendations related to good governance have been implemented.³¹ In 2013, the ombudsman launched 1 243 investigations against public authorities. Out of that number, in 560 cases (accounting for 31% of the total number of investigations launched) the authorities concerned rectified the shortcomings spontaneously after the initiation of the investigation, without any recommendations by the ombudsman. The number of cases in which the authorities concerned rectified the shortcomings without receiving any recommendations was 9% higher than in 2012 (22%), which is a highly commendable step forward by the authorities.

³¹ Ombudsman's Annual Report, 2013.

In 2013, the ombudsman received 115 complaints on the defence sector, which equals 2.28% of the overall number of complaints the ombudsman received in 2013.³² The ombudsman's annual report for 2013 pointed out that the majority of the 14 systemic measures recommended jointly by the ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection in order to improve the security sector's respect of citizens' rights had not been fully accepted or implemented. The report notes that members of Security Services have sought the assistance of the ombudsman to protect them against violation of their rights after they had come forward with claims of irregularities in the work of the services. The ombudsman points out that there is a pressing need to improve the way certain services respect the rights of their members, but there is also a pressing need to investigate thoroughly all aspects of alleged irregularities they reported as whistle-blowers. Finally, the report notices that the Ministry of Defence has not taken sufficient notice of the findings and results of the Inspector General in charge of oversight of the military intelligence and security services,³³ without providing any further details about the issues in question.

Despite the mishap of the Gay Pride Parade the ombudsman mentions improvements of its relationships with the MoD. In 2011 for example, in a majority of cases raised by the ombudsman the Ministry of Defence did not challenge the grounds for complaint, but informed the ombudsman that it had remedied the deficiencies in the course of the procedure for controlling the legality and regularity of the work of the MoD.³⁴ Furthermore, in some cases, the MoD recognized the problem raised by the ombudsman and informed him about the planned activities aimed at promoting the protection of human rights and freedoms.³⁵ Some examples of such cases were referred to earlier in this report.

Although the development of the ombudsman institution is mainly home grown, the international community had a fairly positive role in building the capacity of the institution. For example, during 2011, the OSCE Mission to Serbia continued developing the capacity of the ombudsman's office. Among the most important activities is a booklet of good practices in the exercise of the rights of persons with disabilities as well as a public opinion survey about the ombudsman institution conducted by Ipsos Strategic Marketing. This survey has shown that the ombudsman enjoys a high level of confidence among the citizens who believe that the institution contributes to the promotion and protection of human rights. The OSCE supported the drafting of a new job classification in the secretariat of the ombudsman institution, as well as the

³² *Ibid.*

³³ *Ibid.*

³⁴ Ombudsman's Annual Report 2011.

³⁵ *Ibid.*, p.126.

amendments to the Law on Ombudsman which were presented at the expert debate that was attended by the representatives of the National Assembly, Ministries, non-governmental organisations, the media and the academic community.

Certain worries have been expressed, however, in view of attempts to reverse ombudsman's role. One of the attempts occurred in 2009 in the preparation of the draft Law on Classified Information. The Ministry of Justice, which was a proponent of the draft law, suggested the prohibition of access to classified data to independent regulatory bodies, such as the ombudsman and the Commissioner for Free Access to Information and Data Protection. This proposal raised strong criticism from the independent institutions, as well as from civil society and was dropped in the final version of the draft. The Law on Classified information in the end does provide access to confidential data both to the ombudsman and the Commissioner for Free Access to Information.

According to the incumbent ombudsman, one of the main problems in the operation of public administration and especially in the defence sector is that bureaucratic accountability is limited to hierarchical responsibility. The civil servants are trained that they should be accountable for their actions and policies not to the people's representatives but to their superiors. Accountability mechanisms are weak, including a lack of serious scrutiny by the legislature or the judiciary. Standards to inform citizens about the public administration responsibilities and results are lacking. In general, public administration agencies are unresponsive to people's needs. Most decisions are executive rather than the result of consultation. Delegation would increase efficiency, but civil servants generally shy away from being delegated decision-making powers and feel more comfortable when decisions are taken at the top. This is due to lack of confidence and risk aversion. A strong tendency still lingers of passing the responsibility from the lower to the higher level. The entire decision-making procedure becomes centralized and the delegation of powers useless and ineffective. This culture poses heavy challenges to the ombudsman and to the Information Commissioner.

In conclusion, the ombudsman institution has established itself well in the Serbian politico-administrative landscape and is producing good results in terms of public governance, but there are still a number of societal challenges to overcome in order for the ombudsman to achieve its full institutional potential and effectiveness.

4.2 External Audit Institution

The State Audit Institution (SAI) was established by the Constitution in 2006 for the first time. The Constitution (article 92) provides that the SAI is the highest state body for the audit of public funds, and provides a basis for its independence. Detailed regulation of the SAI's operation is provided in the Law on Supreme Audit Institution (LSAI), which was adopted in 2005 and amended in 2007, and by the Rules of Procedure of the SAI, adopted in 2009. Although the legal basis for the operation of the SAI were established in 2005, due to problems with the selection of its management, the SAI started operations only four years later, in 2009.

The SAI institutional set-up is a combination of Auditor General and collegiate model, characterised by unclear responsibilities of the members of the Council of the SAI.³⁶ According to article 13 of the LSAI, the SAI Council is the supreme collegial authority of the SAI. The council members are collectively responsible for decision making. Significant managerial powers and authority have been bestowed on the SAI President.

The independence of the council members is ensured through clearly determined conditions and procedures for their appointment and dismissal. They shall have an appropriate university education and relevant working experience and must not have been employees of any government body for two years prior to their appointment to the Council. This should ensure at least some degree of political and personal impartiality when conducting ex post audits of government operations. Council members are appointed by the National Assembly by qualified majority for a 5-year term upon proposal of the assembly, and they cannot be reappointed to council membership more than twice. There is, however, concern that the independence of council members may be jeopardised by the provision of the LSAI permitting that at least 20 MPs (out of total of 250 MPs) can initiate the dismissal procedure of a Council Member. This is quite a low number, which enables almost any parliamentary political party to initiate a dismissal procedure.³⁷ Lower ranking SAI staff have civil servant status and are recruited in accordance with the provisions of the Civil Service Law.

Nevertheless, the legal framework provides a sound basis for organizational, functional and financial independence of the SAI. First, the Law allows the SAI to independently determine its internal organizational structure and staffing plans (job systematisation), as well as to issue by-laws and other acts necessary

³⁶ SIGMA, Assessment of Serbia, 2012.

³⁷ European Policy Center (2012), *Towards a More Financial Accountable Government in Serbia, Implementation of Recommendations and Measures of the Serbian State Audit Institution*.

for the implementation of the Law independently. Second, it is given functional independence by being allowed to define the scope, time and nature of audits autonomously; to conduct audit examinations on the spot; to have access to all necessary documents and to submit audit and other reports without any restrictions. This is fully in line with the Lima declaration and standards authorising the SAI to decide unconstrained the audits it will carry out, to freely publish its findings and exercise its investigative powers. Lastly, the financial independence of the SAI is assured as a separate budget line in annual Budget Law. The financial plan of the SAI is determined by the Council, approved by the National Assembly and only then submitted to the Ministry of Finance for inclusion in the general State budget. This is also generally in line with the international standards for the SAI's independence.

The SAI is, however, insufficiently staffed and funded. When comparing the number of posts filled (223) with the number of posts planned in the Rulebook on Internal Organisation and Systematisation (431),³⁸ the SAI is understaffed, which has a negative effect on the scope of audits achieved.³⁹ This however, represents an important increase in human resources in comparison to the situation of only two years ago (January 2013), when the number of SAI's staff was only 153. Furthermore, in 2014 its audit capacity increased significantly.⁴⁰

The SAI does not have adequate premises, which negatively affects its operations. This fact precludes it from hiring more staff. The SAI is located at four different locations, which hampers inter-institutional cooperation and communication and increases its operational costs. The SAI staff enjoy a competitive compensation package. In addition to the level of salaries guaranteed by the Law on Civil Servants' Salaries, the SAI is authorised to pay supplements to its staff amounting to 30%. The President of the SAI has adopted the Rulebook on Institutional Supplements of the SAI, by which it has determined that the fixed part of the supplement amounts to 20 per cent, while the variable part amounts to 10 per cent of an employee's salary. Systematic training is provided regularly to the SAI staff, funded partly by the national government through the Human Resource Management Service and partly by international donors.

The SAI can audit all public funds, resources and operations regardless of whether they are reflected in the national budget, and regardless of whether they are confidential or not. While auditing the accounts of the MoD, the SAI has access to all confidential documents.

The SAI can conduct three basic types of audit: audit of the accuracy of accounts; audit of the legality and regularity of business processes; and

³⁸ Data from the Booklet on SAI, dated October 2014.

³⁹ SIGMA, Assessment Serbia, 2012.

⁴⁰ *Ibid.*

performance/value for money auditing. Besides the “usual” auditing powers, the SAI can carry out other tasks that are closely linked with the audit function, such as assessment of the correct functioning of internal control systems; general advisory functions to auditees; proposing changes to existing legislation and auditing standards; and tackling fraud and corruption.

The SAI included the MoD in its 2011 report, corresponding to the FY 2010. It was the first time that the MoD was subject to external audit. The SAI carried out financial audit (without value for money assessment), which included the following areas: accounting systems; inventory of property and commitments; internal control and internal audits; capital expenditures and revenues; cash flow; budget execution and public procurements.⁴¹ The report identified serious irregularities in the inventory of immovable and movable property of the MoD. The report pointed out that the MoD did not have complete and accurate records of immovable property for general purposes (apartments, business premises, parking places, parking lots and studios) which were used and managed by the MoD and armed forces. The value of immovable property, which was reflected in the records, did not represent an objective and true view of the real situation. The SAI also noted that the inventory of movable property of the MoD and armed forces was not complete and that the value of movable property was referred to its purchasing price without devaluating the amortisation and was not adequately recorded in the accounts.

The SAI also identified some irregularities on procurements, especially with regard to procurements of “special purpose goods”, classified as confidential by the MoD.⁴² The SAI noted that the MoD had not followed the procedures for the procurement of “special purpose goods” as required by the Decree on Goods of Special Purpose. The SAI also pointed out that in the procurement processes for classified equipment or goods, the only criterion in the bid evaluation was the price, despite being required by the Regulations to observe several additional criteria: the quality, price and costs of maintenance. The way the list of potential bidders was created was not in line with the regulations either. Finally, the SAI noted that the Ministry was obliged to keep special records covering classified procurements, and that it did not prepare the annual report on the procurement of classified material. Finally, several minor irregularities were found regarding the calculation of salaries and social contributions of the MoD staffers. Subsequently to the publication of the report, the MoD immediately started addressing all the raised concerns.

Assessing the value of movable property (arms and arms equipment especially) with the deduction of amortisation costs has been problematic. Because no

⁴¹ Report on Audit of the Annual Financial Report of the MoD for 2010.

⁴² Audit Report on the Annual Financial Statements of the Ministry of Defence for the year 2010, pp.169-177.

specific regulation exists in this matter, the MoD applies private (economy) sector regulations which are not suitable for the defence sector. For this reason, the SAI has given the MoD an extended deadline to meet the report recommendations and to define an accountancy policy and methodology specific for assessing military equipment and reflecting changes in the accounts. In 2014, the MoD adopted a new Rulebook on material-financial operation, which provides the basis for reassessing the value of the MoD's movable property taking into account amortisation costs. As the work on the reassessment of the value of arms and military equipment is highly demanding, the MoD does not have sufficient capacities to carry it out in a short period of time.

In 2013, the SAI carried out a financial audit of the supporting documents of the MoD's financial report regarding remuneration of its employees and members of the armed forces. The SAI concluded that the supporting documents regarding remuneration were fair and objective with the exception of some minor issues on the calculation of social contributions, and minor problems in the accounting system.⁴³

In 2014, the SAI for the first time carried out value for money audit of the use of government vehicles, including the MoD. The SAI did not have any objections in this matter and considered that the MoD positively responded to its 2010 report recommendations.

The MoD has a positive record of following up on the SAI's recommendations. One of the most important measures undertaken by the MoD was the commencement of an inventory of immovable property. In the SAI's view this is a rather demanding exercise given that the MoD's property is scattered all around the country. The MoD has also started working on the assessment of value of movable property taking into account the amortisation costs, which is a fairly demanding exercise as explained earlier in the text. The MoD has also complied with the SAI's recommendations regarding calculation of salaries.

The SAI can make its reports directly available to the public and the parliament. The SAI is required to issue to the National Assembly an annual report on the consolidated government accounts and final accounts of organisations administering mandatory social insurance by the 31 March of the current year for the preceding year. In the course of the year, the SAI may also submit special reports on particularly important and urgent issues, in accordance with its Annual Plan. The SAI reports are not debated in depth or considered effectively by the Parliamentary Committee for Finance, Republican Budget and Control of the Use of Public Funds. The Committee started discussing SAI

⁴³ State Audit Institution, "Report on audit of supporting documents of financial reports of the Ministry of Defence for 2012," Belgrade 24 December 2013.

reports only in 2011 and its capacity to fulfil its budgetary oversight role remains weak.⁴⁴

In conclusion, the SAI is well established by now. Its greatest obstacle is the lack of adequate premises, which does not allow it to hire additional staff and operate effectively. The second problem is a very lengthy procedure for processing misdemeanour cases, which are instituted by the SAI and processed by misdemeanour courts. This weakens the personal liability of public bodies' personnel in charge of financial management. The SAI does not have any particular problems in effectively auditing the accounts of the MoD since the level of cooperation with the MoD is satisfactory.

More generally, the political will to enforce effective audit arrangements in Serbia is mixed. Managers of a number of public bodies repeatedly breach financial management rules in spite of the fact that they are called to account for irregularities in financial management before misdemeanour courts. The situation could be improved by strengthening the functions of financial management and control and internal audit in individual institutions. The Ministry of Finance has a key role in coordinating the efforts of individual public bodies in strengthening their financial management and control and internal audit functions.

4.3 Prevention of Conflict of Interest

Conflict of interest legislation was introduced for the first time in 2004 by the Law on Prevention of Conflict of Interest in Discharging Public Functions. The monitoring of the conflict of interest rules was entrusted to the Republican Committee for Resolution of Conflict of Interest, established in early 2005.

Although initially the committee's results were encouraging, it lacked a stronger sanctioning power, which limited the potential of this institution. At its outset the committee dealt with a number of incompatibility cases leading public officials to resign from their positions subsequent to its recommendations, but officials tended to drag their feet and resign only 3-6 months after the committee's recommendation was issued, which was not positive for the its standing. Instead of strengthening the authority of the committee, the government decided to create a new institution, the Anti-Corruption Agency (ACA). According to the transitional provision of the Law on Anti-Corruption Agency, the Republican Committee for Resolution of Conflict of Interest continued performing its functions until 1 January 2010, when the ACA was to take over its responsibilities, caseload, databases and

⁴⁴ SIGMA, Assessment Serbia, 2012.

staff. The new Law on ACA contained new provisions on conflict of interest, which entered into effect also on 1 January 2010, when the 2004 Law on Prevention of Conflict of Interest ceased to have effects.

The ACA is responsible for enforcing the conflict of interest regulations for senior officials, whereas for lower-level officials enforcement lies with the management of each institution. The role of administrative inspection in issues related to conflict of interest is minimal. The Ministry of Justice is responsible for policy and legal developments on conflict of interest, but according to the current Rulebook on Internal Organisation and Systematisation of the Ministry of Justice, no staff are currently dealing with the conflict of interest policy.

The declaration of income/assets/gifts is mandatory for all high-level public officials. The concept of a public official includes every person elected, appointed or nominated to State bodies, autonomous provinces, local self-government units, public enterprises and companies, institutions and other organisations founded or owned by those. There are in total around 20,000 public officials who are obliged to declare their assets. Two kinds of high-level officials are exempted from asset declaration obligations: firstly the council members and/or members of the managing or supervisory board of a public enterprise, institution and other organisation funded by a municipality or town; and secondly officials who are members of the managing or supervisory board of a public enterprise, institution and other organisation funded by the Republic, an autonomous province or the City of Belgrade, if they are not entitled to remuneration arising from membership. These officials are not obliged to declare assets, unless the ACA, which keeps the Official Register, does not explicitly demand it.

The obligation of asset declaration also applies to officials' family, including the spouse or partner, as well as under-age children if they live in the same household. It may be argued that the list of relatives is rather narrow, especially given the traditionally strong family ties in Serbia. For this reason, the ACA has requested that the list of relatives be extended to all blood relatives in direct line, if they live in the same household. Rank and file civil servants and members of the armed forces are not covered by the Law on Anti-Corruption Agency. Therefore, the asset declaration provisions are not applicable to them.

Only the top-level management of the MoD (minister, state secretaries, assistant ministers, and Ministry's general secretary) are obliged to declare assets and personal interests, as this falls within the scope of the Law on the Anti-Corruption Agency. Top military personnel are not obliged to declare assets and interests, which constitutes an important exception to the rules on asset declaration, an exception for which legal experts do not see any good reasons.

The procedure for the collection of information is regulated by the Law on the Anti-Corruption Agency, which keeps the Register of Officials. The body in which the official holds an office shall notify the ACA that the official has taken or terminated tenure in office within seven days from the date of taking or termination of office. The official is to submit to the Agency, within 30 days of his election, appointment or nomination, a disclosure report concerning his property and income. If significant changes occur over the course of one year, the official shall report to the ACA by 31 January of the current year with the status as of 31 December of the previous year. A significant change is any change that exceeds the average monthly net income in Serbia. Furthermore, an official whose public office has been terminated is required to file annually a report on significant changes during the subsequent two years.

There are personal and family restrictions on holding property titles of private companies. Within 30 days of election, appointment or nomination, an official is required to transfer his managing rights in any commercial company to a legal entity or citizen who is not a close relative, and who will discharge the duties related to the operation of the company on behalf of the official until the termination of his term in office.⁴⁵ An official may exceptionally transfer his management rights in a company to another person or legal entity who is a founder, member or director of the company in which the official has management rights. An official shall submit, within five days of the date of transfer of the managing rights, evidence of the transfer both to the commercial company and the ACA. Officials owning up to a 3% share in a company are not required to transfer their managing rights to another legal entity or person.

These rules also apply to MoD officials including professional military personnel. Although there are no specific rules on this matter in the Law on Armed Forces, the Civil Service Law has subsidiary application to professional military personnel, as provided by Article 8 of the Law on Armed Forces.⁴⁶ Article 8 of the Civil Service Law provides that a civil servant is not allowed to form a business company or undertake entrepreneurial activities. The transfer of his managerial rights within a business company to another person is defined by regulations on prevention of conflicts of interest in public offices (i.e. by the Law on ACA as explained earlier). A civil servant is obliged to submit relevant data on evidence of the transfer to the Anti-Corruption Agency.

⁴⁵ The law on Anti-Corruption Agency defines a close relative as an “associated person” which includes: a spouse or a common-law partner of the official, lineal blood relative of the official, lateral blood relative to the second degree of kinship, adoptive parent or adoptee of the official, as well as any other legal entity or natural person who may be reasonably assumed to be associated with the official.

⁴⁶ Article 8 of the Law on Armed Forces stipulates that on all issues that have not been regulated by the Law on Armed Forces, Civil Service Law and Labour Law shall be applied in a subsidiary way.

The ACA is in charge of checking the accuracy and completeness of the information. The verification is carried out pursuant to the annual verification schedule for a certain number and category of officials as established by the ACA's annual plan. The verification schedule contains the declarations of 250–300 top-ranking officials in addition to those in management positions in state-owned enterprises, bringing the total number to about 500. This number of verifications is viewed as a realistic and impartial, but it raises questions concerning the veracity of declarations of the several thousand remaining officials who are obliged to file them. The ACA would need to have its capacities strengthened to enable higher quality and more in-depth verifications.⁴⁷

In order to verify the asset declarations, the ACA may request additional data from competent authorities, financial organisations, companies and other persons. The ACA has reported some difficulties with declaration verifications. There has been satisfactory co-operation from domestic banks, although the issue is inevitably quite different with regard to foreign banks. Inquiries addressed to foreign financial institutions have to be made through official channels of international co-operation on criminal matters and through the anti-money laundering unit. This requires evidence extending beyond the evidence required solely for verification purposes.⁴⁸

Failure to comply with the rules of asset declaration has disciplinary or criminal consequences. In accordance with the Law on the ACA, an official who fails to report property to the ACA, or gives false information about the property with the intention to deceive, may be imprisoned from six months to five years. Furthermore, if an official is sentenced to imprisonment for the criminal offence related to a failure to declare assets, his term in office will be terminated and he will be banned from entering public office for a period of ten years after the court decision becomes final. Data are made available to investigators tasked with detecting cases of possible criminal offences. When the ACA establishes that an official has violated asset declaration provisions, it notifies the competent body for the purpose of instituting a disciplinary, misdemeanour or criminal procedure and provides it with all information relevant for the case in question.

It is difficult to assess the effectiveness of asset declaration, as the whole system was established only recently. On a positive note, most public officials have declared their assets following the 2012 and 2014 election. The main problem is, however, that the ACA does not have the capacity to verify declarations of all officials due to the very high number of officials who are

⁴⁷ SIGMA Assessment, Serbia, 2011.

⁴⁸ *Ibid.*

obliged to declare their assets (around 20,000). In order to be able to check as many asset declarations as possible, the ACA currently focuses on those positions especially vulnerable to corruption, for example public prosecutor, director of a public utility company and the like.

From August 2011 to July 2012, the ACA processed 326 asset declarations (covering 211 senior public officials) and verified 168 of them. From 18 July 2012 (after the installation of the new government) to 1 February 2013, the ACA processed 304 new asset declarations out of which 175 had been made by newly appointed high level public officials.⁴⁹ In 2013, the ACA reviewed 282 declarations which had not been finalized in 2012, as well as 317 declarations in line with the annual verification plan and upon complaints and objections *ex officio*. According to the 2013 annual plan, 287 declarations were reviewed. These were filed by MPs elected during the 2012 National Assembly election, judges of the Supreme Court of Cassation, the Commercial Appellate Court, the Commercial Court in Belgrade, and the acting president judges of commercial courts. As a result of reviews initiated *ex officio* in this period, 30 public officials were suspected of not having declared all of their assets and income.⁵⁰

In 2013, the ACA submitted nine criminal charges to the Anti-Corruption Department of the Prosecutor's Office in Belgrade based on suspicion that public officials had failed to declare their assets or that they had intentionally given false data.⁵¹ The criminal charges were filed against three MPs, four members of a managing board, the principal of a school of professional business studies, and a district council chairman. Out of the nine criminal charges mentioned, arraignments were filed in two cases and further investigation was ordered in five cases. Two of the aforementioned criminal charges are currently being decided upon by the Prosecutor's Office. A total of 20 reports were filed to the Prosecutor's Office and other state authorities on suspicion that public officials, whose assets were subject to verification, had committed other criminal offences such as bribes, misuse of public office, money laundering, tax evasion, etc.⁵²

The holding of concurrent jobs by public officials is quite restricted by the ACA Law. The categories of public officials covered by these restrictions are the same as those required to declare assets. The general rule is that an official may hold only one public office unless he receives approval from the ACA that he can concurrently hold another public office. An official who intends to discharge multiple public functions concurrently is required to request consent from the ACA within three days of the day of election, nomination or appointment. The ACA is required to issue a decision on the request within 15

⁴⁹ Information Booklet of the ACA, last updated on February 28, 2013.

⁵⁰ Anti-Corruption Agency, 2013 Annual Work Report.

⁵¹ Article 72 of the Law on the ACA.

⁵² *Ibid.*

days of receiving the request. The ACA will not issue consent for the discharge of another public office if it compromises the discharge of the current public office held by the official.

An official is allowed to perform a function in a political party, and/or political entity and participate in its activities, but only if this does not impede the efficient discharge of his public office. An official is not allowed to use public resources in his capacity as an official for the promotion of any political parties, and/or political entities. An official is required, at all times, to unequivocally indicate to his interlocutors and the general public whether he is stating the viewpoints of the official body in which he holds office, or the viewpoints of the political party, and/or political entity.

An official who has full time employment in a public office may not perform any other jobs or engagements during his tenure without ACA authorisation with the exception of research, educational, cultural, humanitarian or sporting activities if they do not compromise the efficient and impartial discharge and dignity of public office. An official is required to report incomes from these activities to the ACA. If, however, the ACA determines that the official's engagement in research, educational, cultural or humanitarian activities compromises the impartial discharge of public office, or represents a conflict of interest, it will set a deadline wherein the official is required to cease the engagement or job. An official who has full time employment in a public office is also prohibited from establishing a commercial company or enterprise. He may not hold a management, supervisory or representation office in a private capital company, private institution or other private legal entity either. Public officials are allowed to hold membership in professional associations. An official who is a member of an association may not, however, receive reimbursement or gifts deriving from membership in the association, excluding travel and other such costs.

The MoD officials and the armed forces, excluding the senior (so-called appointed) positions at the MoD, are not covered by the general rules regarding external concurrent employment regulated by the Law on the Anti-Corruption Agency, since it applies to office holders and senior civil service positions only. MoD officials who are civil servants are covered by Article 29 of the Civil Service Law, which prescribes that a civil servant may not be a managing director, deputy or assistant director of a legal entity. There is, however, an exception to this rule, which is that a civil servant may be a member of the management board, supervisory board or other management body of a legal entity if he is appointed to the function by the government or other state body in accordance with special regulations.

The Civil Service Law contains provisions on conditions in which additional work may be performed by civil servants. Article 26 of the Civil Service Law

prescribes that a civil servant may work outside regular working hours with the written approval of the manager, and may work for another employer if that work is not prohibited by a special law or other legislation and does not create a conflict of interest nor influence the impartiality in performance of his or her tasks. A permit is not needed for scientific research, publications, cultural and artistic activities, humanitarian, sporting and similar organizations. The manager may forbid this if it affects or impedes the civil servant's performance or damages the reputation of the state authority.

Additional occupation of members of the armed forces is regulated by Article 52 of the Law on the Armed Forces, which prescribes that a professional member of the armed forces can carry out additional activities only with the approval of the head of the armed forces or other authorised person, the Minister of Defence or person authorised by the Minister.

A significant number of military and civilian personnel at the MoD have obtained permission to perform another job outside their working hours, but in some cases such requests have been refused. Thus, in the MoD Human Resources Department in the period between January 2010 and January 2012, 89 professional military personnel and 157 civilian personnel sought the written consent of their superior to perform another job outside their working hours and all these requests were granted. In the organisational units of the armed forces in the same period, 73 professional personnel sought consent to perform another job outside their working hours, and nine of these were refused. Finally, in the Material Resources Department in the same period, nine persons sought consent to perform another job outside their working hours and all were granted permission.⁵³

There is no prohibition against taking up additional work in the defence industry during military service. On the contrary, this matter is explicitly allowed by the Law on the Public Enterprise *Jugoinport-SDPR*.⁵⁴ According to this Law, the public enterprise *Jugoinport-SDPR*, which produces, imports and exports arms and military equipment, allows the engagement of professional military personnel. Article 18 of the Law on the Public Enterprise *Jugoinport-SDPR* prescribes that the engagement of professional military personnel within the SDPR should be arranged through a contract that is signed between a competent public body and the SDPR.

An explicit legal obligation to declare private interests that may impact decision making exists for all civil servants in public administration and also for the members of the armed forces (as the Civil Service Law is also applicable to

⁵³ M. Savkovic (2013), "Armed Forces and Ministry of Defence", in Petrovic P (ed.), *Corruption in the Security Sector of Serbia*, Belgrade Center for Security Policy, p. 42.

⁵⁴ Official Gazette of the Federal Republic of Yugoslavia", No. 46/96.

them in this respect). In accordance with the provisions of the Civil Service Law, a civil servant shall inform his direct superior immediately, in writing, about each interest that he or his relatives may have on public decisions. On the basis of such a statement, a civil servant's superior decides on his exemption from the case in question. A civil servant who is a manager of a state body involved in the decision and has a private interest shall inform his appointing body about the potential conflict. The Law on the Armed Forces requires members of the armed forces to abstain from the decision making if they or their relatives have a private interest in the matter.

The Law on the ACA, which is applicable to all high level public officials (including ministers, MPs and senior civil servants), contains only one provision regarding conflict of interest situations in decision making processes. It is not possible to adequately assess to what extent these rules are actually applied in the MoD, as there appear to be no statistics about cases of withdrawal and abstention in decision-making at the MoD and the armed forces.

Restrictions and control of gifts and other benefits are governed by the Law on the ACA and by the Rulebook on Public Officials' Gifts adopted by the ACA. These rules are primarily applied to high-level public officials. The general rule is that an official may not accept gifts in relation to the discharge of his public office duties, except appropriate or protocol gratuities.

The general rules regarding gifts and benefits apply to other officials and the armed forces. This is due to the fact that the Civil Service Law contains provisions that refer to the application of the law dealing with the prevention of conflict of interest (i.e. the Law on ACA) with respect to gifts and benefits. The ACA, however, cannot monitor the implementation of these rules with regard to armed forces personnel and civil servants in general, but only with respect to high-level public officials.

In accordance with the recommendations of the ACA, the MoD has adopted its own Directive on Gifts to Officials. In accordance with the Rulebook and by Order of the Minister of Defence, commissions for recording gifts and preparing reports on gifts given and received have been formed in all MoD organisational units. The Rulebook defines a gift as "money, an object, a right or a service provided without payment of an appropriate fee" or "any other benefit given to an official or associated person in connection with the carrying out of their public function, which has monetary value."⁵⁵ As in the ACA's Rulebook on gifts, in the MoD's Rulebook it is specified that the value of a gift may not exceed 5% average net monthly salary in Serbia,⁵⁶ and also that the

⁵⁵ Article 3

⁵⁶ Article 4.

receipt of money or financial instruments may not be considered as a gift.⁵⁷ The Rulebook does not specify who may be considered an “associated person”, but does contain a detailed explanation of the procedure for receiving and recording gifts and includes examples of forms for declaring the receipt of gifts, and a list of examples of gifts given to officials. There are no regulations regarding the participation in industry-sponsored events and renting of military property for external events.

There is a general prohibition of *pantouflage* or revolving doors whereby a member of the government (or other public official) after terminating their office move to a private company whose activities are closely related to the office held by the member of the government. General rules regarding employment after leaving office apply only to the management of the MoD, but not to all officials and members of the armed forces. In line with GRECO⁵⁸ recommendations, Article 38 of the Law on the ACA prescribes that during the period of two years after termination of public office, an official may not take employment or establish business cooperation with a legal entity, entrepreneur or international organization engaged in an activity related to the office the official held, except if authorised by the ACA. This prohibition also applies to all high-level public officials, except MPs. One of the arguments for this exception is that MPs’ responsibilities (i.e. passing of legislation) include all forms of economic and social life and that therefore it would not be feasible to prohibit MP’s from moving into the private sector after termination of their public office. In a situation when an official has left the government service for employment in a non-government body, the government usually does not assess the decisions made by the official in his official capacity in order to ensure that those decisions were not compromised by an undeclared conflict of interest, unless there is a serious concern regarding an actual or potential corruption case.

There is no moratorium on defence industry employment with regard to post-employment of MoD officials. As mentioned earlier, the Law on the Public Enterprise “*Jugoinport-SDPR*”, which constitutes an important part of the defence industry, allows the engagement of professional military personnel in the activities of SDPR.

The ACA Law⁵⁹ establishes penal and administrative sanctions regarding breaches of conflict of interest regulations for high-level public officials. An official who fails to report property to the ACA or intentionally gives false information about the property shall be punished with imprisonment from six months to five years. There are also a number of administrative sanctions for

⁵⁷ Articles 3-4.

⁵⁸ GRECO - The Group of States against Corruption.

⁵⁹ Article 72.

breaches of other conflict of interest regulations that range from 10,000 to 50,000 dinars (€100-500). The sanctioning system is not adequately applied as the ACA does not have sanctioning powers and is very much dependent on judicial authorities in enforcing conflict of interest legislation. The ACA has the authority to institute proceedings for the violation of the Law on ACA. However, on several occasions the public prosecutor's office and courts did not respond to the ACA's request to bring charges against officials who in ACA's view had breached the rules. The effectiveness of the system requires improvement of the cooperation between the ACA and the judicial authorities. The Civil Service Law does not contain administrative sanctions for breaching conflict of interest rules. The Law on the Armed Forces considers breaches of conflict of interest as a basis for disciplinary sanctions of the members of the armed forces.⁶⁰ There are no data on whether these disciplinary sanctions are effectively applied in practice.

The development of conflict of interest rules in Serbia was influenced by GRECO, who recommended that Serbian officials should expand the number of personnel who need to declare their assets, which created problems for the ACA in relation to verifying such large number of asset declarations.

In summary, the conflict of interest legal regime is well established, but the asset declaration obligations affect too many personnel, a fact which renders sound verification impossible and weakens the system. The exemption of top military personnel from that regime is considered unjustified by legal experts. Enforcement of sanctions is weak since the cooperation of the prosecutors and judiciary with the ACA needs improvement.

4.4 Transparency, Free Access to Information and Confidentiality

The principle of access to official documents has constitutional standing, as according to article 51 of the constitution everyone has the right to access the data of public bodies in accordance with the law. Free access to information is provided by the 2004 Law on Free Access to Information of Public Importance, as amended several times. The Law was adopted under continuous pressure from several local NGOs organised in a Coalition for Freedom of Access to Information. The Coalition included several renowned NGOs such as the Centre for Advanced Legal Studies, Lawyers Committee for Protection of

⁶⁰ Article 149 of the Law on Armed Forces.

Human Rights, Transparency Serbia and Open Society Fund.⁶¹ The drafting of the Law was supported by the OSCE mission in Serbia and the Council of Europe. At the time the Law was passed (2004), Serbia was under considerable pressure to adopt it since it had just become a member of the Council of Europe (2003), and wanted to meet the recommendations of the Council of Europe to its member states to pass legislation on free access to information. The Law is well aligned with international standards, including several exceptions to the right to free access to information. The ministry responsible for policy development on access to information is the Ministry of Justice, but it does not have an adequate organisational structure and staff for performing this task.

One of the key problems to free access of information in the defence sector has been the inadequate legal regulation of classified data. Although the Law on Classified Information was adopted in 2009, the government adopted key secondary legislation necessary to allow for its proper implementation in the MoD only in the course of 2013 and 2014.⁶² The Law on Classified Information introduced new categories of classified information (restricted, confidential, state secret, top secret), abolishing the previously existing classification of “military secret” and “official secret”. All state bodies were required to revise the confidentiality of their documents in accordance with the new classification within two years of the entry into force of the new Law, more precisely by 24 November 2011. However, in the absence of criteria on how to determine if a document is confidential or not (which had not been determined by a government decree at that time) state bodies, including the MoD, kept using the previous classifications, leaving a great number of “inherited” documents under the status of military or official secret, i.e. the status of confidentiality. This has resulted in arbitrary withholding of information which could be released if correctly classified, and in creating a risk of undue leakage of sensitive information. The key institution responsible for monitoring the implementation of the Law, the Commissioner for Free Access to Information and Data Protection, has often publicly raised concerns about this problem, which also involves the MoD.

An applicant is not required to give reasons for accessing the information, as there is a legal presumption of justified interest to access information. Access to documents is free. Fees for copies can be imposed, but are waived for journalists, NGOs focusing on human rights, and those asking for information relating to a threat to their persons or the public. Public authorities are required

⁶¹ Open Society Fund, Guide for the Law on Free Access to Information, Belgrade, 2005, available at: http://www.transparentnost.org.rs/dokumenti/Vodic_final.pdf .

⁶² Decree on Criteria for Determining Level of “Secret” and “Top Secret” Classified Data, “Official Gazette of RS” 46/2013, adopted on 20 May 2013 and entered into effect on 2 September 2013; Decree on Criteria on Determining the Level of “Restricted” and “Confidential” Classified Data in the Ministry of Defence, “Official Gazette of the RS” 66/2014, adopted on 29 June 2014.

to respond to an applicant's request within 15 days, except in cases where there is a threat to the person's life or freedom, protection of the public health or environment, in which case the request has to be processed within 48 hours. A time limit for processing of the request can be extended to a maximum of 40 days in cases where the authority has a justified reason not to respond within the official 15 days deadline. The public authority shall give reasons for rejecting an applicant's request. If a public authority refuses to allow the applicant an insight into the document containing the requested information or to issue a copy of the document, it shall give a written explanation of such a decision and notify the applicant of the legal remedies at his disposal to file an appeal against such a decision.

The Commissioner for Free Access to Information and Personal Data Protection is an independent central institution in charge of policing the right to free access to information. The Commissioner's Office has achieved noteworthy results in disclosing individual corruption cases in public administration and has generated great public confidence. The Commissioner has adjudicatory powers and can hear and decide cases on denial of access to information, delays, excessive fees or outright refusal to provide information. The Commissioner's decisions are binding, final and enforceable, as introduced by the 2010 amendments to the Law. The amendments also allowed the Commissioner to enforce his decisions by coercive means (coercive action or fines, as appropriate), in accordance with the law on general administrative procedures, which is a very positive development. If, for whatever reason the Commissioner is unable to enforce his decisions on his own, the Government shall assist him by taking action within its competences in order to ensure compliance with the Commissioner's decision.

There are, however, some exceptions to the rule that the Commissioner is authorised to decide on appeals of denials to the access of information. The exceptions include decisions of the Parliament, the President, the Government (Council of Ministers), the Supreme Cassation Court, the Constitutional Court and the Public Prosecutor. The decisions of these bodies are not heard by the Commissioner because they have a higher constitutional standing than the Commissioner. Appeals in those cases can only be made directly to an administrative court and the court can only review the reasonableness of the procedure rather than the merits.

There are clear and transparent procedures for appointing and dismissing the Commissioner. Although there is no requirement to have a two-thirds majority for appointment of the Commissioner, in practice some opposition parties also voted in favour of the (re)appointment of the Commissioner, who is appointed to this position for a period of seven years with one reappointment. The lower ranking staff of the Commissioner has the status of civil servants and is selected

in accordance with the provisions of the Civil Service Law. Over the past two years the resources of the institution have improved since it has obtained new adequate premises in August 2013 and increased the number of staff from 42 in 2012 to 60 in early 2015. However, as the number of cases received by the Commissioner is continuously increasing, the existing number of staff is already insufficient to cope effectively with such a demanding caseload. The number of staff foreseen in the Rulebook on Internal Organisation and Systematisation is 92.

The staff receive systematic training funded partly by the national government and partly by international donors. Staff members enjoy the same compensation package as other civil servants. Their salaries are not high, but are sufficient to prevent undesirable staff turnover. Work in the Commissioner's office is also considered to be prestigious. This fact contributes to low staff turnover.

Commissioner's (second instance) decisions can be challenged before the Administrative Court and this procedure is considered to be effective. In practice, not many decisions of the Commissioner have been challenged before the Administration Court and annulled. For example, in 2010, none of the decisions of the Commissioner were annulled, thus demonstrating his effectiveness in solving free access of information cases.

All public authorities shall make information of public interest available to the public in a booklet called 'Informator', which contains basic information about the authorities' competences and work. Every public body shall place an information booklet on its website. The Commissioner has provided guidance on what kind of information such a publication must contain: key competences of the body in question; its organisational structure; number of employees; financial statements etc.

In September 2011, the MoD received an award from the Commissioner for the best information booklet among all Serbian authorities. This is an important achievement in increasing transparency at the MoD. The Commissioner also praised the information provided by the MoD in its information booklet as one of the best role-models in the Serbian administration. In addition to the information booklet, the MoD presented a procurement plan for 2012 and public procurement procedures carried out over the past three years on its website, which is also a positive development.

In the view of the MoD, important progress has been made in the area of free access to information over the past few years. In 2014, out of around 130 requests, the MoD provided information in 110 cases. Only in 10-15 cases did the MoD refuse, which prompted the intervention of the Commissioner for Free Access to Information, after which the data was forwarded to the applicants. In four cases the MoD refused to provide the requested data even after the

intervention of the Commissioner and a fine was imposed by the Commissioner. The data in these cases were requested by the Fund for Humanitarian Law and was related to the activities of the members of the armed forces during the war operations.

Archiving information and documents in the MoD has been identified as one of the integrity risks in the MoD's integrity plan. The ACA's report on integrity plans⁶³ identifies three main risks within MoD's integrity plan: 1) Regulations for keeping and archiving of documentation are not consistently applied, which means that documentation to be kept or archived may be damaged, disposed of, lost or destroyed; 2) employees in charge of keeping or archiving documentation do not have enough knowledge to carry out this task, which means that documentation can be lost or wrongly classified due to lack of employee competencies; 3) the control system related to keeping and archiving documentation is not efficient and reliable, which may lead to the damage, disposal, loss or destruction of documents. In order to overcome the risk in the case of archiving, the ACA recommended the MoD to establish a more efficient control of documentation management covering documentation reception, classification, certification, expedition, retention and archiving.

The Commissioner has recently (January 2015) criticised the MoD for refusing to provide data about i.a. the price of the repair of military aircraft requested by a journalist, whose request was subsequently supported by the Commissioner. This has raised further public debate on which data should be considered as classified. In its research on the level of corruption at the MoD, Transparency International pointed out delays in the MoD's responses to requests for free access to information. In their view, one of the reasons for this is the lack of capacity at the MoD to respond to such requests. In its response to the TI findings, the MoD stressed that the reasons for delays in responding to requests for free access to information are not due to lack of its capacity, but to the complex organisational structure of the MoD and short deadlines for responding to these requests (15 days).

In the Commissioner's view, the main breach of access to information legislation is the refusal to provide information on the grounds of confidentiality. The main causes of these breaches are a traditional culture of secrecy of administration and lack of political support to make administration more open and transparent. The political will to uphold and enforce the freedom of access to information is weak. This is reflected by the fact that the Government, which is in charge of enforcing the Commissioner's decisions when state bodies do not comply with his orders, has never assisted the Commissioner to enforce his decisions. Furthermore, the Ministry of Justice,

⁶³ Anti-Corruption Agency of the Republic of Serbia (2014), "Report on Self-Assessment of Public Bodies in the Republic of Serbia, Integrity Plans," pp. 79-89.

which is in charge of free access to information policies has not established misdemeanour proceedings against responsible persons in cases of breaches of the Law.

The media has been of invaluable support to the Commissioner. Media-driven public pressure has often been the determinant factor for the enforcement of his decisions, yielding results in more than 90% of cases. The lack of political will and the resistance of other informal centres of power that want to keep information confidential, counteract freedom of information. A major obstacle faced by the Commissioner is the insufficiency of human and financial resources to discharge its duties effectively. As the number of incoming cases is steadily and continuously increasing, there is a risk that the current staffing levels will not be able respond to the obvious public need to access information.

The right to access to public information is well guaranteed by the Law and the Commissioner, who wields significant enforcement powers even if facing resistance stemming from governments and state bodies attached to a culture of secretiveness. The success of the current institution is closely linked to the personality of the Commissioner. The lingering secretiveness culture and the lack of clear legal definition of what constitute state secrets in a democracy may be conducive to reversing the achievements of the transparency policy conducted by the Commissioner.

5 Policies under the Control of the Executive

5.1 Internal Financial Control

There is a comprehensive legal framework for public internal financial control (PIFC). The key law is the 2009 Budget System Law, as amended several times. Articles 80-83 of the Budget System Law define the concept of Financial Management and Control (FMC), internal audit (IA) and the central harmonisation unit (CHU). The secondary legislation for PIFC consists of the “Rulebook on the Joint Criteria and Standards for Setting Up, Functioning and Reporting about Financial Management and Control in the Public Sector”, and the “Rulebook on Joint Criteria for Organising and Standards and Methodological Instructions for Performing Internal Audit in the Public Sector.” Both Regulations were adopted in 2011 and have improved the legal framework which has existed since 2002. The “Regulations on Terms, Manners and Procedures of Examinations for Acquiring the Qualification of Certified Internal Auditor in the Public Sector” were adopted by the Ministry of Finance in June 2009.

There is a system of ex ante control of commitments and payments in the MoD. There is a segregation of duties in a manner that does not allow the same person to be simultaneously responsible for authorization, implementation, recording and control. This is enabled by a triple signature system at the level of the users of resources, which means that the payment of a financial obligation is to be made against the payment order that has to be signed by the person who writes it, the person from the financial service that conducts the control thereof and by the person who approves the payment of the undertaken obligation (order-issuing authority). Before entering the payment system, the payment documentation is subject to another prior control performed by the Accounting Centre. The additional prior control (interim audit) is conducted by the Treasury. In that case, the payment system automatically ensures that the payment is made within the allowed budget and disposable monthly quotas. The establishment of the PIFC system in the MoD started in 2011, when the Ministry of Finance launched an initiative for the introduction of the PIFC in all budget users. The newly introduced PIFC system is an upgrade of the previously existing system of oversight and internal control, which was developed within the MoD and the armed forces over a couple of years. For this reason the MoD already had a basis for the introduction of the PIFC system.

In January 2011, the Action Plan for the implementation of the PIFC system at the MoD was adopted. In accordance with the action plan the following activities have been carried out: a) Training of personnel responsible for implementation of the PIFC; b) inventory and description of all business

process of all users of budget funds; and c) drawing maps of business processes. In 2012, the Minister of Defence adopted a Risk Management Strategy, whose objective was to ensure a single framework for the identification, assessment, management and monitoring of all organisational risks and to assign responsibilities to key actors in the risk management process. The identification and assessment of risks has been completed. The MoD has also completed the assessment of adequacy of existing controls and recommended their further development in order to reduce the risks to an acceptable level. The Register of Strategic Risks in the MoD and armed forces has also been adopted in accordance with the Risk Management Strategy. With the establishment of the Register, all key activities from the action plan have been completed.

The MoD has also established the basis for managerial accountability in the use of budget funds. The Minister of Defence has issued a decision by which the Assistant Minister for Budget and Finances has been appointed as the person responsible for financial management and control, while managers of MoD organisational units and bodies within MoD have been designated as persons responsible for the establishment and development of the PIFC system in their organisational units.

As regards internal audit, the MoD established a separate section for internal audit in 2010. The section has four employees (out of five envisaged by the Rulebook on Internal Organisation and Systematisation). Three internal auditors have audit certificates. Up to August 2015, the internal auditors have conducted 23 audits and given 246 recommendations with regard to various areas such as: public procurement, human resource management issues, including salaries, official trips, donations, office management etc. The PIFC system of the MoD is one of the most advanced ones in comparison to those of other users of budget funds. In spite of this the MoD acknowledges the need for training and further strengthening of its capacities as well as those of the armed forces staff in the area of PIFC.

Public Internal Financial Control is well established, but needs some strengthening. In the MoD it seems solidly introduced and working well.

5.2 General Administrative Inspectorates

The General Inspectorate has a long tradition in the Serbian defence sector. In 1911, the General Inspectorate for the armed forces was established – headed by the Crown Prince. From 1919 to 1923 there were a number of inspections – of Infantry, Artillery, and other arms. In 1930, a ground defence inspection was set up, which changed its name over the years (Supreme Inspection of Military Force, General Inspection of Yugoslav National Army, General Inspection of

the Armed Forces, General Inspection of National Defence). The current Defence Inspectorate was established pursuant to the order of the President of the Federal Republic of Yugoslavia of 22 February 2002 and the decision of Supreme Defence Council of 15 March 2003.

The appointment and dismissal of the Director of the Defence Inspectorate is not regulated by the Law on Defence or any other general legal act. The Law on Defence prescribes only that the Inspectorate regularly informs the Defence Minister and the President of the Republic about the inspections' results.

The Defence Inspectorate has a wide remit. Examples include areas such as inspections within the Serbian Armed Forces relating to operations and functions and implementation of the decisions and acts affecting the system of defence management. In the view of the MoD, the Defence Inspectorate is able and well-resourced to carry out its tasks.

The Defence Inspectorate plans, organizes and conducts regular inspections according to the annual inspection plan approved by the Minister of Defence with the consent of the President of the Republic on the operational and functional capabilities of units, institutions and organizational parts of the Serbian armed forces. Extraordinary inspections are conducted based on the order of the President and Minister of Defence and the Director of Inspectorate. Excerpts from the Annual Inspection Plan of the Defence Inspectorate are submitted to the subjects of inspection and notification of extraordinary inspection is given on the day of inspection.

Based on the annual inspection plan, the Director of the Inspectorate specifies in his order for the inspection in a particular month the following: types, subject and time of inspections, including their contents and questions to be raised, the membership of the acting inspection team and so forth. Pursuant to the Order of Director for the specific month, the head of the team develops a plan for the preparation and execution of the inspection, which is approved by the Director of the Defence Inspectorate. Based on the approved plan, the inspection body conducts the professional preparation with inspectors for the execution of the planned inspection. At the end of the inspection, the inspection team informs the responsible persons of the inspected subject about the findings that will be entered into the inspection notes. The inspection team submits these to both the inspected subject and the superior authority of the subject, no later than eight days after the completion of the inspection.

The inspection team submits a report to the Director of the Defence Inspectorate on the completed inspection with a proposal on urgent measures to eliminate shortcomings in the subject of inspection, which is the responsibility of the President and the Minister of Defence. The inspected subject can object to the inspection minutes within eight days. The objection is decided by the

head of the inspection body in the first instance. When there is a need and a legal obligation, the inspection body informs relevant government bodies on parts of the inspection findings and initiates appropriate disciplinary or judicial proceedings. After deciding the objection, the head of the inspection body adds a decision regarding the objections to the minutes and issues orders for the elimination of deficiencies and irregularities identified in the inspection. The inspected subject can appeal to the Director of the Defence Inspectorate. If the inspected subject is not satisfied with the decision of the Director of the Inspectorate, he can initiate proceedings before a competent court.

The Defence Inspectorate submits reports to the President of the Republic and the Minister of Defence on the inspections conducted in the previous month, as well as the annual report of the Defence Inspectorate and analyses of the situation in the areas of inspection proposing measures for the elimination of systemic deficiencies in the SAF and the MoD. The Defence Inspectorate, at the request of the National Assembly and other government bodies carries out special investigations and analyses.

The Defence Inspectorate's reports are not publicly available and hence it is not possible to assess the effectiveness and impact of its work. The MoD explained that the Defence Inspectorate sends information about inspection results only to management and command bodies in the defence system for the purpose of making decisions and executing measures within their functional responsibility. The Defence Inspectorate is not responsible or authorized to receive complaints from the members of the armed forces or the public, nor is it obliged to inform the public about the results of inspections. It should be noted that the MoD has an Inspector General for Military Security Services as mentioned earlier in this report. The Inspector General for Military Security Services appears to have the authorities which are common for the IG for Defence in other countries (e.g. employees of defence security services, as well as ordinary citizens, can make complaints to the Inspector General for Military Security Services if they have knowledge of irregularities in agencies or if their rights have been violated).

The Defence Inspectorate seems to be an acceptable counterbalance to the MoD and Armed Forces management, but this cannot be fully ascertained because of the general opaqueness of its performance.

5.3 Public Procurement and Military Surplus Asset Disposal

Public procurements were for the first time regulated by the 2002 Law on Public Procurement (PPL), which was introduced in order to align Serbia's legislation with the EU *acquis*, as Serbia did not have any public procurement

legislation. The second public procurement law, the 2009 PPL brought some positive changes to the public procurement system, particularly in terms of further alignment with EU standards. The new Serbian PPL (2012) was adopted under EU pressure, but also reflected the will of the new government to show its determination to fight corruption.

The parliament passed the new PPL in December 2012. It entered into effect in April 2013. This Law replaced the 2009 Public Procurement Law. In addition to the PPL, the Ministry of Defence conducts its procurements in accordance with the recently adopted Decree on the Process of Public Procurement in the Defence and Security Sector. The Decree was adopted in August 2014 and came into force on 1 January 2015. This Decree superseded the Decree on Special-Purpose Items linked to the defence sector, the Decree on Special-Purpose Items linked to the operations of the Ministry of Interior and the Decree on Designation of Items for Special Purpose for the Needs of Security and Information Agency.

The new PPL solves a shortcoming of the former PPL, which had left the regulation of procurement in the fields of defence and security exclusively to secondary legislation. The new PPL differentiates between two legal procurement regimes in the defence and security sector: on the one hand, procurements in the field of defence and security to which special provisions of the PPL apply (article 127 of the PPL); on the other, the exceptions in the defence and security sector (article 128 of the PPL) where its provisions do not apply. The new PPL is better aligned with EU directives in the field of defence, especially with Directive 2009/81/EC. Article 128, like the mentioned Directive, sets the following exemptions from the general public procurement regime: contracts awarded pursuant to international rules and contracts awarded within the framework of a cooperative programme based on research and development, realised jointly by the Republic of Serbia and one or more countries or international organisations.

5.3.1 Acquisitions

Article 127 of the PPL defines the notion of military equipment and sensitive equipment, services and works in compliance with the mentioned EC Directive. Article 127, paragraphs 4 and 5, establishes the obligation to inform the competent National Assembly Committee on contract award procedures in the fields of defence and security, and guarantees placed on the competitiveness of the procedure. These solutions are in line with the main objective of Directive 2009/81/EC because they aim at introducing standards of transparency and

competitiveness in procurement in the fields of defence and security.⁶⁴ When it comes to full transposition of Directive 2009/81/EC in Serbian legislation, further progress was made by the adoption of the above-mentioned Decree on the Process of Public Procurement in Defence and Security Sector which also contains a detailed list of goods, services and works that may be an object of public procurement in the fields of defence and security. Before 1 January 2015, when this Decree came into force, there were inconsistencies between the wording of the 2012 PPL and the applicable secondary legislation which was adopted pursuant to the 2009 PPL, which are expected to be ironed out in the near future.

According to the 2014 annual procurement report in the defence sector, only five out of 184 procurements were from a single source (approximately 3%). More specifically, these single source procurements were conducted under negotiated procedure without invitation to bid.⁶⁵ However, there is not enough information on the full number and characteristics of procurements in the fields of defence and security, which according to Article 128 of 2013 PPL are exempted from the application of this Law.⁶⁶ Due to incomplete data, the exact percentage of single source defence procurement cannot be provided.

There is a central Public Procurement Office (PPO) in charge of technical activities and the promotion of competition and equality of bidders in public procurement procedures. The PPO is set up as an independent Government agency with the mission to help the establishment of single procurement procedures and practices ensuring that public funds are spent in an efficient and transparent way, as well as supporting the government's overall drive against corruption. Despite inadequate budget and the lack of staff, the PPO managed to prepare a range of user tools, including manuals aimed to facilitate public procurement procedures. It has run a number of training courses and certified more than 1 050 procurement officers, which represents an important step in the professionalization of the public procurement system. It has also promoted training of a great number of contracting authorities, bidders and other stakeholders.⁶⁷

In addition to the PPO, another institution ensures the correct functioning of the public procurement system: the Republic Commission for the Protection of Rights in Public Procurement Procedures. This Commission is an autonomous and independent legal entity for the protection of both the bidder's legitimate rights and the public interest in public procurement procedures. The

⁶⁴ Strategy for the Development of Public Procurement in the Republic of Serbia of 2011, 6, available at: www.kg-cci.co.rs/pdf/strategije_2012.pdf.

⁶⁵ The data for 2013, when the new PPL came into force are not available.

⁶⁶ The annual plan only contains insufficient and vague information related to 30 procurements which are exempted from the application of 2012 PPL.

⁶⁷ Assessment Serbia 2011, SIGMA.

Commission is accountable to the National Assembly. The 2012 PPL broadened the powers of the Commission, which can now impose fines on a contracting authority and conduct minor offence proceedings in the first instance.

The key problems on the functioning of those two institutions, such as inadequate budget and insufficient administrative capacities are about to be overcome. The number of staff of the Republic Commission for the Protection has increased dramatically, from 9 to 38, and it moved to new, more adequate and well equipped premises in 2012. In 2014, it has further continued to build up its administrative and enforcement capacity to a total of 54 employees. In 2014, eight new posts were created in the Public Procurement Office, but further reinforcement of its administrative capacity is needed in view of its new responsibilities. Since the entry into force of the new Law on Misdemeanours in March 2014, the Public Procurement Office has initiated 26 misdemeanour procedures against contracting authorities. Institutional cooperation on public procurement, including with audit, judicial and police institutions, is improving, but needs to be reinforced.⁶⁸

According to the Rulebook on Internal Organization and Systematization of the MoD, the Ministry has separate departments in charge of public procurement, organized under the Material Resource Sector. These are the Supply Department and the Directorate for Purchase and Sale, which is subordinate to Supply Department. The PPL requires all public bodies, including the MoD, to have a ‘procurement officer’ who is specially trained to conduct public procurement procedures and must ensure that public procurement procedures are carried out in accordance with the Law. The MoD has so far appointed around 50 qualified procurement officers.⁶⁹ There are around 14 employees engaged in public procurement processes at the Directorate for Purchase and Sale. The MoD’s view is that there is a need to strengthen the capacities of this unit.

The Supply Department, Directorate for Purchase and Sale, has issued a document on Procedures for the Uniform Proceedings in the Implementation and Realization of Public Procurements within the Directorate for Purchase and Sale of the Material Resource Sector of the Ministry of Defence.⁷⁰ The Procedures specify the conditions, methods and procedures for the procurement of goods and services for use by units of the Ministry of Defence. A new procurement procedure manual that will reflect changes in the legal framework has been prepared and is in the consultation process within the MoD.

⁶⁸ Annual 2012 Serbia Progress Report, European Commission.

⁶⁹ According to the document referred to as “Response to BCBP Questionnaire” there were 45 certified procurement officers employed in the MoD.

⁷⁰ Internal No. 332-1/10, adopted on May 31, 2010.

There is a procurement plan developed and approved by the Minister of Defence. In the view of the MoD the plan is based on a proper needs analysis. There is an action plan setting deadlines, persons responsible, budget and items. The procurement plan, containing both classified and unclassified procurements is published on the website of the MoD. Civilian purchases of the MoD amount to approximately 85%, which are subject to the procedures defined by the PPL. Altogether 95% of those are conducted through open procedure with full publicity, as required by the PPL. The remaining 15% of purchases are non-civilian and confidential, and are carried out through the procedures foreseen in the Decree on Goods of Special Purpose which entails competition among the bidders drawn from a list kept by the Ministry of Economy.⁷¹

In order to introduce stronger measures for combating corruption, the PPL devotes the whole chapter to protecting the persons employed or otherwise engaged by the procuring entity and who are involved in conducting public procurement procedures in order to encourage them to report corruption cases to the PPO. The PPL introduces an interesting innovation – the Civil Supervisor – who is to control the public procurement procedure when its estimated value is higher than 1 billion dinars. The Civil Supervisor is nominated by the PPO among recognized public procurement experts. It is noteworthy that the Law on Whistle-blowers Protection was adopted in November 2014.

The final decision regarding the type of public procurement procedure that is going to be applied is made by the procuring entity, i.e. MoD. There is a specific type of risk related to the planning and execution of procurement procedures, which is particularly evident at the MoD as it is one of the largest purchasers of goods and services. A sole decision concerning what, and under what conditions, the procurement is made may represent a source of risk.⁷²

The level of transparency of public procurement procedures is increasing. In that sense, the 2009 PPL introduced the principle of transparency as a fundamental public procurement principle, stipulating the obligation to publish public procurement announcements in the Official Gazette and on the Public Procurement Portal in the manner prescribed by the PPL. The PPL also lists the types of notices which are to be published: periodic information notices; calls for competitive tenders; contract award notices; public procurement contracts completed; and notices outlining the termination of public procurement procedures. The 2012 PPL (article 59) in addition introduces the obligation of the *prior notice* – each procuring entity is required to publish at least once a year, at the beginning of the calendar year, prior notice on the intent to procure

⁷¹ SIGMA/OECD, Assessment Serbia 2011, SIGMA.

⁷² Regular Monitoring and Mapping of the Security Sector in Serbia, Belgrade Centre for Security Policy, 2011.

goods/services/works whose estimated annual value is above fifteen times the lower threshold (3.000.000 dinars- around €27 000) times fifteen.

There are justified concerns that purchasing entities do not prepare public procurement terms of reference based on proper market research. As a result a large number of unnecessary goods/services/works procurements appear. Thus it seems necessary to provide more professionalism and transparency during the planning phase. This refers to the need to carry out a precise needs assessment for procuring different goods, works and services, to give more detailed explanation and justification of the parts of the budget which shall be realized through public procurements, and to allow interested parties to monitor and participate in budget drafting.

Article 55 of the 2012 PPL requires that a tendering committee shall be established by the contracting authority. It further stipulates that when it comes to public procurement procedures whose estimated value is three times higher than 3.000.000 dinars, the chair of the Committee shall be a public procurement officer. A tendering committee has at least three members, at least one of whom has to be a public procurement officer or a person with a law faculty degree, or second degree studies (master academic studies, specialized academic studies, specialized professional studies), or basic studies of at least four years duration. The decision to establish the committee is made by the MoD body authorized to initialise public procurement procedures. The Directorate for Purchase and Sale also appoints one of its employees to be the member of the committee.

While the 2009 PPL did not contain any provisions on conflict of interests in the case of committee members, the 2012 PPL introduced the obligation to provide a special statement signed by all the committee members confirming that they are not in conflict of interests for the concrete procurement. More specifically, Article 54 of the 2012 PPL stipulates that persons who may be involved in conflict of interests for the specific subject of public procurement cannot be appointed to the committee. Further, it provides that members of a tendering committee shall sign a statement confirming that they are not involved in any conflict of interest in a given public procurement once a decision establishing the committee is made.

The tendering committee shall report a professional assessment of the bids, including recommendations to the procuring entity on the most appropriate bid. The PPL does not specifically mandate that the contracting authority is bound by the recommendation of the Committee, but it prescribes that the report, containing the recommendation for decision, must be justified and meet the form and content prescribed by the Law. In practice in the MoD, the final decision usually fits the Committee's recommendation. The Public Procurement Authority shall publish the most appropriate bid on the Public Procurement Portal. The tendering committee shall, in the case of a single bidder, explain the

reasons causing this situation and suggest measures to ensure more competition in future procedures. The recommendations/decisions of the evaluation committee are not published on the website of the MoD.

The national legislation specifies that government agencies are not allowed to use offsets in procurement.⁷³

All decisions taken in a public procurement procedure are published, as prescribed by the PPL. The tender committee shall write a report on the technical evaluation of the bids. Based on this report, the procuring entity decides on the most advantageous bid, and this is communicated to all bidders and participants in the procurement procedure. Decisions, either on awarding the contract or cancelling the public procurement procedure must be reasoned and must specifically contain certain data from the report on expert evaluation of bids. The decision is published in the Official Gazette and on the Public Procurement Portal of the PPO, a digital database containing updated information on public procurements. Besides the PPO, procurement entities shall keep all documentation pertaining to any public procurement, and keep records of all the contracts awarded. The documentation must be kept for at least 10 years from the expiry of the agreed period for the execution of the individual public procurement contract or five years should a public procurement be suspended. Decisions of tendering committees are subject to review by the State Audit Institution, internal audits and the review of the relevant committees of the National Assembly. However, it appears that these reviews have not been conducted on a regular basis so far.

The quality control section at the Supply Department sets measures and procedures for quality control. If specific requirements are not met, a deadline is given to address deficiencies. In accordance with the Rulebook on Military Control of Quality, special analyses are conducted in authorised laboratories in order to make sure that the quality of procured goods or services is adequate.

An appeal procedure against a contract award can be lodged before the Republic Commission for the Protection of Rights in Public Procurement Procedures, which is the core institution for the review system. A complaint may be lodged by any person with an interest in concluding a contract in the particular public procurement. However, in the case of violation of the public interest, a complaint may be submitted by the PPO, a public attorney or a competent Government body. A request for the protection of the bidders' rights should be submitted to the procuring entity and a copy simultaneously submitted to the Republic Commission. After receiving the request, and a preliminary examination, the procuring entity should decide whether to accept the request and cancel the procurement procedure, partially or wholly, or to

⁷³ NATO, Building Integrity, Self-Assessment, Peer Review Report, Serbia, 2012, p. 19.

reject the request as unfounded. Subsequently, the decision should be communicated to the complainant to decide if he is going to proceed with the subsequent procedure before the Republic Commission against which the sole recourse is an appeal in the administrative court.

According to the PPL, there are no hearings during the appeal procedure in front of the Commission, but prior to making its decision, the Commission may request additional information from the procuring entity, the claimant or other participants. It can also appoint an expert and review other documents held by the parties to the public procurement procedure, as well as collect additional information. The 2012 PPL allows the parties to suggest holding a hearing if the complexity of the case demands it.

The complainant must deposit 60 000 dinars (€600) in a special budgetary account prior to initiating the appeal. If the request for the protection of rights is well-founded, the procuring entity must compensate the expenses incurred on the basis of rights protection of the claimant. If it proves that the appeal is unfounded, the amount will not be reimbursed. The above-mentioned amount is fairly high taking into account the low economic standard in the country, and it could influence potential complainants against initiating the process. The 2012 PPL introduces different fees depending on the type of the procedure, but those are also quite high considering the current economic opportunities and standards in Serbia.

According to the SAI 2010 Annual Audit Report, the procurement of ‘special purpose goods’, classified as confidential by the MoD, was considered most controversial.⁷⁴ The Ministry of Defence had not followed the special procedures for the procurement of ‘special purpose goods’ as required by the Regulation on Goods of Special Purpose. The SAI pointed out that in the procurement processes for classified equipment or goods, the only criterion in the bid evaluation was the price, despite the regulations requiring that several additional criteria had to be observed, namely the quality, price and costs of maintenance. Nor was the way in which the list of potential bidders was drawn up in line with the regulations. Finally, the SAI noted that the Ministry was obliged to keep special records covering classified procurements, and that it did not prepare the Annual Report on the procurement of classified material.

5.3.2 Asset Disposal

The 2011 Law on Public Property represents the primary legislation on asset disposal of state property. The Law recognizes three types of public property:

⁷⁴ State Audit Institution, “Audit Report on the Annual Financial Statements of the Ministry of Defence for the year 2010”, pp.169-177.

state property (owned by Republic of Serbia), property of the Autonomous Province Vojvodina and property of local self-government units. The most important aspect of asset disposal is disposal of immovable property which is no longer necessary for the functioning of the MoD.

In order to dispose of a large number of unused or obsolete military assets, the government enacted special regulations that govern this process. In June 2006, the government adopted the “Master plan for disposal of immovable property which is not necessary for the functioning of the Republic of Serbia”, which contains the list of immovable State property.⁷⁵ The master plan was conceived as a document with all necessary data on buildings and other objects, which were designated for sale. The MoD identified around 455 military facilities as no longer necessary. One objective of the plan was to obtain additional financial resources for the reform of the defence sector and improve the financial position of the MoD and armed forces personnel (through providing them with apartments).

The master plan envisages three key ways in which the surplus of military property could be disposed of: 1) Sale by tender; 2) Swapping with other institutions using state property; 3) Investing in joint apartment buildings. The most common way of asset disposal was “swapping with institutions using state property”, i.e. municipalities. On the basis of the government conclusion, the property is first offered to municipalities. Around seventy-nine municipalities have military immovable assets on their territory. Fifty-nine municipalities positively responded to the offer of the Ministry of Defence. The idea was that municipalities, in exchange for the military property, would provide the MoD with apartments or would build apartments for the MoD, the value of which would equal the value of the MoD’s transferred property to the municipality.

There are several steps in this process: 1) The MoD sends a letter to the municipality with an offer to sell the property; 2) the municipality accepts the initiative and starts negotiations; 3) the MoD collects all necessary documentation related to the property and sends it to the Republican Directorate for Property (a government body responsible for all immovable property of the Republic of Serbia), which is the key body responsible for conducting the procedure; 4) the Tax Administration assesses the property value and forwards its assessment to the Republican Directorate for Property; 5) the MoD approves the property value assessment; 6) the MoD and municipality reach an agreement on the property value and the manner of payment /or swap on the basis of the system-property for property (apartments); 7) signature of the contract.

⁷⁵M. Tadic (2012), “What to do with military property surplus?,” Belgrade Centre for Security Policy.

Although it appeared that the Master plan provided a good framework for asset disposal, its implementation was unsatisfactory. In the period from 2006–2010 only 22 military facilities were sold. The reasons for this were that the procedure did not envisage specific deadlines for taking certain actions, the property assessment prices were unreasonably high and ownership issues were often left unsolved. To overcome these difficulties, the government adopted an action plan to accelerate the procedure of disposal and more efficient sale of military immovable property in 2010. The action plan defined accurate terms for carrying out all actions such as collecting necessary documents, assessment of the property value, limited pre-emption rights of the local government etc. The MoD agreed to discount the initial assessment prices. The Republic Directorate was authorised, without the approval of the previous government, to lower the initial price by 20% if the property in question is not sold in two consecutive tenders. If the sale is not completed even at a lower price, the price could be reduced by an extra 20%. Another new feature introduced by the action plan was the possibility of payments in instalments. This new legal framework achieved better results, but they were not completely satisfactory. Up to January 2015, 72 military facilities and parts of six other military centres were sold, while 72 contracts on asset disposal have been signed.

In the course of 2006–2009 a new section for keeping a record of immovable assets was formed and deals with asset disposal. The section is responsible for acquiring the documentation regarding asset disposal and consists of personnel with various qualifications – civil engineers, geodetic engineers, lawyers, economists etc. The section also deals with the military assets cadastre, the operation of which poses specific problems. The data in the military assets cadastre have not been aligned with the data in the civil cadastre kept at the Geodetic Authority, a fact which creates problems regarding sales. The government has recently adopted a decision allowing the cadastre in the Geodetic Authority to use the data from the military cadastre, which should provide a better basis for the gradual alignment of the data in the civil and military cadastres.

If the immovable property is to be sold through tender, the sale is conducted by a committee which consists of two to three persons from the Republican Directorate for Property and one representative of the MoD. The final decision on the sale is made by the government. This is in accordance with the Law on Public Property, which states that the government decides on the disposal of assets of public property, unless otherwise specified by the Law. According to the Law on Public Property the disposal of movable assets shall be carried out through public announcement, and then through written bids, or exceptionally, by direct negotiations. The contract for the disposal of movable assets is approved and signed by the head of the state authority which disposes of the assets, i.e. the Minister of Defence in the defence sector. More details on the

procedure of disposal of movable assets are provided in the MoD Rulebook of material-financial operation and the Directive on the Manner in which Materials and Acts are Prepared in the MoD.

The Law on Public Property does not prevent conflicts of interest arising among committee members. Decisions of the evaluation committee are justified in writing, but are not published on the website of the MoD. The Law obliges public authorities, agencies and organizations and other institutions indicated by this Law to keep records on the condition, value and disposal of public property assets which they are using, in accordance with the Law and government instructions. The records are kept on paper for each asset disposal at the MoD and the Republican Directorate for Property. According to the Law on Public Property and the Directive on the Manner in which Materials and Acts are Prepared at the MoD, the final decision on the disposal of movable assets of the MoD is approved by the Minister of Defence, or the person authorised by the Minister.

The 2010 SAI's report on the financial statements of the budget of the Ministry of Defence did not take into consideration the disposal of military assets. The reason why the SAI excluded this issue from the report is because at that time there was no accurate and updated inventory of MoD property.

Since 2006, the media, the civil society and international organisations have not raised serious concerns about general arrangements for asset disposal or the ways in which the MoD disposed of military or other assets. The demand for military property is not very high, especially during the current economic crisis. The MoD is looking into ways to accelerate the whole process of property disposal.

In summary, even if the public procurement system has improved dramatically in recent years, enhancing professionalism and transparency during the planning phase seems necessary in order to carry out a precise needs assessment for procuring different goods, works and services, as well as the provision of more detailed explanations and justification.

Military asset disposal schemes for both movable and immovable property have improved in recent years, and there do not seem to be major concerns.

5.4 Human Resource Management

The civil service legislative framework was introduced through three key pieces of legislation. In September 2005, the Law on State Administration and the Civil Service Law were promulgated and followed by the Law on Salaries of

Civil Servants and Employees in July 2006. Several implementing decrees were adopted throughout 2006 and 2007 – namely on Classification of Posts, on Open Competition, on Internal Competition, on Personnel Plan and on Performance Appraisal. The EU, OECD-SIGMA and the World Bank provided assistance and loans to develop these reforms.

The legal framework on military personnel was introduced in 2007 through the adoption of the Law on the Armed Forces, as amended several times. The international community assisted in the preparation of this Law by providing the MoD with a comparative analysis of the status of military personnel in other countries and suggesting appropriate solutions in the legal text. The civil service legislation applies to civil servants at the MoD and as supplementary legislation also to the armed forces, as foreseen by the Law on the Armed Forces. Therefore the Civil Service Law applies in all matters not explicitly regulated by the Law on the Armed Forces. The Labour Code will also apply to matters not dealt with either by the civil service or military laws. Oddly enough, the number of civilian and military personnel is not publicly available.

The MoD conducts personnel security clearance of those to be appointed to sensitive positions. The checking is carried out by the Military Security Agency in accordance with the Rulebook on Security Checks. Appointments for some sensitive positions are also discussed at a special Personnel Committee within the MoD and at the Personnel Committee of the Head of the Armed Forces. In addition, there is also a personnel rotation scheme with four-year cycles in sensitive positions.

Security checks performed by intelligence agencies have been generally scrutinised and criticised by the Commissioner for Free Access to Information and Protection of Personal Data. The Commissioner pointed out that security checks are carried out in an inconsistent manner. The legal foundation for security is to be found in secondary and tertiary legislation passed with little or no public scrutiny. The way in which the security clearance is done is prone to abuse and violation of privacy rights. The Commissioner launched an initiative to adopt primary legislation on personnel security checks. This initiative is supported by the ombudsman. In the view of the MoD, this issue is insufficiently developed and they would be interested in some international technical assistance on the matter.

In the Serbian public administration there are three key categories of personnel: a) political, i.e. senior positions appointed by the government for the duration of the government's term in office such as ministers and state secretaries; b) appointed personnel, i.e. senior civil servants appointed by the government for a period of 5 years, based on open or internal competition procedures; c) civil servants, i.e. all other staff, who can be considered as "ordinary civil servants". The Law on State Administration establishes a clear distinction between

political posts and senior civil service posts. The state secretary position (formerly deputy minister) is a political post. A state secretary is appointed and dismissed by the government on a minister's proposal and his mandate terminates with that of the proposing minister. In order to allow ministers to get political advice the Law on State Administration allows ministers to appoint up to three special advisors, which are also political posts.

The secretary of a ministry and the posts of assistant ministers (heads of sectors) are senior civil service posts. The Civil Service Law introduces mandatory recruitment by open and/or internal competition for these positions and establishes professional requirements that candidates have to meet in order to apply for senior civil service posts: university education and at least 9 years of relevant work experience. Senior civil servants do not have a permanent position. In order to reduce politicisation they are appointed for a five-year period, which extends beyond the duration of a government mandate. Although this may not be a fully satisfactory solution, it is an improvement if compared with the situation prior to the enactment of the Civil Service Law in 2005 where ministry secretaries and assistant ministers were appointed solely on political grounds. Staff in the category of ordinary civil service have permanent civil service status. They are classified in different ranks, which are defined on the basis of civil servants' educational qualifications, experience, and a broad definition of the level of the job. As in other ministries, political advisers and state secretaries in the MoD are political appointments made by the Minister of Defence. Their tenure is linked to that of the minister. Assistant ministers in the MoD shall be appointed through public competition for a period of 5 years.

Heads of other defence sector organisations (Directors of the Military Intelligence Agency and the Military Security Agency) have a special status regulated by Laws on the Military Intelligence Agency and Military Security Agency. They may have either the status of senior civil servants, if they are civil servants, or the status of military personnel. If civil servants, they have to undergo competitive selection like other senior civil servants and are appointed by the Government for a period of 5 years.⁷⁶ If military personnel, they are appointed by the President of the Republic also for a period of 5 years. In either case, heads of defence sector organisations have to have a university degree and at least nine years experience in the intelligence-security sector.

As a general rule merit-based, open competition recruitment is mandatory for entering the civil service for the first time and also for appointment to a senior civil service position. The Minister of Defence shall request the Human Resource Management Service (HRMS) to greenlight the vacancy advert in order to determine whether it is in line with the Rulebook and Staffing Plan.

⁷⁶ Article 37 of the Law on Military Security Agency and Military Intelligence Agency.

Subsequently the vacancy is advertised by the MoD and will also be placed on the website of the HRMS.

The next step is the appointment of the members of the competition committee, which is an ad hoc selection panel that will be in charge of managing the public competition procedure. The competition committee is comprised of a minimum of three members who are appointed prior to the announcement of the competition by the head of the state institution. As a rule, two members of the committee are civil servants from the MoD, one of them being of a higher grade than the post being recruited and the other an HRM specialist. The Civil Service Law provides that a third member of the committee shall be a civil servant of the HRMS, and selected by the Director of the HRMS. In the selection of senior civil servants, the competition committee will be comprised of only one representative of the Ministry, one representative of the High Civil Service Council and one external member from outside the civil service, in order to provide a higher level of objectivity in the selection process. The competition committee shall prepare a list of candidates who fulfil the competition requirements, and carry out the screening to ascertain the professional qualifications, knowledge and skills of the candidates. A written exam and personal interview are the two main selection methods but only the latter is a mandatory requirement of the selection process, which does not provide sufficient guarantees for merit-based selection.

The final say in the selection process lies with the head of the organisation, i.e. the minister of defence. After testing the professional qualifications, knowledge and skills of candidates, the competition committee proposes a shortlist of a maximum of three candidates to the minister. The Civil Service Law prescribes that the minister may hold additional interviews with the candidates from the shortlist before selecting one of them. A minister cannot reject the selected candidates and initiate a new recruitment procedure, but does have a discretionary right to select one of the three best-ranked candidates. However, in the case of the selection of senior civil servants, a minister can either select one or reject all the candidates by informing the High Civil Service Council and the HRMS of the reasons for such a decision. In that case, he can appoint an acting senior civil servant to the respective senior post.

The analysis of public competition procedures shows that recruitment is not fully based on the principle of merit. First, there is no mandatory written examination in the selection process, which leaves a high degree of discretion in the hands of the recruiting authority. Second, given that the competition committee reaches its decisions by a majority vote, there is no reliable safeguard against inappropriate interferences, as the members of the committee from the MoD can easily overrule the opinion of the civil servant from the HRMS (in the case of selection of “ordinary” civil servants). Thirdly, and

perhaps most importantly, the head of an organisation is not obliged to pick the best-ranked candidate on the short list, but has the right to choose from the first three best-ranked candidates, which is not in accordance with the principle of merit. SIGMA has raised this issue with the Serbian authorities on several occasions, to no avail.⁷⁷

One of the biggest concerns is that the minister can circumvent the selection rules by repeatedly rejecting the candidates shortlisted by the competition committee and filling the vacant senior position through a temporary appointment. As there is no limit to the number of open competitions and no alternative ways to fill the vacant position in the case of repeatedly unsuccessful public competitions, a minister is able to use temporary appointments as long as his mandate lasts, which goes against the principle of merit. The Civil Service Law contains clear provisions on possibilities for promotion based on the results of performance appraisal. However, as the performance appraisal procedure is often assessed as not sufficiently objective and precise and most personnel are given the highest marks, it is questionable whether it safeguards the merit principle.

The meritocratic arrangements have been subject to political interference in particular concerning the provisions of the Civil Service Law prescribing that all senior civil service positions should be filled by competition. These provisions have largely been ignored by all governments since the Civil Service Law was adopted in 2005. In the government 2012 changeover, MoD state secretaries and assistant ministers were improperly removed. This was a consequence of the introduction of article 38 of the Law on Ministries, which allows a minister upon taking office to set up a new organisational chart and dismiss senior civil servants. This provision provided grounds for the dismissal of a number of senior civil servants throughout the state administration in autumn 2012, including at the MoD.

Professional military personnel enter public employment in two different ways, depending on the rank. The lowest ranks (soldiers) enter into employment by contract if they meet all the conditions required by the Law on the Armed Forces. The students of the military school become army officers on the day they complete their education.

The Law on the Armed Forces provides an opportunity for professional military personnel and civilians working for the armed forces to change their status to civil servants without public competition and vice versa (civil servants can change their status to members of the armed forces/civilian armed forces personnel), if it is required. These provisions of the Law of the Armed Forces are further elaborated in detail by the Government Decree on Admission to the

⁷⁷ SIGMA civil service assessments for 2008, 2010 and 2011.

Armed Forces and the Ministry of Defence without a Public Competition. The MoD has explained that this procedure allows flexibility and career development for lower ranks of the armed forces, nor is it an unusual practice in other countries. There are, however, no procedures for internal competition in these cases, which undermine the merit principle. Promotion within the military is regulated by the Law on the Armed Forces and the Government Decree on Status of Armed Forces Personnel and Promotion of Officers and Non-Commissioned Officer. The main criterion for promotion is successful performance of duties, exemplified in the official performance appraisal mark over a specified period of time.

Appointments of civil servants are reviewed by the Government's Appeals Commission. The commission was established in mid-2006 in order to ensure that reviews of administrative decisions on the rights and duties of civil servants be conducted in accordance with the Civil Service Law. The Commission is independent and reports directly to the Prime Minister. It has eight members (plus the President) working in panels of 3 members.

It is difficult to assess the extent to which political affiliation/patronage has a role in career progression. There are claims that only some employees have opportunities to be promoted and to attend courses on professional development. The MoD has assessed these remarks as highly debatable and subjective as they were obtained during informal interviews, and cannot be accepted in serious research.

Both the Civil Service Law and the Law on the Armed Forces provide for dismissal rules, with a significant level of protection against political and managerial discretion over dismissal. However, the strong legal protection of employment stability limits dismissal possibilities in the case of civil servants to exceptional circumstances.

Pension rights subsequent to retirement or dismissal are not different from those of other public or private sector employees, in accordance with the Law on Pension Insurance. Personnel released from service are suitably compensated and supported if injured whilst in military service. Spouses or partners receive suitable support and compensation.

The salary scheme for civil servants in the MoD is fixed by the Law on Civil Servants and Employees' Salaries. Ordinary civil service posts are classified into eight pay levels in accordance with the ranks assigned to them, based on the complexity and responsibility of their job.

There is also a limited element of variable pay, which is also fixed by a civil service wage scale and based on performance. Each pay grade in which the civil service posts are classified has eight horizontal pay steps. Pay progression through horizontal pay steps is based on the results of performance appraisal, as

regulated by the Decree on Performance Appraisal: 1) a civil servant whose performance has been assessed as “exceptional” for two consecutive years is promoted by two pay steps (which amounts to a 10 per cent increase in salary; one step amounts to 5 per cent); 2) a civil servant whose performance has been assessed as “excellent” for two consecutive years, or as “exceptional” and as “excellent” irrespective of the sequence of the assessments, is promoted by one pay step; 3) a civil servant whose performance has been assessed as "good", or as “excellent” and “good” irrespective of the sequence of the assessments for three consecutive periods is promoted by one pay step. Unlike ordinary civil servants salaries, senior appointments have fixed pay levels which are subject to a 4 per cent annual increase based on the years in service. There is no system of additional bonuses for civil servants in the Serbian administration.

Salaries in the military are determined by tertiary legislation. In accordance with the Law on the Armed Forces, the Minister of Defence is authorised, with the government’s consent, to regulate the salaries, including coefficients, performance appraisal criteria, promotion, salary allowances, salary supplements, monetary awards and assistance, reimbursement of travel expenses and other compensations. As the details of regulation of civilian and military staff are left to the Minister of Defence in the form of tertiary legislation (MoD’s Rulebook) they are not publicly accessible and available, which contravenes the principle of transparency of public servants’/military personnel’s pay. Performance appraisal for military personnel is regulated by a Decree on Performance Appraisal of the Military Personnel. According to the MoD, there are no major issues with regard to implementation of the system in practice. The overall pay rates for military personnel are openly published. However, it is questionable whether these rates contain allowances. The pay is received on time. One important concern about the military pay system and HRM is that salaries of military personnel are higher than the salaries of civil servants. This appears to be one of the most important reasons why the number of military personnel in the MoD is higher than the number of civil servants.

Article 111 of the Law on Defence prescribes that salaries of the employees, the assigned personnel, and individuals appointed to certain positions within the MoD can be increased by 20% more than salaries at other ministries by a government decision at the proposal of the Minister of Defence, due to special work conditions, difficulty and the nature of their tasks and jobs. This provision can be a source of unjustified pay inequalities throughout the civil service.

The 2010 SAI report raised the issue of payment of overtime at the MoD. The report indicated that out of 99 checked overtime payments, only 14 were supported by proper documentation. The problem is that overtime payments are used by managers to raise salaries at their discretion.

An obligation to report corruption was explicitly introduced for the first time through amendments to the Civil Service Law and to the Law on Free Access to Information of Public Importance both of which were adopted on 11 December 2009. In line with a GRECO recommendation, Article 23a of the Civil Service Law introduced the obligation to report corruption and to ensure the subsequent protection of whistle-blowers in the following way: “Civil servants or employees are obliged to notify in writing their immediate superiors or managers if they learn, in the course of discharging their duties that corrupt activities have been undertaken by an official, civil servant or an employee of the state authority. The civil servant or the employee who reports alleged corruption ‘shall enjoy protection’, starting from the day of the submission of written notification thereof, in compliance with the Law.” Although amendments to the Civil Service Law have clearly established civil servants’ obligations to report corruption, the protection of whistle-blowers has remained regulated in vague terms. As a result, the effectiveness of whistle-blowing concerning corruption has been somewhat diminished.⁷⁸

The legal framework for whistle-blowers protection was strengthened by the adoption of amendments to the Law on Anti-Corruption Agency in July 2010. According to Article 56, a civil servant or other employee of a public body or a local government unit who files a complaint to the Agency regarding suspected corruption enjoys special protection by the Agency. The Agency is obliged to protect the anonymity of the complainant. The Director of the Agency is obliged to prepare special guidelines on how this process is to be managed. As the results regarding whistle-blower protection were mixed, a new special Law on Whistle Blowers’ Protection was adopted on 25 December 2014 and will become effective on 25 May 2015. The new Law grants judicial protection to whistle-blowers and requires all public bodies to adopt further measures to ensure protection for them. Officials and armed forces personnel at the MoD currently are not encouraged to report corrupt practices. No hotlines exist for whistle-blowers to report bribery and anti-corruption concerns. However, these issues are expected to be addressed in the course of the implementation of the new Law on the protection of whistle blowers.

In the eyes of legal experts the legal framework does not fully support the development of the merit system in HRM neither in the civil service nor in the military. Meritocratic arrangements have been the target of political interference. This is the case particularly as regards the provisions of the Civil Service Law prescribing that all senior civil service positions should be filled by competition. These provisions have largely been ignored by all governments since the Civil Service Law was adopted in 2005. It is unclear whether promotion in the military is fully based on merit.

⁷⁸ SIGMA Annual Assessment Serbia 2011, available at:
<http://www.oecd.org/site/sigma/publicationsdocuments/48970654.pdf>.

Security clearance of personnel carried out by intelligence agencies has been criticised by the Commissioner for Free Access to Information and Protection of Personal Data because the security checks are carried out in an inconsistent manner. The legal foundation for security clearance is to be found in secondary and tertiary legislation passed with little or no public scrutiny. The Commissioner launched an initiative to adopt primary legislation on personnel security checks. This initiative is supported by the ombudsman.

6 Anti-corruption Policies and Anti-corruption Bodies

6.1 Anti-Corruption Policies

All major political parties expressed their will to fight corruption by including anti-corruption provisions in party/election programmes. The White Paper of the Serbian Progressive Party entitled “With a Programme to a Change”, which provided a platform for the most recent elections, outlines several anti-corruption measures such as promoting an independent and efficient judiciary, a respectful and well-paid public administration, the reduction of monopolistic power and dominant players on the market and increase of competitiveness, transparency, freedom of information and media, transparency in financing of political parties, prevention of open and covert conflicts of interest, raising awareness and responsibility, respect of international conventions and standards in the fight against corruption, and so forth. The Serbian Socialist Party’s programme also supports the fight against corruption and organised crime through strengthening the capacities of the police, prosecutors and judges. The Democratic Party Platform proposes strengthening the institutions, primarily the Anti-Corruption Agency and improving the cooperation between all institutions by means of both preventative and suppressive anti-corruption responsibilities.

The government programme was presented in the inaugural speech of Prime Minister Vucic on 27 April 2014. The Prime Minister stated that strong coordination would be established to implement the National Strategy for the Fight against Corruption 2013–2018. He further emphasized that the government would work on the prevention of corruption through strengthening the capacities of the anti-corruption bodies and by introducing amendments to the Law on the Anti-Corruption Agency. Finally he stressed that the Law on Whistle-blowers Protection would be adopted as early as June 2014 in order to protect citizens who are prepared to report corruption.

The first National Anti-Corruption Strategy was adopted by the government, and consequently by the parliament, in December 2005 while the Action Plan for the Implementation of the Strategy was adopted in 2006. The Anti-Corruption Strategy was an umbrella document with separate programmes covering the political system, the judiciary and the police, the state administration and local self-governments, public finances, economy, media and civil society. Corruption in the defence sector was not specifically addressed in that document. In its 2011 Progress Report, the European Commission pointed out that both the strategy and the action plan were being

implemented slowly and lacked precisely defined activities.⁷⁹ Furthermore, another weakness of the strategy in the Commission's view was the fact that it did not address education and the health systems which are very reputed to be severely affected by corruption. It also appears that the action plan did not fully realize the potential of the strategy.

In reaction to criticism especially that from the European Commission, the government prepared a new Anti-Corruption Strategy which was adopted by the parliament in July 2013 and was followed by an action plan adopted in August 2013. The new strategy was prepared by a working group comprising of representatives of the Ministry of Justice and the Ministry of Internal Affairs, the Prosecutor's Office, the Anti-Corruption Agency, Transparency Serbia and the non-governmental sector. It covers a number of fields, but does not include the defence sector. The areas covered by the strategy are as follows: 1) political activities 2) public finance 3) privatisation and public private partnership 4) judiciary 5) police 6) spatial planning and construction 7) healthcare system 8) education and sport; and 9) media. The strategy devotes special attention to corruption prevention and implementation and monitoring, which are addressed in separate chapters. As stated previously, the defence and security sector is again missing.

The content of the strategy does take into account country-specific realities. This is the reason why it may be argued that it does meet local needs and ensures local ownership. The question, however, is whether local stakeholders have been sufficiently aware of the variety and comprehensiveness of corruption issues, given that there was no serious initiative to include the defence sector in the strategy.

The action plan contains detailed measures, activities, output-based indicators, time-frames and resources to implement the strategy, with a focus on the most vulnerable areas such as the improvement of the financial investigation capacity and making illicit wealth a criminal offence. The strategy specifies 53 objectives, and to achieve these the action plan formulates 225 measures while 585 activities have been defined for their implementation. A mid-term review of the action plan with a view to assessing the first measures implemented and possibly amending or adjusting some of the longer-term measures is foreseen. This mid-term review should be used as a way to conduct a reality and feasibility check of the implementation of the strategy and action plan, to ensure that both are turned into concrete results. The institution responsible for coordination, implementation, monitoring, reporting and adjustment of the action plan is the Anti-Corruption Agency (ACA). The ACA, which was

⁷⁹ Commission Staff Working Paper, *Analytical Report Accompanying the document Communication from the Commission to the European Parliament and the Council, Commission Opinion on Serbia's application for membership of the European Union*, Brussels, 12.10.2011, SEC(2011) 1208.

created in 2010, is an autonomous and independent governmental body with wide-ranging powers.

In addition to the ACA, in August 2014, the government established a Coordination Body for the Implementation of the National Strategy, which is the primary contact point with the authorities, holders of public powers, and international organizations in relation to the implementation of the strategy. The Prime Minister is the head of this body, while the Minister of Justice is the Deputy Head. The ACA has pointed to the duplication of bodies responsible for the implementation of the Anti-Corruption Strategy since the ACA has already been assigned the responsibility for implementation of the strategy.

Since the adoption of the new Anti-Corruption Strategy and the Action Plan in 2013, the ACA has assessed the implementation of the strategy and concluded that most of the envisaged activities have not been conducted as planned. According to the ACA's assessment, out of a total of 123 activities: 24 have been carried out in accordance with the indicator (19%); 10 activities have not been realized in accordance with the indicator (8%); the ACA was unable to assess the realization of 12 activities (10%), while in most cases, i.e. 77 activities (63%) are still on-going. The ACA proposed general recommendations, which were addressed to the parliament, the Ministry of Justice, the Ministry of Finance and other responsible entities.

The parliament discussed the ACA report on the implementation of the Anti-Corruption Strategy for 2013 and requested the government to strengthen the legal powers of the Anti-Corruption Agency. The parliament has also stressed the need for all the bodies responsible for implementing the strategy to take all necessary measures to achieve its objectives. The parliament has also committed itself to amending the existing Law on Parliament in order to ensure that the government effectively follows up the parliament's requests, especially with respect to the implementation of recommendations proposed in the reports of the Anti-Corruption Agency and other regulatory bodies.

The government is facing a number of problems in implementing numerous strategies, for various reasons. One is that the concept of a "government strategy" is relatively new, and was not used in Serbia before 2000. The Serbian legal system is based on "hard law" and essentially does not recognise categories of "soft law", such as a 'strategy'. The concept of the 'government strategy' was introduced for the very first time by the Law on Government (2005). Before that time, all the strategies (most of them imposed by international donors' pressure) were adopted by a government conclusion which is the lowest act in the government hierarchy of acts. Therefore, it may be argued that there is a general lack of commitment and understanding of the obligatory nature of strategy documents, since many of them have not been properly implemented.

Another problem in implementing strategic documents is that in Serbia there is a strong tradition of independent ministries and administrative bodies, but a weak cross-ministry coordination and cooperation. Central government institutions (such as the Government Secretariat) traditionally carry out rather technical functions, not having capacities to oversee the implementation of strategic government policies. Furthermore, traditionally there have always been government coalitions of several political parties. The strong political association of ministers of the same party remains even once the coalition is established. Therefore, there is a tendency for the government to operate collectively primarily among ministers/ministries belonging to the same party, which poses additional risks to the implementation of comprehensive fields of action, as required by anti-corruption strategy document.

As the new Anti-Corruption Strategy was first implemented in mid-2013, it is still early to evaluate its effects. Furthermore, as the defence sector is not covered by the Anti-Corruption Strategy, it is not possible to provide an assessment of the results of the implementation of the Anti-Corruption Strategy in this sector.

The defence sector, has, however, been involved in developing a comprehensive integrity plan. The integrity plan was one of the main anti-corruption instruments introduced by the 2005 Anti-Corruption Strategy. All public bodies were required to develop their integrity plans, as self-assessment tools to identify corruption risks. In order to build the capacities of institutions for developing integrity plans, the ACA organized several training programmes for HR managers of all Ministries (including the MoD) and other agencies in February 2011 and throughout 2012. The defence sector completed its integrity plan within the envisaged deadline of March 2013, which is a positive development. All 13 institutions within Serbia's defence sector have developed individual integrity plans. The effects of the implementation of the integrity plans remain to be seen.

According to the ACA's report on the integrity self-assessment, integrity plans of the defence sector show that the greatest risks for integrity lie in the area of ethics and personal integrity, followed by the area of human resources management, security, management of an institution, documentation management, public procurement and finally financial management, where the risks, according to integrity assessment are the lowest. The ACA has provided several recommendations for strengthening integrity in the defence sector, which are being considered by the MoD's management. The ACA has, for example, recommended the MoD to adopt an internal act for protecting personnel who report corruption, and regulate ethically and professionally unacceptable actions and other irregularities. Furthermore, the MoD should adopt an internal act against conflict of interest among its employees and

develop training courses and plans for ethics and integrity, IT security, documentation management etc. In addition, during 2012 the MoD carried out a self-assessment and a peer review to reduce corruption risks in cooperation with a NATO expert team under the auspices of the NATO programme for building integrity. The MoD has also been actively engaged in the preparation of the Transparency International UK research on corruption risks in the defence sector – the Government Defence Anticorruption Index, which is carried out in 82 countries. The MoD has provided comments to the TI findings, which have been published on the TI website.

Serbia has adopted both a National Security Strategy and a Defence Strategy. However, neither of these documents examines the phenomenon of corruption. There is only one reference to corruption in the National Security Strategy, which reads as follows: “Corruption threatens the fundamental values of society and leads to the decline of trust in state institutions, makes the implementation of essential reforms difficult, slows the transition process, economic development, foreign direct investment and integration processes and leads to the destabilization of the situation in the country and region.” A statement covering the consequences of corruption is obviously an insufficient basis for fighting corruption in the defence sector. The Belgrade Centre for Security Policy has raised concerns about the exclusion of the military sector from the general anti-corruption policy and the lack of awareness of both central government institutions and the European Commission for when it comes to taking more serious measures to combat corruption in the defence sector.

Anti-corruption strategies have been adopted several times, but the notion of strategy as soft law is little understood. The policy coordinating mechanisms at the centre of the government are weak for a number of reasons including the way in which coalition governments work in Serbia. This has jeopardised the implementation of anticorruption strategies and policies.

6.2 Anti-corruption Bodies

The ministry responsible for drafting the anti-corruption policy is the Ministry of Justice, but no special unit in the Ministry is in charge of developing anti-corruption policy. It is also unclear from the organisational chart which organisational unit is to lead the anti-corruption policy. Therefore the organisational and staffing patterns in this area could be assessed as inadequate. The key person in charge of development of the anti-corruption strategy seems to be a political adviser to the Minister.

There is no specialized unit within the MoD responsible for anti-corruption policy implementation and oversight. The Military Security Agency together

with the Military Police is responsible for the suppression of corruption within the MoD, i.e. the investigation and gathering of evidence in the case of criminal offences involving corruption within the MoD and the armed forces. There is also an internal control unit within the Military Police and employees of the MoD, members of the armed forces or citizens can file complaints against the Military Police with this control unit. However, a specialised unit that could deal with issues related to the prevention of corruption and implementation and oversight of the anti-corruption policy is lacking. This role is currently held by the Strategic Planning Department. It would be advisable to establish a separate unit within the MoD that would be responsible specifically for anti-corruption policy development and oversight.

The specialised body for the prevention of corruption is the Anti-Corruption Agency (ACA). The creation of the ACA was first envisaged in the first Anti-Corruption Strategy (adopted in December 2005). Its creation was also supported by the international community, although the international community was not essential in the ACA's establishment. It may also be argued that Article 6 of the UN Convention against Corruption (ratified by the Serbian Parliament in December 2005) provided the conceptual basis for the creation of the ACA as an independent body tasked with preventive anti-corruption activities, which would tackle corruption issues in a comprehensive and systemic manner.

The ACA was established by the Law on Anti-Corruption Agency adopted in October 2008. The ACA has the status of a legal entity and enjoys greater organisational independence than an agency that is part of a ministry. As the ACA's legal status, organisational structure, functions, and scope of competence are defined by the Law and not by government regulation, it could be argued that the ACA possesses a high level of legal independence. In effect, the ACA has been granted a high degree of managerial and financial independence. It has full managerial autonomy, i.e. can freely make decisions concerning the use of inputs (personnel, finance, technical, and infrastructure) in the design of its internal organisation. Financial autonomy is granted by the ACA Law, which states that the operational funds for ACA are provided by the budget of the ACA, as proposed by the Agency, and that the ACA can autonomously use its funds.

Although there is a sound legal framework that should guarantee the ACA's independence and effective operation, the ACA is still quite vulnerable to various risks. One of the most important risks for the ACA is failure to be recognised by the public as a credible actor in the fight against corruption, mainly due to the low public awareness of anti-corruption preventative measures, which are mostly imperceptible to the public. This, together with an occasional lack of government support, could lead to gradual marginalisation of

the institution and also possibly to its abolishment, which has already happened to its predecessor, the Republic Committee for Resolution of Conflict of Interest.

The ACA's competences are quite comprehensive, including the prevention of corruptive actions, implementing, coordinating and supervising anti-corruption policies, and developing and disseminating knowledge about corruption prevention. The ACA has also a legislative drafting initiative and power to act upon its own initiative. It also can access documents in other state institutions. All central and local government bodies are required to forward at the request of the Agency all documents and information necessary for the Agency to perform its tasks. The extent of cooperation and flow of knowledge between the MoD and the ACA has been quite satisfactory. Five representatives of the MoD took part in all the training courses and workshops organised by the ACA primarily with regard to the development of integrity plans. In the view of ACA's staff, the MoD officials were quite active and open.

There are some concerns that in some aspects the distribution of competences between ACA and other institutions may be confusing and overlapping. There is a certain lack of synchronization between the Agency and other competent authorities in coordinating the fight against corruption, which primarily refers to the prosecution and judicial authorities, and also to a lesser number of regulatory bodies. There are concerns that the ACA's findings have not been followed up by the Prosecutor's Offices and the courts. Finally, as the Ministry of Justice has recently formed a special Coordination Body for implementation of the Anti-Corruption Strategy, the division of competencies between ACA and this new government body remains unclear. If such a trend continues, the credibility of the ACA as an institution may also be questioned. Furthermore, there is a lack of clarity on the precise scope of ACA's authority to make inquiries as opposed to investigations, for which it is not authorised. As a result, the ACA has adopted a policy of communicating openly and regularly (on a daily basis) with law enforcement agencies in order to avoid any potential conflicts about exceeding its authority. This policy applies not only for asset verifications but also for inquiries based on complaints and reports of corruption received.

Within this framework the Agency deems it necessary to enact a number of amendments to the law governing its scope of competencies and manner of work with the aim of achieving better coordination between the organizations and authorities involved in suppressing corruption, thus enhancing the Agency's efficiency and results. It is attempting to establish a permanent co-operation mechanism whereby a prosecutor and a police investigator would be permanently seconded to the ACA for this purpose. Overall, it is necessary to invest further efforts in the coordination and complementary action of all anti-

corruption institutions, especially with regard to the collection of information and securing of corruption-related evidence.

There are clear and transparent procedures for appointing and dismissing the head of the ACA and the highest-ranking staff. The management of the ACA is composed of the Board of Directors, who are elected by the parliament, and the Director of the ACA, who is selected by public competition procedure. Several decision-makers are involved in the appointment of the ACA management, which should guarantee merit-based selection of its leadership. Nine members of the Board are elected by the parliament upon proposal of the following bodies: the Administrative Committee of the Parliament, the President of the Republic, the Government, the Supreme Court of Cassation, the State Audit Institution, the Ombudsman and the Commissioner for Public Access to Information (jointly), the Social and Economic Council and the Bar Association of Serbia and the Association of Journalists.

Although the appointment procedure appears to be quite comprehensive, the independence of the Board's members is jeopardised by the granting of the nomination right to highly political bodies, such as the Administrative Committee of the Parliament, the President of the Republic, the Government, and the Social and Economic Council, while independent bodies such as the Ombudsman and Commissioner for Free Access to Information have the right for only a joint nomination. Furthermore, the board members are elected by the parliament, which provides additional grounds for potential political deals on the ACA. Lastly, the term of office of the board members coincides with the four-year election cycle, which is not a good practice.

On a positive note, there are explicitly stated professional criteria for the appointment of the director/board members and quite strict rules for their dismissal. Thus Article 8 of the Law on the ACA states that a member of the Board must meet the general requirements for employment in state administration bodies, hold a university degree, have a minimum of nine years of experience, and not have a criminal conviction making him unworthy to discharge the function of a member of the managing board. A member of the Board may not be a member of a political party, and/or political entity. As regards dismissal, a member of the Board can be dismissed only in the following cases: dereliction of duty; if he becomes a member of a political party, and/or political entity or discredits the reputation or political impartiality of the Agency; if he is convicted of a criminal offence making him unworthy of being a member of the Board; or if it is determined that he has committed a violation of the Law on the ACA. The Board members cannot simultaneously hold other government offices.

Based on its experience in the implementation of the Law on the Anti-Corruption Agency, in mid-March 2013 the ACA submitted to the Ministry of

Justice and Public Administration and to the National Assembly a justified Initiative for Amendments to the Law, the objective of which is to clearly prescribe stricter rules on public officials' accountability, in order to make the ACA's work more efficient and to strengthen its independence by excluding the President and the Government from the procedure on appointment of the members of the Board. There is an open and transparent recruitment processes for lower ranking staff with involvement and endorsement by ACB senior staff, since the staff of the Agency have the status of civil servants.

The ACA reports to the parliament. It shall submit an annual report on its operations to the parliament no later than 31 March of the current year for the preceding year. The annual report focuses on the implementation of the Strategy, Action Plan and Sector Action Plans. The ACA also submits its annual report to the government and is free to publicise its reports. The Law provides the ACA with authority to submit special reports at the request of the parliament or on its own initiative. As mentioned in the previous section on anti-corruption policies, the parliament discussed the ACA's annual report together with the report on the implementation of the Anti-Corruption Strategy for 2013 in the plenary session, and adopted important conclusions to ensure the implementation of its recommendations. The parliament requested the government to strengthen the existing legal powers of the ACA by amending the Law on the Anti-Corruption Agency in order to strengthen its role in monitoring the Anti-Corruption Strategy among other things.

The parliament reviewed the annual 2010 report of the ACA for the first time in July 2011 and adopted conclusions on its recommendations, which were published in the Official Gazette. In 2012, ACA's report (for 2011) was not discussed in the plenary session, but at the session of the Committee for Judiciary and Administration, which adopted the ACA's report. However, the parliament has given only limited attention to legislative and other proposals tabled by the ACA independent regulatory bodies, including cases when they make use of a statutory right of initiative.⁸⁰

After initial difficulties with human and financial resources, the ACA has strengthened its organizational and human resource capacities over the past few years. In September 2011, it gained new and adequate premises with the government's support, and currently operates with 77 staff.⁸¹ This number is still below the number of staff envisaged in the Rulebook on Organisation and Systematisation of Posts (125 staff). Due to the strengthening of its human and

⁸⁰ *Commission Staff Working Paper, Analytical Report, Accompanying the document Communication from the Commission to the European Parliament and the Council, Commission Opinion on Serbia's application for membership of the European Union {COM(2011) 668}*.

⁸¹ Information Booklet of the ACA, last updated on 10th June 2014.

financial resources, the public visibility of the Agency has also increased, which is a positive development.

It may be argued that the ACA staff enjoy relatively a competitive compensation package. Their level of salary corresponds to the salary levels in the civil service. Up to now, the salary level was sufficient to prevent the undesirable turnover of staff. The ACA was involved in the training of MoD officials on integrity plans. Some training courses on anti-corruption are also available (as at October 2102) through organisation of the Serbian Human Resource Management Service (HRMS). The ACA, however, does not have the capacity to meet all the MoD's officials training needs but is responding to the concrete training requests from all public bodies, including the MoD.

The follow-up to the ACA's recommendations is mixed. One of the most important of the ACA's victories concerned the annulment of the amendments to the Law on the ACA adopted in 2010. Under pressure from certain political parties, in July 2010 the parliament adopted a controversial amendment to the Law on the ACA regarding conflict of interest, by which an official who was elected to his position directly by citizens could perform several public functions without the consent of the Agency, except in cases of incompatibility of functions determined by the Constitution. These amendments stirred a significant public debate. In September 2010, the ACA submitted an appeal to the Constitutional Court challenging the constitutionality and legality of these amendments. In July 2011, the Constitutional Court ruled unconstitutional Article 29 Paragraph 3 of the Amendments of the Law on the ACA. After a two-month delay, and a certain pressure exerted by the ACA, the ruling was finally published in the Official Gazette on 7th September 2011. The concerned MPs and local government deputies were required to choose between their positions or request the ACA to provide them with its opinion on the matter within 15 days of the publication of the ruling in the Official Gazette. Two MPs who held two public offices concurrently gave up one of their appointments (one gave up his MP's position, in order to keep his other major post, while the other one decided to keep his MP's position and give up his Deputy's position). In total 22 public officials stepped down from their positions as a result of the ACA's challenge to the amendments.

The ACA, however, has not fully succeeded in having a number of its recommendations implemented. For example, in 2011 the ACA filed criminal charges against two public officials who allegedly failed to report their property to the Agency. The Public Prosecutor's office dismissed both charges. The ACA also initiated a request for the dismissal of one of the members of the High Judicial Council (in charge of the procedure of re-appointing judges), due to a conflict of interest situation, but the parliament rejected the request.

In its report on integrity plans published in mid-2014, the ACA gave several recommendations to the institutions of the defence sector, based on their corruption risk assessment presented in the integrity plans, but it is still early to assess whether these recommendations have been followed up and implemented.

The public reaction to ACA is mixed. At the beginning of its operation the public expected this institution to have stronger investigative powers and to be able to process corruption cases, and was somewhat disappointed with its results. Over the past few years, there has been an increasing awareness of the preventive function of this institution which is starting to be recognised as an effective partner in the fight against corruption. This is evidenced, inter alia, by the significant increase in the number of complaints filed by citizens in the course of 2013 and 2014. There is no doubt that ACA's work and results helped to bring this about, as did the significant improvement in cooperation with competent state authorities and other independent state authorities in particular as well as civil society organizations engaged in fighting corruption. It may, however, be argued that the ACA is still in the process of developing its full potential. The role of the international community regarding the ACA can be assessed as positive. The ACA has benefited from a number of international projects to build its capacity, without any specific conditionality being imposed upon it.

The ACA's staff are of the opinion that one of the main causes of corruption is the way state bodies operate, and the lack of accountability/responsibility of key public sector personnel for their actions. The lack of individual accountability is present at all levels of public administration from the lowest to the highest. The manner in which public institutions operate is highly influenced by politics and businesses. In their view the solution cannot be found overnight. One of the first measures would be to reform the public sector in order to introduce ideas of good governance and raise the level of personal responsibility for individual actions. They also strongly believe that prevention efforts will not yield any results if they are not followed by effective sanctioning of corruption. Therefore, it is very important to strengthen the suppressive side of corruption and the processing of individual corruption cases before the courts. It is also important to educate civil servants and the public about building personal integrity and to raise awareness on the unacceptability of corruption.

In summary, the Anti-corruption Agency is consolidating its position as a preventative anti-corruption body with comprehensive competences, but some political forces have attempted to undermine the role of the Agency for several reasons. These include its real activism against certain aspects of the status quo, particularly in the case of politicians, such as conflicts of interest and incompatibilities which may lead to corrupt practices. The

ACA needs to reinforce its cooperation and coordination with judges and prosecutors as well as to enhance its internal capabilities.

7 Recommendations

7.1 Recommendations Specific to the MoD

1. Human resources management

Serbian MoD should further enhance meritocratic HRM. It should be ensured that all senior civil service positions are filled on the basis of competition. There is also a need to secure that appointment of the Director of the Defence Inspectorate is based on merit, in order to ensure his independence and effective performance.

In addition, the MoD needs to focus its attention on *military* HRM and align the existing military HRM legislation (Law on Armed Forces and supporting secondary and tertiary legislation) with the regulations of the Civil Service Law. This particularly refers to remuneration of members of the armed forces and civil service personnel. Attention must be paid to the career development of both civil servants and members of the armed forces in order to increase the motivation of staff.

Special focus should be placed on making security clearance procedures in recruitment and selection more transparent.

The MoD should also start building capacities to introduce protection for whistle-blowers in line with the provisions of the newly adopted Law on Whistle Blowers Protection.

2. Public procurement

As the new Decree on Public Procurement in the Defence Sector was passed in January 2015, there is a need to build the capacity of procurement personnel in the MoD to implement the Decree in the most effective manner. More transparency during all phases of public procurement (from competition documentation to bids evaluation and reports on contract realisation) is necessary. Capacities for asset disposal of non-perspective property should also be further strengthened in order to allow for speeding up this process.

3. The conflict of interest regime

Develop procedures for asset declaration by senior members of the armed forces, as they are currently unjustifiably excluded from the general asset

declaration regime. Asset declaration should also be introduced for positions more prone to corruption. More detailed and clear rules should be defined for cases in which MoD staff can be transferred to defence industry institutions, in order to avoid conflict of interest situations.

4. Free access to information

There is a need to focus on the issue of how the balance is struck between free access to information on the one hand and the protection of personal data and state secrets on the other hand. It is necessary to strengthen the capacity of the MoD to fully implement the Law on Classified Information and supporting secondary legislation adopted in 2013 and 2014 (Decree on Criteria for Determining Level of “Secret” and “Top Secret” Classified Data and Decree on Criteria on Determining the Level of “Restricted” and “Confidential” Classified Data in the Ministry of Defence). This would reduce the extent of discretion in deciding whether to make the information available to the public and create adequate safeguards for protecting sensitive information.

There is a need to improve archiving procedures and strengthen the capacity of staff in charge of keeping and archiving documentation, in order to prevent damage to and loss of MoD’s documentation.

5. Public internal financial control

Although the MoD is progressively introducing better financial control and internal audits, there is still a need to strengthen this function. Special attention should be paid to strengthening managerial accountability and establishing clear lines of accountability within the institution for the performance of tasks and duties through internal written procedures.

Complete the inventory of immovable and movable property. There is a need to strengthen the capacities of the MoD staff to reassess the value of arms and military equipment with the deduction of amortisation costs, in accordance with international accountancy standards.

6. Improved integrity framework and its implementation

The proposals mentioned above should be addressed in a comprehensive effort to improve the integrity framework in the defence area. To this end, it is advisable to consider the establishment of a special organizational unit in the MoD that would be devoted solely to integrity building issues and anti-corruption policy implementation and oversight. Given that the MoD has

recently adopted its own Integrity Plan, special attention should be paid to effective monitoring and evaluation of its implementation.

7.2 General Systemic Recommendations

1. The mechanisms for civilian and democratic control of the defence sector are in need of further improvement. Further efforts are needed to fully subject it to civilian control by elected representatives both in the executive and in parliament.
2. Institutions which are instrumental for the parliamentary control of the executive, such as the State Audit Institution (SAI), the Anti-Corruption Agency, the Ombudsman and Commissioner for Free Access to Information and Data Protection need to further strengthen their capacities and should be enabled to perform their duties in accordance with their mandate. Parliamentarians should be encouraged to take the findings and recommendations of these institutions more seriously and hold the government to account for their implementation.
3. The SAI should introduce corruption risk as one of the criterion in setting priority audit areas in its annual audit plan and should also introduce improved follow-up mechanisms on its recommendations.
4. There is a need to enhance the monitoring and coordination of the implementation of the National Anti-Corruption strategy and its Action Plan and strengthen the cooperation between the Anti-Corruption Agency and the Ministry of Justice as key stakeholders in this process.
5. A considerably higher level of inclusion of the MoD in the development and implementation of the national anti-corruption strategic documents should be facilitated.
6. The conflict of interest policy and regulations need to be improved. One means would be better targeting and verification of asset and interest disclosure. There is also a need to improve the enforcement of sanctions regarding conflict of interest and foster cooperation between the Anti-Corruption Agency, the prosecutors' offices and other judicial institutions in this process. Strengthening the role of civil society organisations in the oversight of conflict of interest regulations is also recommended.
7. The promotion of more transparency at every level of government and in the functioning of every public institution should continue to be tirelessly and permanently pursued. Constant checks on the degree of transparency in decision making and working procedures should become customary.

8. Internal financial control needs to be strengthened and a culture of managerial accountability developed.
9. The civil service needs to be depoliticised and professionalised and the respect of the principle of merit ensured in all human resource management decisions, including at the Ministry of Defence.

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