

NATIONAL INTEGRITY SYSTEM

Serbia and FR Yugoslavia

NATIONAL INTEGRITY SYSTEM

Serbia and FR Yugoslavia



Evropski pokret
Srbija

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TRANSPARENCY
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Foreword

The national system of fighting corruption - the National Integrity System (NIS) - is an all-encompassing method of fighting corruption in any country that has been formulated by Transparency International, a leading international organisation specialising in fighting corruption. The system consists of eleven "pillars" upon which fighting against corruption rests: the executive and legislative power, the judiciary, the Public Prosecutor's Office, the police, public services, the Auditor General, anti-corruption agencies (commissions), the ombudsman, the media and civil society. An efficient anti-corruption strategy and policy can be defined only after the state of the supporting pillars has been established.

Hence the first step in formulating an all-encompassing anti-corruption strategy is to assess the state of the above-mentioned pillars. Following this, concrete measures are defined and deadlines are set for the results these measures are expected to produce. Logically enough, the anti-corruption policy will tend to rely on the strongest pillars in the first phase. At the same time, the weaker pillars will gradually be strengthened so that, with time, the burden of fighting corruption could be more evenly distributed.

Assessment studies of the pillars of integrity based on the methodology of Transparency International have been conducted in 19 countries so far. They have proved to be a good foundation for building efficient national anti-corruption strategies everywhere.

An analysis of the pillars of integrity in Serbia and FR Yugoslavia has been conducted by an independent expert team commissioned by the European Movement in Serbia and Transparency International Serbia.¹ The resulting study consists of two parts.

The first part is a questionnaire in which the experts provided answers to questions formulated on the basis of the Source Book 2000, published by Transparency International. In the second, narrative part, the authors elaborated on the answers provided in the questionnaire (for each of the 11 sectors), highlighting the main findings and giving specific recommendations at the end.

Transparency International Serbia and the European Movement in Serbia would like to thank the authorities of Yugoslavia and Serbia for their co-operation in the course of the realisation of this study. Moreover, we would like to thank the British Embassy and especially His Excellency, Charles Crawford, British Ambassador to FRY, as well as the Department for International Development (DFID) for financial support.

Predrag Jovanović, Ph. D.

President

Transparency International Serbia

Belgrade, November 2001

¹ Transparency International Serbia is a collective member of the European Movement in Serbia.



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Indicators

Formal provisions

What actually happens

Executive

- Can citizens sue Government for infringement of their civil rights?

Yes.

Private citizens can file civil suits before the regular courts against the state and state authorities if any of their rights have been violated by a decision made by a state organ.

If a regulation (law or decree), which has been adopted, is deemed to be contrary to the Constitution and the law, private citizens can file a motion with the Constitutional Court for an assessment of its constitutionality or legality.

Private citizens can also file administrative lawsuits in which courts adjudicate the legality of regulations dealing with the rights and obligations of physical persons. (Law on Administrative Lawsuits, art. 1).

- Are there procedures for the monitoring of assets and life-styles, e.g. disclosure provisions for the chief executive, Ministers and other high level officials? If disclosure provisions exist, are the disclosures checked or subject to random checking? And are they either made by an independent body or made available to the public/media?

No.

At the time of the election of the current Government of Serbia (January 2001), the prime ministers and some of the ministers informed the public about their personal property - immoveables and funds. But this data is impossible to verify, as there exists no legal obligation to record property owned by presidents, prime ministers, ministers and parliament speakers at the time they take office. Although the then opposition Democratic Party (DS) filed in 1994 a draft law on obligatory recording of property owned by state officials, no such law has been proposed since the promotion of the current government, which includes DS representatives. The 1994 draft called for public insight into the property owned by elected officials, control mechanisms, and harsh sanctions for failure to report property. It also stipulated keeping records of property owned by close relatives of senior officials (spouse, children, parents).



Indicators

- Are there conflict of interest rules? If so, are these generally observed?

- Are there registers for **a)** gifts and **b)** hospitality? If so, who keep them and are these kept up-to-date? Do the public/media/political opponents have access to them?

- Are members of the Executive obliged by law or by convention to give reasons for their decisions?

- Is there regular consultation with civil society when policy is being developed?

- Are there clear rules against political interference in day-to-day administration, i.e. formal rules requiring political independence of civil servants?

Formal provisions

- Yes.

- No.

- Yes.

- Yes.

- Yes.

What actually happens

The Law on Public Administration bars government members from conducting economic activities.
 Law texts are published in the "Official Herald" which is freely available to the public.

The National Assembly controls the work of the Government (Constitution of the Republic of Serbia, art. 73). The President of the Republic can ask the Government to present its views on questions, which lie within its competences (Constitution, art. 84). A parliamentary deputy may query a government minister or the Government on questions within their competences.
 Although the deputies of the ruling parties have insisted that the right of interpellation be included in the Rules of Parliamentary Procedure, the 2001 amendments to those rules do not feature interpellation.

Consultations take place mainly with expert groups and trade union organisations.

The day-to-day running of the administration is regulated by law. This rule is violated in practice, and politicians can be said to exert influence on the work of the administration, either by speeding up or slowing down the adoption of certain decisions and their performance, or by preventing decisions from being made where there exist vested interests.



SERBIA

Indicators

- Do Ministers or equivalent high-level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?
- Do sales of public assets take place, which are seen as unduly favouring those with close links to the ruling party?

Formal provisions

No.

No.

What actually happens

In the former regime certain ministries had the authority to decide on such matters. The new government has formed government agencies with such powers.

A frequent occurrence in the former regime, but no such cases has been reported lately.

Indicators

Formal provisions

What actually happens

Legislature

● Are there clear and well-understood conflict of interest rules that are an effective barrier for parliamentarians to use their positions for personal benefit?

No.

The Law on the Election of People’s Deputies does not specifically bar deputies from holding other posts, so that they can be owners or directors of enterprises or factories. Many deputies take advantage of information acquired ahead of other businessmen (deputies are often informed about draft legislation relevant to commerce several months before it is enacted) to adapt the policies of their firms to the coming regulations. Deputies can also lobby the government for regulations to be adopted, which would place them in advantageous business situations, or influence by their votes the adoption of laws helping them to acquire personal gain.

● Are there arrangements for the monitoring of private interests and personal incomes of elected officials and member of their immediate families?

No.

No such legal initiatives have been submitted to parliament so far.

● Do legislators who oppose the government have a reasonable opportunity to express their views in the Legislature? Are debates open to the public?

Yes.

Sessions of the National Assembly and its committees are open to the public (Rules of Procedure, art. 169). Parliament sessions are as a rule broadcast live on Channel Two of the state television (RTS), which covers the entire territory of Serbia. If other scheduled programmes interfere, sessions of parliament are then transmitted on RTS Channel Three, covering over one-half of the territory and reaching about three-quarters of the population. Parliament sessions are not open to the public in cases defined by law or when parliament so decides.



SERBIA

Indicators

- Do select committees meet in public? Are their reports made public?

- Is the legislature required to approve the budget?

- Are there significant categories of public expenditure that do not require legislative approval? Which?

- Are there significant categories of public expenditure that do not require legislative approval? Which?

- If so, are these registers kept up to date? By whom?

- Is there a realistic mechanism to compel deputies to report gifts and services received?

- Is there an institution looking into deputies' assertions (as regards gifts and services)?

Formal provisions

- Yes.

- Yes.

- No.

- No.

- No.

- No.

- No.

What actually happens

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

Parliament deputies can propose amendments and other legal documents to the Draft Law on the Budget filed by the Government.

The Pension and Disability Funds and the Republican Health Insurance Fund have their own assemblies, which adopt their annual financial plans and control the annual financial statement. (Law on Public Income and Expenditures, arts. 22, 78, 79). The National Assembly approves the Funds' financial plans and financial statements (Law on Public Income and Expenditures, arts. 22, 78, 79).

**SERBIA****Indicators**

- Is the Executive entitled to appoint members in addition to those who have been elected? If so, are they entitled to vote?
- Are convicted criminals barred from running for election?
- Is the legislature generally ready to lift the immunity enjoyed by one of its members, regardless of the party to which the member belongs, where there are serious grounds for believing that he/she may be guilty of a serious criminal offence?

Formal provisions

No.

No.

What actually happens

The election of people's deputies is regulated by a law explicitly stating that deputies are elected at general elections at secret votes and on the basis of a free, general, equal and direct right (Law on the Election of People's Deputies, art. 2).

No cases have been recorded in Serbia's parliamentary practice that immunity from prosecution was not applied to a deputy from a ruling party.

Indicators
Formal provisions
What actually happens

Political Party Funding

● Are there rules on political party funding?	Yes.	The current Law on the Financing of Political Parties was enacted in 1997.
● Are substantial donations and their sources made public?	No.	The Law on the Financing of Political Parties defines sources of income as public knowledge and stipulates that records must be kept on the structure, type and size of income (art. 9). In practice, political parties often ignore this legal obligation.
● Are there rules on political party expenditures?	Yes.	Political parties are legally bound to spend funds in a legally-prescribed manner, they have to keep books and file a final account with the federal Accounting Service.
● Are political party accounts published?	No.	Political parties are legally bound to keep books. Supervision of the financial operations of political parties is performed by the competent state organ of authority.
● Are accounts checked by an independent institution?		
● Does that institution start investigations on its own initiative?	Yes.	No inquiries were launched until quite recently. A current investigation into several senior Socialist Party of Serbia officials is looking into irregularities in the financing of the SPS, which allegedly took place during the period when it was the ruling party.



Indicators

Formal provisions

What actually happens

Judiciary

- Do judges have the jurisdiction to review the lawfulness of government decisions? If so, are these powers used? Are decisions respected and complied with by the government? Is there a perception that the Executive gets special treatment, be it hostile or preferential?

No.

Courts assess the legality of the administrative acts of executive organs in administrative proceedings. Only acts passed by the head of state and the Parliament on the basis of direct constitutional authority remain outside their sphere of control. (Even these acts may be reviewed if the organ having passed them overstepped its authority.) Courts exercise their authority with regard to executive organs as well if the acts of these organs result in initiating administrative proceedings. This rarely happens in the case of acts passed by the Government or the Parliament, but is a frequent occurrence in the case of acts passed by ministries, because ministries are administrative organs authorised to pass decisions in second-instance administrative proceedings. The Government, for the most part, observes the decisions of courts. Its influence, however, is realised through extra judicial means. After the events of October 5th 2000, the situation has improved but is not satisfactory yet. Courts no longer function in accordance with political interests of the day but are still under pressure, which is especially true of commercial courts, albeit to a lesser extent. These pressures are manifested in the influence of centres of political power on the appointment of judges, especially presidents of courts.

- Are judges/investigative magistrates independent?

Judges and investigative judges were in a position of dependence for a long time, especially when it came to politically motivated cases, because courts were contaminated by political interests of the day. After the democratic changes, the judiciary has been trying to free itself from the

Indicators

- Are appointments required to be based on merit? Are the appointees protected from removal without relevant justification?

Formal provisions

No.

- Are appointments to the senior Judiciary made independently of other arms of government? Are they seen as being influenced by political considerations?

Yes.

SERBIA

What actually happens

influence of the powers-that-be, but the risk of succumbing to such influences will remain as long as judges who were obedient servants to political interests of the day remain in courts. Getting rid of such judges will be difficult, because the Constitution proclaims the principle of security of tenure for the judicial function. There is also a certain amount of resistance to changes in the judiciary, because many such judges have disguised themselves as "democrats" and become members of ruling political parties.

The Government can exert influence on the selection of judges through the Minister of Justice. Under the previous regime, especially in its final years, the Minister of Justice did exert this influence. Through the Minister, the ruling parties contaminated the judiciary by political interests of the day. The formula applied boiled down to the following: the influence of a party in the Parliament (in terms of the number of seats) was reflected in its influence in the judiciary. This principle was particularly in evidence in higher courts. The latest selection of judges, especially presidents of courts, showed that political relations still decisively influence the appointment of judges. This influence is exerted through the Ministry of Justice and the parliamentary Committee in charge of the judiciary.

There is no question of guilt because there exist no regulations dealing with the disciplinary responsibility of judges. These should be included in the new law on courts.

The Government can exert influence on the selection of judges through the Minister of Justice. Under the previous regime, especially in its final years, the Minister of Justice did exert this influence. Through the Minister, the ruling par-

Indicators

- Are judges free to enter judgements against the government without risking relation, such as the loss of their posts, the loss of cars and benefits, transfers to obscure and unattractive parts of the country?

- Are recruitment and career development based on merit?

Formal provisions

No.

**What actually happens**

ties contaminated the judiciary by political interests of the day. The formula applied boiled down to the following: the influence of a party in the Parliament (in terms of the number of seats) was reflected in its influence in the judiciary. This principle was particularly in evidence in higher courts. The latest selection of judges, especially presidents of courts, showed that political relations still decisively influence the appointment of judges. This influence is exerted through the Ministry of Justice and the parliamentary Committee in charge of the judiciary.

Courts do not judge the Government but its acts. This they do rarely. That is why one might say that they live in fear. However, they did make a deal of sorts (in political terms) because they consented to be "of service" to the Government and the ruling parties in politically sensitive cases. They profited from this: materially (through allocation of flats, loans for the purpose of purchasing flats and the like) and in non-material terms (promotion).

Judges are not entitled to a car, except when travelling on business. Judges may not be transferred to another court without personal assent.

In the last few years, judges have been selected mainly on the basis of political criteria and party affiliation. After October 5th 2000, the situation is somewhat better but is still not satisfactory. There have been cases of sacrificing professional and moral qualities for the sake of daily political interests. The Law on Courts currently in effect still does not ensure the influence of courts on the selection of judges and presidents of courts. Courts were not unduly alarmed when they were left without any real influence in the latest

Indicators

- Have there been instances of successful prosecutions of corrupt senior officials in the past 3 years?
- Is there a visible practice of unjustified and excessive delays in starting court proceedings?
- Is the duration of judicial proceedings excessively long, i.e. are verdicts brought in a reasonably short time? If there are delays, list the reasons?
- Are court filing systems reliable? If not, what are the main problems?
- Are the public able to complain effectively about judicial misconduct (other than appeal through the formal court system)?

Formal provisions

Yes.

Yes.

Yes.

Yes.

What actually happens

selection of judges, not just on account of the fact that they have got used to it but also because they are aware that the balance of power established before must be changed in order to be adjusted to the current political reality.

In a couple of cases, top-level officials have been tried; these, however, were more in the nature of clashes with "like-minded" individuals currently on the opposite side in political terms that real trials. Courts merely provided "a good service" to political interests of the day.

As a rule, court proceedings are very slow. Due to this state of affairs, any speedy court proceedings arouse suspicion and tend to be explained by political pressure on courts or corruption.

Court proceedings mainly last for a long time. Hence, verdicts take a long time to be passed. The reasons are many: low salaries, lack of interest, resignation, lack of professional ability, lack of experience, negligence, lack of ambition and the like.

The archive system is rather reliable. Still, there have been serious lapses in this area, especially in the deposit service. The origins of these are the same as in the case of the slowness of court proceedings.

Citizens may submit complaints pertaining to negligent performance of courts to parliamentary committees for dealing with complaints and to the services authorised to monitor the implementation of judicial rules of procedure in the Ministry of Justice. These, however, have no chances of



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Indicators

- Is access to the courts easy, and are legal procedures thereof unnecessarily complicated?

- Have the judges adequate access to legal developments in comparable legal systems elsewhere?

Formal provisions

Yes.

No.

What actually happens

succeeding because they lack reputation, power and funds, so that they can be of no real help to citizens.

Courts are not unreachable, but as they are inefficient and slow, citizens turn more and more frequently to private "debt collection" agencies, which operate in the "grey" zone of reality. Court proceedings are not necessarily complicated, even though, like everywhere else, they could be better.

Judges have little opportunity for professional advancement, and usually do so in professional seminars and conferences. No organised education exists yet, but strong efforts are being made to organise a centre that would deal with this. The idea has been initiated by the Judges' Association of Serbia and the Supreme Court of Serbia.



Indicators

Formal provisions

What actually happens

Prosecutors

- Are public prosecutors independent?
- Are there any special units tasked with investigating and prosecuting corruption crimes?
- Are there any cases of corruption within the prosecuting agencies?
- Which legal instruments are available to the prosecutors in investigating and prosecuting corruption and bribery?
- How many investigations have been launched in the past two years? How many have been successful? If the number is small, list the reasons.

Yes. The independence of prosecutors is enshrined in the laws on the public prosecution and on criminal procedure, as well as in the Constitution.

No.

No such cases have been recorded in the past ten years.

A prosecutor learning about a crime may seek information from the police and other organs, and question citizens in order to establish the facts needed for deciding whether or not to start criminal proceedings.

The new authorities have thus far not been exerting any pressure on public prosecutors.

No special anti-corruption departments exist within the public prosecution agencies.

Cases of this kind are very difficult to uncover, so that it cannot be ruled out completely that there have been some.

In the year 2000 a total of 11 inquiries into suspected corruption crimes were launched, with just one ending in a conviction.



SERBIA

Indicators

- Are prosecutors guided by written directives in deciding whether or not to start inquiries or prosecution? If such directives do not exist, would their drafting and publication raise public confidence in the work of the prosecution agencies?

Formal provisions

No.

What actually happens

In 1999 and the first part of 2000, it was obligatory to issue legal opinions in the cases of tax evasion and illegal trade - although they were made public, this did not elevate public confidence in the work of prosecutors.



Indicators

Formal provisions

What actually happens

Police

- Is the commissioner of police independent? i.e.
- Are appointments required to be based on merit?
- Is the appointee protected from removal without relevant justification?

The institution of the Commissioner of Police does not exist in Yugoslavia. The Minister of Internal Affairs is the highest authority within the Ministry of Internal Affairs. To some extent, the Deputy Minister in charge of public security may be compared to the Commissioner of Police. The Minister is answerable to the National Assembly and the President of the Republic.

The post of the Minister of Internal Affairs is still considered to be one of the most important levers of power, which makes his position dependent on political stability. Despite his being authorised to do so, the current President of Serbia does not influence the work of the police.

- Is there an independent mechanism to handle complaints of corruption against the police?

No.

There do exist Assembly committees that could receive such citizens' complaints, but these cannot be considered independent bodies. The establishment of a new Assembly committee has been announced, one whose sole task would be fighting corruption.

- Does civil society have a role in such a mechanism?

No.



SERBIA

Indicators

- In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

- Which legislative instruments can be used by the police for the investigation and prosecution of cases of corruption/bribery?

Formal provisions

Yes.

What actually happens

According to a statement of the Minister of Internal Affairs, Dušan Mihajlović, dating from September 2001, about one thousand employees of the Ministry have been punished on account of corruption. The data refer to the year 2001, but the character of the sanctions and the structure of the personnel punished remain unspecified.

There exist no special means at the disposal of the police to be used in the course of investigating and fighting corruption. The criminal offences of giving and taking of bribes and abuse of professional capacity are contained in the federal and republican Criminal Codes, while the conduct of the police in the course of discovering and solving these and other criminal offences is basically regulated by the federal law on criminal law proceedings.



Indicators

Formal provisions

What actually happens

Public Service

<ul style="list-style-type: none"> ● Do ministers respect the independence and professional capacities of their subordinate senior civil servants? 	<p>No.</p>	<p>Ministers have no such obligation; the practical situation depends on the minister personally, so that no all-encompassing reply is possible.</p>
<ul style="list-style-type: none"> ● Is there a systematic policy of fighting bureaucracy, opening up the administration towards the public and improving its efficiency? 	<p>No.</p>	<p>Regulations prevent a systematic struggle against bureaucracy. No clearly-defined policy exists which would open up the administration towards the public or improve its efficiency.</p>
<ul style="list-style-type: none"> ● Are brochures published in which the duties of civil servants and the rights of the citizens are explained? 	<p>No.</p>	<p>It is not customary to officially publish handbooks explaining the obligations administrative organs' personnel and public servants have towards the public, the rights citizens enjoy under the law and other regulations, the easiest and simplest manner of establishing communication with those organs and their personnel and to realise their rights. Diverse commentaries of laws and collected general enactments published commercially by various authors and publishers are the only aids available to the public.</p>
<ul style="list-style-type: none"> ● Are there periodic checks (polls) in which the users of public services assess their quality? 	<p>No.</p>	<p>With the help of donations or budgetary financing, some scientific institutions, agencies and media occasionally conduct surveys (usually opinion polls) of the views of the users of public services. There are however no permanent, systematic and periodical surveys organised directly by the state authorities and public services.</p>
<ul style="list-style-type: none"> ● Do civil servants have a duty to explain their decisions? 	<p>Yes.</p>	<p>In administrative matters in which on the basis of authority granted by senior officials they decide autonomously, public officials are under the Law on the General Adminis-</p>



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Indicators

Formal provisions

What actually happens

- Is it clear to ministers and their immediate subordinates that ministers may not interfere in the operational work of the departments they head?
- Are departments and services in ministries and the government open to the media? Is information regularly available, or must ministers or department heads authorise its publication in advance?
- Can the public easily establish the identities of civil servants handling their cases?
- Are senior officials accountable for corruption or the poor performance of their subordinate staff?

No.

Yes.

Yes.

Yes.

trative Procedure (*Official Gazette of the FRY*, No. 33/97) legally bound to issue explanations for their decisions in more complex matters, and in simpler ones only when the client so demands.

Ministers, or senior officials heading other republican organs of authority, are responsible, and interfere in the operational work of the department to the extent they feel they are competent.

There is public access to the work of the administrative organs. This access can be restricted or excluded by a decision of a senior official in legally-defined cases.

In principle, clients can establish communication with the civil servants handling their cases, and can get information from them about the timeframe for the resolution of their cases. There exist no regulations providing for explicit bans on issuing information. But in some cases senior officials issue instructions for the identities of staff working on certain cases to be withheld in order to protect the organ and staff from possible pressure by the client.

Under the law, senior officials are accountable for their own work, for that of the organ or organisation or service they head, and for the work of the employees of the organ, organisation or service. Accountability in the event of serious violations of powers and duties in the performance of duty is political, material and criminal. Political accountability covers dismissal from duty or submission of resignation.



Indicators

Formal provisions

What actually happens

- Are there mechanisms to protect civil servants reporting corruption or other malfeasance? If they exist, do civil servants trust them to protect them if they blew the whistle on a superior or a colleague?
- Are records kept of gifts and hospitality received by civil servants employed in sensitive posts?
- Is there regular rotation of civil servants employed in particularly sensitive posts?
- Are there periodic campaigns to inform the public about procedures and criteria for administrative decisions (granting permits, tax assessments etc.)?
- Are there clear rules requiring political independence of the civil service?

No.
 No.
 No.
 No.
 Yes.

Political accountability does not exclude material and criminal accountability.

There is no mechanism for protecting employees reporting their superiors for corruption or other malfeasance.

No legislation exists which makes obligatory the keeping of official records of gifts and services accepted by senior officials and other civil servants.

Periodic rotation of officials performing certain duties does not exist; no such obligation is defined by legislation. Only in the event of irregularities or disciplinary or other violations by a public official shall that official be replaced from his or her post as a disciplinary measure.

Campaigns are being conducted with the aim of improving the efficiency of the collection of public revenue.

Their independence is defined by exclusion of political influence. Employees of the state authorities and appointed persons have a duty to perform their jobs conscientiously and fairly, in which process they may not be guided by their political convictions or express those views and advocate them. Establishment of political parties and other political organisations in the state authorities is prohibited.



SERBIA

Indicators

- Are there mechanisms to protect civil servants from political pressure by ministers and other politicians? If there are, what are they?
- Is there legislation establishing criminal and administrative sanctions for bribe-taking by civil servants?
- Does employment and service promotion depend primarily on competence?
- Are there regulations preventing nepotism?
- Are there rules (including registers) covering acceptance of gifts and hospitality by civil servants?
 - If there are, are records updated and who keeps them?
 1. Are those responsible for registers empowered to investigate suspicious cases?
 2. Have they staff to look into allegations?
- Are their post-civil service employment restrictions?

Formal provisions

- No.
- Yes.
- No.
- No.
- No.
- No.

What actually happens

There exist no mechanisms to prevent pressures by ministers and other politicians on civil servants.

Criminal law defines penalties for accepting and giving bribes. Laws in the area of administration define disciplinary accountability for accepting bribes. Disciplinary accountability for accepting and giving bribes does not exclude criminal accountability.

Employment and promotion do not depend fully on competence. The discretionary powers of senior officials play the decisive role.

There are no regulations preventing nepotism in the state authorities and public services.

There is no legislation regulating acceptance by and provision of presents and services to civil servants. There are no services keeping registers to that effect.

There are no major restrictions on employment possibilities following termination of service in the public sector. Restrictions can be defined by service regulations, in connection with employment, which had the character of a state or official secret.



Indicators

- Are there mechanisms to process complaints by the public in connection with the work of the civil service?

Formal provisions

No.

What actually happens

There is no legislation defining decision-making mechanisms in connection with public complaints about the work of public officials.

There is no single organ resolving public complaints about the work of the administrative organs, public services and their staff. No regulations exist which define the existence of such an organ.



Indicators

Formal provisions

What actually happens

Public Procurement

● Are there attempts to minimise bureaucratic requirements?	No.	The jobs performed in this way are bureaucratic by nature.
● Does public procurement require competitive bidding, with precisely-defined exceptions? Is access to the bids limited in any way? When is a select group only invited to take part in the bidding?	Yes.	Restrictions can be imposed for specific acquisitions and deliveries, commissioning of works, sale of equipment etc., but only according to specific regulations and highly restrictive exceptions.
● Are there strict formal requirements that limit the extent of sole sourcing?	Yes.	In cases where repeated tenders are unsuccessful, public procurement can be contracted for by direct negotiation.
● Are all major public procurements widely advertised to the private sector?	No.	
● Are public procurement regulations widely available to the public?	Yes.	Regulations on public procurement are available to the public - they are published in official gazettes and economic and other bulletins, as well as the daily press.
● Are procurement decisions made by a central tender commission or by commissions set up by administrative entities?	No.	Decisions on public procurement and contracts are made by the government (within its competencies), as well as state administrative organs, parliamentary services and other organs procuring commodities or services or commissioning works (refurbishings, construction, reconstruction activities, etc.).
● Are procurement bidding outcomes (winners) made public?	Yes.	Information about public procurement is distributed through the Chamber of Commerce of Serbia and regional Chambers.



Indicators

- Is there a procedure to request review of procurement decisions?

- Can an unfavourable decision be reviewed in a court of law? If the court accepts the complaint, what is the procedure that follows and does the party which suffered damage receive fair compensation?

- Are there provisions for blacklisting companies proved to have offered bribes in a procurement process?

- Are there procedures for preventing nepotism/conflicts of interest in public procurement?

- Is there monitoring of the assets, incomes and lifestyles of officials in charge of public procurement?

Formal provisions

Yes.

Yes.

No.

No.

No.

What actually happens

Participants in public tenders have the right to file grievances about the legality of the procedure to the competent ministry; the decision issued thereto is binding. In cases where material damage has been inflicted, a suit can be filed before the regular courts. Unless legal protection of the participants in the tender process is especially defined, regulations of the Law on the General Administrative Procedure or another law, depending on the nature of the matter (an administrative or civic commercial matter, etc.) shall apply.

The party which suffered damage is not entitled to go to court and seek cancellation of a contract concluded with a competitor, but can only seek compensation. The courts usually award only compensation covering the costs of the participation in the bidding, rather than the full amount of profits lost by failure to win the contract.

There exist no specific regulations about blacklisting companies or individuals who offered bribes during the tender procedure or made other illegal actions. But such persons can be criminally prosecuted.

No such regulations exist.

There is no control of the property owned by senior officials and officials in charge of public procurement, and of their income and lifestyles, except in the case of complaints of suspicion that a criminal offence might have been committed, in which case such control is carried out by the police.



Indicators

Formal provisions

What actually happens

Investigative Agencies (Anti-corruption Commissions)

● Are there special investigative agencies?	Yes.	A commission has been set up by the Government of Serbia to look into malfeasance in financial operations. The Commission is answerable to the Government.
● Are they independent? 1. Are appointments based on merit? 2. Are the appointees protected from removal, except where irregularities, incompetence or inefficiency are proven? 3. Are their reports published (except when criminal charges are pending)?	No. Yes. Yes. Yes.	Appointees include representatives of ministries linked with the object of the Commission's work. The Rules of Procedure define a procedure for dismissal; so far the only person relieved of duty has been the Commission's (first) president.
● After appointment, are agency presidents free from political control in the performance of their regular duties?	No.	The president is not independent of the Government.
● Are all other agency staff free from political control in the performance of their duties? Are there "prohibited zones" of investigations?	No.	The Commission members are also dependent on the Government. There are no prohibited zones as such, but there are often problems with uncooperative officials from the ranks of the "old cadres".
● Is the Agency answerable to the government, parliament courts and the public?	Yes.	The Commission is answerable to the Government, the Parliament and the public, in the form of reports. Courts are competent in case of disputes.
● Does the Agency inform the legislature about its activities?	Yes.	



Indicators

- Can the public complain to the Agency without fear of adverse consequences for themselves?

Formal provisions

Yes.

What actually happens

The public do approach the Commission directly, although it is not empowered to act on individual grievances directly. As this has not been explained to the public, the Commission sometimes comes in for unjustified criticism.



Indicators

Formal provisions

What actually happens

Ombudsman

- Is there an Ombudsman or its equivalent (i.e., an independent body to which citizens can make complaints about irregularities in the work of the civil service?)
- Is the Ombudsman independent? Are requirements based on merit and proficiency? Are appointees protected from removal without clearly-shown justification?
- Can petitioners complain anonymously if they fear reprisals?
- Does the Ombudsman make public the results of his activities?

No.

A Government commission has drafted a bill on a Defender of Civil Rights, which has still not been finalised. The centre for Anti-War Action NGO has submitted its own model law to the competent institutions.

The proposals foresee full independence for the defender.

The appointment criteria have been defined - positive (law graduate, several years' experience), as well as negative (no prior convictions or bans on the performance of jobs incompatible with the post of Defender).

Under the proposals, the reasons for dismissal are brought before the parliament, and approval would require the votes of half of all deputies (bill) or two-thirds (model law); the same numbers would also be required for the election of a Defender.

Both the bill and the model law would have the Defender throw out anonymous petitions.

The proposals call for an annual report and recommendations by the Defender to be submitted to the parliament and published in the *Official Herald*.



Indicators

Formal provisions

What actually happens

Media

● Is there freedom of information laws and/or do procedures exist to ensure that members of the public can obtain information/documents from public authorities?

No. It has been announced that such a law is being prepared.

The only thing that the citizens are guaranteed is the right of access to personal data on the basis of the federal Law on the Protection of Personal Data (1998), whereas the federal and republican laws on public information stipulate that it is the duty of state organs to make information accessible to the media.

In September 2001, the initiative for the passing of such a law was made public.

● Does the country have an "Official Secrets Act" or something similar - if so, is it used as a tool to effectively secure censorship of the media by the government?

Yes. Criminal Code stipulates that one is to be prosecuted for giving away a state, professional, military and business secret.

The criteria for determining a secret are usually regulated by law in a very general way, which enables the executive organs to interpret these criteria themselves.

● Is there a law guaranteeing freedom of speech and of the press?

Yes. Freedom of the media is regulated by the Constitution and the Public Information Law.

The regulations currently in effect do not specify any legal remedies for realising these freedoms. The Law on Public Information was effectively used during the Milošević regime to suppress freedom of speech and the media. This law has now been suspended, and new regulations in accordance with European standards are being prepared.

● Is there censorship of the media?

Censorship is forbidden by the constitution and by law on public information.

There is no open censorship of the media. Freedom of expression is limited by the existing Criminal Code provisions on slander and libel, by political pressure on the media, by non-transparency of the work of the government and state officials and by unequal treatment of the media on the part of officialdom.



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Indicators

- Is there a spread of media ownership?
- Is there a competition within the **(a)** print media, **(b)** television, **(c)** radio - and do antimonopoly laws exist to secure competition and, if so, are they enforced?
- Is there an antimonopoly law ensuring competition? To what extent is it observed in practice?
- Is there a growing independent media sector - including Internet media, informal journals and newsletters, and is this growing?

Formal provisions

Yes.

Yes.

Yes.

Yes.

What actually happens

There is a spread of media ownership, including state (national and local public media), private and mixed property.

Private ownership is dominant both in the printed and the electronic media.

There is a lot of competition among the printed media. The state TV and radio are in a privileged position because they are the only media covering the entire territory, their finances are more stable and the staff potential is greater. Private TV and radio stations are a significant rival to the state ones, in terms of program quality, staff potential and credibility. Still, the state TV is the medium with the highest level of credibility.

The antimonopoly provisions pertaining to media ownership are very few because the media concentration of ownership is still rather diffuse.

A new draft law on broadcasting in Serbia contains provisions forbidding cross-ownership.

The independent media are numerous and diverse, but their financial, technological and personnel resources are small.

The survival, and in particular the development of the independent media require the assistance of the state and foreign donors because their operation has become very difficult due to the market conditions.



Indicators

- Is the publicly owned-media independent of government control as to editorial content? If not, is the publicly owned media in practice relied upon, by the public at large, as a credible news source?
- Does any publicly-owned media regularly cover the views of government critics? Does the publicly owned media routinely carry stories critical of the administration (e.g. quoting opposition politicians etc.)?
- Have journalists investigating cases of corruption been physically harmed in the last five years?
- Does the media carry articles on corruption?

Formal provisions

- No.
- No.
- Yes.
- Yes.

What actually happens

The media are not safeguarded against political control and there are various forms of political influence on the media.

In spite of a big change in the public media reporting in Serbia, since 2000 respectively, which is now more tolerant towards the opponents of government policies, the public media are uncritical of the incumbent government. Still, the public media - especially the national television - are the most trusted information source in Serbia.

The media stopped being the main propaganda tool of the government for mobilising support for its policies and creating a negative image of any opposing view. Critical views - whether coming from the opposition, non-governmental organisations or individuals are not presented negatively, as the case used to be, but are mainly ignored

During the Milošević regime, journalist Slavko Ćuruvija was murdered and several journalists were sent to prison.

Reporting on corruption began after the change of government in October 2000.

This topic became less prominent afterwards, but re-emerged during August-September 2001 on account of a conflict in the ruling DOS coalition.

Independent journalistic research on corruption cases is very rare.



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Indicators

- Do media licensing authorities use transparent, independent and competitive criteria and procedures? Do media entities (print, audio-visual and other) have to obtain special licences/permits from public authorities? If so, is this a device is used to censor the media?
- Are libel laws used, in effect, to censor the media and curb the dissemination of information about persons who influence the community?
- Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?
- Do journalists have to be licensed? If so, is this device to effectively curb journalistic freedom?
- How well are journalists paid?

Formal provisions

In Serbia, the procedure of issuing licences was applied both in the case of the printed and the electronic media.

Yes. In Serbia, libel/slander is an offence punishable by a prison sentence.

No.

What actually happens

Until the year 2000 the state control over broadcasting frequencies and licences was often used to suppress the development of the independent electronic media.

The criteria for issuing licences were neither transparent nor independent. New regulations are being prepared, and these envisage the existence of a regulatory body for the allocation of frequencies and issuing licences for the operation of the audio-visual media.

Under the Milošević regime, these provisions were used in order to suppress the publication of information on influential politicians. Even today, the Criminal Code provisions represent obstacles for journalists wishing to report freely on public figures.

There have been several proposals urging that the libel/slander provisions in the Criminal Code be replaced by civil law provisions, in keeping with the international practice in this area.

In Serbia, journalists employed with the public media earn on average between DEM 100 and 300 DEM. In the commercial media in Serbia, the average salaries are in the DEM 200-400 range, and only those in top managerial positions earn more. It is customary for journalists, on account of their low earnings, to do part-time work for other media outlets in addition to the work they perform at their regular workplace.



Indicators

- Are individual journalists physically safe if they expose corruption and/or investigate the interests of powerful private and public sector leaders?

- Are criminal libel actions against journalists rare or common?

- Does the **(a)** print media; and **(b)** television/radio media; regularly carry articles by investigative journalists?

- Is there a school for the training of journalists, including training in investigative journalism?

Formal provisions

Yes.

What actually happens

In June 2001, Milan Pantić, a Jagodina correspondent of the Vecernje Novosti daily was killed in front of his house. Before the murder, Pantić had received several anonymous phone calls threatening him because of the articles he had published.

The Independent Journalists' Association of Serbia (IJAS), together with the Serbian government, have launched the "Stop the Mafia" campaign, aimed at protecting journalists exposed to threats for their work.

Libel cases against journalists are relatively rare.

Analytical and investigative pieces are found very rarely in our media.

There are just a few regular training courses for journalists. Investigative journalism courses are extremely rare.



Indicators

Formal provisions

What actually happens

Civil Society

<ul style="list-style-type: none"> ● Are there restrictions on the ability of civil society to organize itself through the formation of non-governmental organisations? 	No.	<p>Although the work of NGOs is not regulated by any specific new law but by laws dating from the era of Communism referring to citizens' associations and social-political organisations, it is not difficult at all to get NGOs registered.</p>
<ul style="list-style-type: none"> ● Are there restrictions on the ability of civil society to organize itself through the formation of non-governmental organisations? 		<p>Tax laws are insufficiently flexible towards NGOs and pose difficulties for them. For example, tax officials are inclined to impose turnover taxes on foreign donations that NGOs receive for the purpose of financing projects.</p>
<ul style="list-style-type: none"> ● Are there restrictions on the holding of public meetings, which act as a barrier to the mobilisation of NGOs? 	No.	
<ul style="list-style-type: none"> ● If there are requirements for the licensing of meetings (e.g. by local police) are licences issued as a matter of course where there are unlikely to be problems maintaining the law and order? 	No.	<p>Article 43 of the Constitution of Serbia proclaims freedom of gathering without prior permission. In fact, a public gathering has to be reported to the authorised local organ of interior affairs 48 hours before it is scheduled to take place; the organ in question may ban the gathering.</p>
<ul style="list-style-type: none"> ● Do the public authorities generally co-operate with civil society groups? 	Yes.	<p>A large number of NGO representatives have entered the structure of the new powers-that-be. However, the actual level of cooperation is insufficient. Expert organisations cooperate the best with the republican Government, although it is still not standard practice to submit draft laws to a wide circle of interested parties for the purpose of consultation. NGOs cooperate most successfully with local authorities.</p>



Indicators

- Are there citizen's groups or business groups campaigning against corruption?
- Are there citizen's groups monitoring the government's performance in areas of service delivery, etc?
- Do citizen's groups regularly make submissions to the legislature on proposed legislation?

Formal provisions

Yes.

Yes.

Yes.

What actually happens

It is somewhat reluctantly that the authorities receive such initiatives.

The monitoring and control of the work of state organs are still insufficiently developed.

Due to insufficient cooperation with the Government, NGOs sometimes find out about the texts of draft laws only after these have entered the parliamentary procedure.

Legal Profession

- Is the legal profession subject to disciplinary measures?
- Are lawyers who are detected as behaving corruptly likely to lose their right to practise?

Yes.

Yes.

On the basis of the authority granted to it by the federal Law on the Legal Profession, the Bar Association of Serbia has passed its Code and Statute. These acts specify the cases when lawyers are to be subjected to disciplinary sanctions and the organs within the framework of the Association authorised to pass them.

For grave violations of the Code, the stipulated sanction is being temporarily struck off the Bar Association register, whereas fines are stipulated for minor violations.

The law stipulates that a lawyer may lose his/her licence to practise if he/she is sentenced for a criminal offence making him/her unfit to pursue the legal profession.



Indicators

Formal provisions

What actually happens

Accounting/Auditing Profession

- Is the accounting / auditing profession subject to disciplinary measures?

Yes.

The sanctions stipulated by the Code include caution, minor fines, ban on pursuing professional activities for a period of six months to two years and being struck off the register.

- Are those who are detected as behaving corruptly likely to lose their right to practice?

Yes.

Grave violations of the Code are the taking and giving of bribes and mediating in it; for these, the disciplinary sanction of being struck off the register may be passed.

Medical Profession

- Is the medical profession subject to disciplinary measures?

No.

There is no medical association that medical practitioners would be obliged to join and that would be legally authorised to regulate matters of importance for the profession by means of internal acts. Some of the associations of medical practitioners currently in existence do have their own codes; violating them, however, may only influence the status of the medical practitioner in question within the association he/she is a member of.

- Are those who are detected as acting corruptly likely to lose their right to practice?

Yes.

Only in the case of a safety measure imposed upon a medical practitioner in the course of criminal law proceedings.



Indicators

- Are health workers in the public service also permitted to have private fee-paying practices? If so, are there effective procedures to contain potential conflict of interest?

Formal provisions

No.

What actually happens

In practice, many doctors work both in the state and the private sector. No procedures exist that would prevent conflict of interests.



Indicators

Formal provisions

What actually happens

Local Government

<ul style="list-style-type: none"> ● Is there a legal requirement that meetings of municipal/city councils be open to the public and the media? 	Yes.	Under Article 88 of the Law on Local Administration, all sessions of municipal councils are public, except in cases defined by statutes.
<ul style="list-style-type: none"> ● Are there clear criteria defining when the meetings are closed to the media and the public? 	Yes.	Statutes usually regulate that meetings are closed to the public in the event of a state of war, an immediate threat of war and a state of emergency.
<ul style="list-style-type: none"> ● Are records kept of gifts and hospitality received by those holding sensitive posts in local administrations? Are such records accessible to the public? 	No.	
<ul style="list-style-type: none"> ● Are municipal authorities also come within the competencies of the Ombudsman or other similar body? 	No.	No body similar to an Ombudsman exists in Serbia. The local administration bill features the institution of a public defender - an Ombudsman at local level.



Executive

- The Republic of Serbia has no law on obligatory reporting of property owned by state officials, or a law on administrative control.
- Apart from the ban on economic activities by cabinet members, they are free to perform all other public activities.
- Government members may also be on the boards managing public enterprises and institutions.
- Government members can also be federal or republican parliamentary deputies.

The Government of the Republic of Serbia is the holder of executive power in Serbia. Under the republican Constitution (art. 9), the Government implements the policies of the Republic of Serbia, enforces laws and regulations and decisions of the National Assembly (parliament), adopts decrees, proposes laws, proposes the budget and annual financial statement, issues opinions on draft laws and other regulations proposed by others, and supervises the work of ministries (Constitution, art. 90). The Government is made up of the Prime Ministers, Deputy Prime Ministers and Ministers (Constitution, art. 91). In their work, the Government and all its members are accountable to the National Assembly (Constitution, art. 93). State administration business is performed by ministries (Constitution, art. 94)

If any of their rights have been violated by a decision of a state organ of authority, private citizens can file civil lawsuits against the state and/or state authorities before regular courts.

Should a law or decree have been adopted which is deemed to be contrary to the Constitution or the law, private citizens can file a motion

with the Constitutional Court for an assessment of its constitutionality or legality.

Private citizens can also file administrative lawsuits where the courts adjudicate on the legality of regulations by which state organs of authority regulate the rights and obligations of physical persons (Law on Administrative Lawsuits, art. 1).

Although courts work slowly in Serbia, there have been cases where private citizens have won suits filed against ministries which issued the disputed regulations.

Serbian government ministers are barred from taking part in economic activities, but can perform other public functions (federal or republican parliamentary deputies). No legal obligation exists for cabinet members or other senior state officials to file reports on their property status at the beginning of their terms of office, or limitations on their professional activities after leaving the post of government member or other.

Government members have an obligation to submit to parliament reports on their work, at the insistence of the parliament, and to answer deputies' questions within a maximum of 30 days.

The lawmaking process usually begins with the formation of a team of experts who will draft the law. This is followed by a "public debate" involving mainly experts and interested parties, such as trade unions.

During the election of the Serbian Government earlier this year, the prime minister and several of his cabinet colleagues informed the public about their property (immoveable, moveable and funds). But these facts cannot be checked as there is no legal obligation to record the property of the president of the republic, the prime minister and ministers, and the parliament speaker, when their term of office begins.

Although the then opposition Democratic Party (DS) proposed in 1994 that the parliament adopt a law on obligatory recording of property of state officials, no such law has been proposed by the current government, which includes the DS. The 1994 proposal anticipated public insight into property held by elected officials, control mecha-

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nisms, and harsh sanctions for those falsely reporting their property, as well as the recording of property held by next of kin (spouse, children, parents).

The shift towards a more transparent government in Serbia is shown by the absence among ministers of directors of major firms, a frequent occurrence in the past.

The Government issued decrees setting up Agencies it entrusted with certain jobs usually within the powers of ministries; this drew some criticism in the public motivated by the doubling of powers and increase in the state apparatus. The measures were aimed at improving efficiency in some areas. The agencies, whose work is as transparent as that of the ministries, have to publish their decisions in the Official Gazette.

- It is necessary to adopt regulations preventing conflicts of interest.
- Personal assets must be registered before taking up office and controlled during the term.
- A ban must be imposed on employment on certain activities (within a certain period) after expiry of the term of office.

Legislature

- Deputies to the Serbian parliament can perform other public functions, including economic ones.
- Deputies to the Serbian parliament can also be members of the republican government, officials of local administrations, directors of public enterprises.
- There are no regulations in Serbia which would help prevent conflicts of interest.

The Republic of Serbia has a unicameral parliament entitled the National Assembly.

The National Assembly is the holder of constituent and legislative powers¹. It is made up of 250 people's deputies chosen at direct and secret general elections (Constitution, art. 74). The election and termination of the mandates of deputies is regulated by the Law on the Election of People's Deputies. Deputies are elected on the basis of party lists, coalition lists, or lists proposed by groups of citizens². An election list is valid provided it is supported by the signatures of at least 10,000 voters (LEPD, art. 43). Parliamentary elections are held according to the proportional system, where Serbia is a single electoral district and a party needs a minimum of 5% of the overall vote to win parliamentary representation (LEPD, art. 81). All lists winning more than 5% of the total vote get a number of seats in proportion to the number of votes won (LEPD, art. 80). Mandates are distributed applying a system of the greatest quotient (LEPD, art. 82). The mandate is four years (LEPD, art. 3, Constitution, art. 75). Deputies' mandates can under certain condi-

¹ Constitution of the Republic of Serbia, art. 9 (Constitution)

² Law on the Election of People's Deputies, art. 4 (LEPD)



tions expire before that time (LEPD, art. 88). The National Assembly can be dissolved by the president of the Republic, acting upon an argued proposal by the Government (Constitution, art.89)³. The mandate of the National Assembly also expires when voters reject its proposal to revoke the mandate of the president of the Republic (Constitution, art. 88).

Elections for the National Assembly are called by its speaker (Constitution, art. 78; LEPD, art. 25).

The organs for implementing elections are the Republican Electoral Commission and electoral committees (LEPD, articles 6 and 28-39). They are autonomous and independent in their work and operate on the basis of the law and regulations founded on it. In their work they are accountable to the organ which appointed them (LEPD, art. 28). The Republican Electoral Commission is appointed by the National Assembly (LEPD, art. 33). Protection of the electoral rights is enforced by the Republican Electoral Commission, the Supreme Court of Serbia and competent courts (LEPD, articles 7 and 93-97)

The right to elect deputies and to be elected a deputy is enjoyed by able-bodied Yugoslav citizens residing in the Republic of Serbia and over the age of 18 years (LEPD, art. 10). Holders of judicial functions or others to which the National Assembly has appointed them cannot be parliamentary deputies, except in cases defined by the Constitution. Senior government officials or other employees of the republican authorities who have been elected to parliament will have their employee status in the republican authorities frozen on the day their deputies' mandates are confirmed. (LEPD, art. 11) The prime minister, deputy prime ministers and other ministers can also be people's deputies (Constitution, art. 91).

The work of the parliament is regulated by the Rules of Procedure of the National Assembly of the Republic of Serbia.

³ In October 1993 the president of the Republic dissolved the National Assembly at the recommendation of the prime minister during a debate on a vote of confidence in the government. The president explained his decision by "protection of the dignity of the National Assembly".

The Rules of procedure define the organisation and work of the parliament, as well as the manner in which deputies realise their rights and obligations.

The National Assembly has 23 permanent committees⁴. Deputies' groups nominate members of the committees in proportion to the number of their mandates (Rules of Procedure, art. 25). Besides the permanent committees, the National Assembly can also form committees and commissions of inquiry, the scope of whose work is defined by the decisions on their establishment. (Rules of Procedure, art. 69-70)

A deputy has a right to propose an amendment and/or change of the agenda (Rules of Procedure, art. 84), to address parliament on all points of the agenda (Rules of Procedure, articles. 87, 88 and 91), to make a rebuttal (Rules of Procedure, art. 96) and to query the Government or individual ministers (Rules of Procedure, art. 190)

Sessions of the parliament and its committees are open to the public (Rules of Procedure, art. 166). Records and minutes of the parliament and committee sessions and the drafts of laws, decisions and other documents adopted by the parliament are made available to the information media (Rules of Procedure, art. 167-169). The public can be excluded from parliament and committee sessions only in cases defined by law and when the parliament so votes upon an argued proposal made by the Government, a committee or a minimum of 20 deputies (Rules of Procedure, art. 166)

The National Assembly among other things adopts a Law on the Budget of the Republic of Serbia and the annual financial statement (Constitution, art. 73; Rules of Procedure art. 143-147).

The speaker of the National Assembly can caution deputies or rule them out of order after a violation of the Rules of Procedure. Upon a proposal by the speaker, the National Assembly can remove a deputy from the session. These measures are also applicable to all other participants in parliament sessions, as well as sessions of the committees

⁴ Rules of Procedure of the National Assembly of the Republic of Serbia, art. 44 (Rules of Procedure)

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and other working bodies of the parliament (Rules of Procedure, articles 100-106).

A People's Deputy enjoys immunity from prosecution. A deputy can be taken into custody only if found in the perpetration of a criminal offence punishable by law with prison sentences of over five years' duration. Criminal or other legal proceedings potentially ending in a term of imprisonment cannot be initiated without the consent of the National Assembly against a parliamentary deputy invoking his or her right to immunity from prosecution. (Constitution, art. 77)

The administrative committee of the National Assembly takes under consideration demands to deprive parliamentary deputies of their right to immunity from prosecution, and submits to the parliament its report and recommendation. When in regular session, the parliament rules on the application of the immunity, and when the parliament is not in regular session, the matter is decided by the Administrative Committee, which informs the parliament about its decision. (Rules of Procedure, articles 67 and 163-165)

The relationship between the legislative and executive branches is regulated by the Constitution of the Republic of Serbia. Authority in the Republic of Serbia is divided into the constitutive and legislative powers, belonging to the National Assembly, executive powers, which belong to the Government, and the judicial powers, which belong to the courts (Constitution, art. 9). The National Assembly elects and relieves of duty the prime minister, deputy prime ministers and ministers in the government, and supervises the work of the government (Constitution, art. 73). The government enforces laws, other regulations and by-laws adopted by the National Assembly (Constitution. art. 90). The government and all its members are accountable to the National Assembly (Constitution, art. 93).

There are no legal regulations in Serbia preventing conflicts of interest as regards the post of parliamentary deputy. A deputy can be a member of the government, can hold other public offices, including economic ones, can be the president of a local assembly or hold other

local government posts. A deputy (especially if a member of the majority faction or a president of a parliamentary committee) can exert considerable influence on the adoption of a law or other regulations. This creates a lot of room for the adoption of regulations likely to enable certain deputies to gain various profits outside the market environment. This was particularly evident in the period of the former regime, when many ruling party deputies used information about changes in regulations to alter the policies of their firms (of which they were directors or outright owners). The parliament formed after the December 2000 elections has adopted no regulations at all preventing conflicts of interest in regard to the office of parliamentary deputy, which means that no firm guarantees exist that certain deputies cannot exert influence on the adoption of decisions likely to bring them considerable personal gain.

- It is necessary to adopt a law on people's deputies.
- The law would stipulate that parliamentary deputies may not hold any other office than that of deputy, and define other mechanisms to prevent conflicts of interest.
- The reporting of assets held by state officials and permissible income by parliamentary deputies outside their salaries, as well as control mechanisms, should also be regulated by law.



Political Party Funding

- The Law on the Financing of Political Parties defines mechanisms of controlling the inflow of funds (source of funds) and their expenditure, and clearly defines the sources of income for funding political parties.
- The funding of political parties in Serbia is taking place in an extremely non-transparent manner and outside the law.

The Law on the Financing of Political Parties was adopted in 1997. Under it, a political party can acquire funds needed for its operation from membership dues, contributions, income from its own property, ownership rights in enterprises and credits, as well as from the budget of the Republic of Serbia. Political parties cannot be funded by the authorities and organisations of foreign countries and other foreign nationals, or by the state or local organs of authority, except in ways defined by law. Anonymous contributions may total only up to 3% of a party's net income from the preceding year. (Law on the Financing of Political Parties, art. 2) Parties represented in parliament also receive funding from the Serbian budget, (Law on the Financing of Political Parties, art. 3, 4) which is also the source of some of the funds used in the campaigns for parliamentary (Law on the Financing of Political Parties, art. 60) and presidential (Law on the Financing of Political Parties, art. 8) elections. The maximum permissible contribution by a legal entity to a party is 50 net average monthly salaries in Serbia. Public enterprises may not give contributions to political parties (Law on the Financing of Political Parties, art. 5). Parties are legally bound to keep records of income and expenditure; the sources of income are public knowledge. (Law on the Financing of Political Parties, art. 9).

The Law on the Financing of Political Parties was adopted at an extraordinary session of the Serbian Parliament together with the law on Electoral Districts for the Election of National Deputies. The two laws were adopted as part of preparations for the parliamentary elections held in 1997.

In practice, the Law on the Financing of Political Parties never really became effective in Serbia. Despite the legal obligation to make financing transparent and to conduct all operations through giro accounts open to financial supervision, neither the ruling parties nor the opposition heeded the law.

Most of the income of opposition parties came from foreign donors (which the law bans) or local businessmen, anonymously. The reason is clear: during the former regime it was not advisable to be a donor to an opposition party.

The ruling parties "legalised" only a part of their income, mainly by making public smaller donations, income from enterprises and budget-derived funds, which they transferred via giro accounts. Given that the principle income of the ruling parties was from donations by public enterprises, large economic systems, and the "contributions" of numerous businessmen, which funds were never "legalised" and thus subject to financial control, the obvious question is why the party financing law was adopted at all? After the local elections in 1996, the then opposition "Zajedno" coalition took control of 40 municipalities and the following towns in Serbia: Belgrade, Niš, Kragujevac and Novi Sad. The intention of the law was to prevent the financing of parties from the income of local public enterprises, municipality and city budgets and firms based in the areas controlled by Zajedno.

The situation did not change appreciably after last year's political changes. Political parties still abide by the law only formally, duly keeping books showing only permissible income and expenditure. Major donations still go unreported, which is a possible source of political corruption. It is not known whether any supervision of the financing of political parties has been carried out lately.

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An investigation is under way in Belgrade into several Socialist Party of Serbia officials suspected of masterminding alleged irregularities in the financing of the SPS at the time when it was the ruling party.

- It is necessary to adopt a new law on the financing parties under which parties would be financed mainly from budgets, depending on their representation in the federal, republican and local parliaments.
- Political parties should be barred from setting up enterprises, agencies and similar for acquiring funds.

Auditor General

- The institution of a Auditor General does not exist in Serbia
- The size of budget expenditure in Serbia is such that it most definitely merits the introduction of the institution of Auditor General
- The Serbian Government plans to adopt in the second half of 2002 a law providing for the establishment of a Auditor General's bureau

The institution of a Auditor General does not exist in Serbia. In mid-May 2001, a UNDP mission visited Belgrade with the objective of assessing the situation and drafting a proposal for the establishment of a Auditor General.

Budget expenditure is such in Serbia that it absolutely justifies the establishment of a Auditor General. The major reconstruction projects foreseen for the coming years are another good argument for the introduction of an independent institution to control public expenditure.

It was agreed with representatives of the Serbian Parliament that in September 2001 an assessment should be made of the existing conditions under which a Auditor General should be formed and would function, while in the first half of 2002, a draft law would be completed regulating the foundation, operation and financing of that institution. Its adoption and the establishment of the Auditor General is expected to take place in the second half of that year.

- The institution of Auditor General must be granted firm foundations in the constitution, law and other regulations.



- The Auditor General must enjoy operational, organisational and financial independence to ensure efficient performance of their control function.
- The Auditor General must be granted constitutional and legal powers and funds for controlling all public expenditure and transactions, whether or not budgetary and regardless of who benefits from the funds in question or who controls them, and also including funds from international sources.
- The Auditor General must audit public expenditure, controlling both the regularity of spending and its efficiency.
- The Auditor General must be empowered to make public all audit findings. The Auditor General should submit a report to the parliament which should also be available to the media and the public.
- The Auditor General should assist bodies it controls to develop efficient systems of internal control.

Judiciary

- The judiciary has been exposed to the pressure of the political interests of the day for a long time.
- The financial position of the judiciary is bad.
- Judicial protection is not efficient enough.
- Judges have no influence on the selection of new judges and presidents of courts.
- There exist two concepts of regulating the position of courts.

The Crisis and Renewal of the Judiciary

In Yugoslavia, during the Communist era the courts were formally independent. However, the only party in existence at the time, which, even according to the Constitution, had a special role in society, virtually kept all courts under control. When the all-powerful party vanished from the scene, the division of power was proclaimed (the Constitution of Serbia, Article 9). In reality, however, the executive power was above the judiciary right until October 5th 2000. That is why the judiciary was contaminated with current political issues in the final years of the century just gone by; judges were selected on the basis of their party affiliations, not professional expertise and reputation; bitterness, fear and insecurity reigned; politically-motivated processes, rigged trials and unlawful detentions grew quite frequent; the number of unsolved murders, kidnappings and other grave offences soared; there was more and more talk about corruption in the judiciary; inefficient courts began to be replaced with "efficient" debt-collecting agencies; judges were categorised as suitable or unsuitable, patriotic or non-patriotic and

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members of the independent Judges' Association were persecuted; by means of giving out flats, loans for the purpose of buying flats, presidential and ministerial positions, the state bribed "its own" judges to decide in its favour in court proceedings to do with elections or other politically-motivated lawsuits.

It is small wonder, then, that the judiciary entirely lost its authority. The judicial power bears part of the responsibility for this, for it is still under the influence of the fifty years of unilateral exercise of power and suffers from an inferiority complex towards the executive and the legislative power.

As the previous regime left behind a submissive, unjust and disgraced judiciary, it rests upon the new, democratic Serbia to renew it and to make it independent, just and organised. Only then will the judiciary "regain" the power it already has according to the Constitution.

The Independence of the Judiciary

According to Article 91 par. 1 of the Constitution of Serbia, courts are independent in their work and decide on the basis of the Constitution, the law and other general acts. Many general international acts are dedicated to the independence of the judiciary, the most important ones among them being the Universal Declaration on the Independence of the Judiciary (Montreal, 1983) and the Basic Principles of the Independence of the Judiciary (Milan, 1985). They contain the generally accepted rules of international law pertaining to the judiciary.

In order to win the confidence of the people, courts must adhere to a code of professional ethics. In our country, there exists the Code of Judicial Ethics of the Judges' Association of Serbia, passed on May 9th 1998. It contains ten canons, namely - be independent, be just, be professional, be free, be brave, behave appropriately, be incorruptible, be dedicated, be apolitical, be loyal to the Code.

Guarantees

The guarantees of judicial independence may derive from the Constitution, the law and the generally accepted rules of international law. The guarantees deriving from the generally accepted rules of international law are, in accordance with Article 16 par. 2 of the Constitution of FRY, an integral part of the domestic legal order.

The state of the system of a judicial independence guarantees

The influence of courts on the selection of judges is almost non-existent, because it boils down to giving opinions about potential candidates that are not binding. According to the Constitution, judges are selected by the National Assembly, on the basis of a proposal submitted by its Judiciary Committee. The greatest influence is that of the executive power, exerted through the Minister of Justice, which has resulted in lowering the level of professional ability of court personnel. Even today, the Minister of Justice articulates and exerts political influence on the process of selecting judges, especially when it comes to selecting the presidents of courts.

The security of tenure. The Constitution stipulates that the position of a judge is permanent (Article 101 par. 1). A judge gets selected, like other state officials, but as opposed to them, his/her tenure is not subject to any limitations in terms of duration, so that there is no risk of his/her tenure being terminated due to reasons outside the realm of the law (ideological, party-connected, political and the like). This enables him/her to devote him/herself to the judicial profession as a lifetime vocation. The security of tenure does not preclude the possibility of being appointed to a post in a higher court, nor does it mean that a judge's term of office is for life. The judicial function is terminated upon the request of the judge in question, when the conditions for old-age retirement are fulfilled and when reasons for relieving a judge of duty arise. This guarantee has not always been observed. During the period



of great persecution of judges (November 1999 - June 2000), about thirty prominent members of the Judges' Association of Serbia found out it was of no use to them.

Residential security is also stipulated by the Constitution (Article 100). A judge is not only a representative of the judicial power. He/she is also a citizen with a personal, family, housing, professional and intellectual status. Since this status is established in the place which is the centre of his/her relationships, each involuntary change of residence brings a feeling of insecurity into the life of a judge, which may have a negative influence on the quality of his/her work as a judge. That is why the Constitution stipulates that a judge may not be transferred to another post against his/her will (Article 101 par. 5).

The immunity of a judge is a constitutional obstacle to his/her being held accountable for an opinion given in the course of passing a judicial decision and to his/her being held in custody without the prior assent of the National Assembly (Article 96 par. 2). The level of immunity is lower than that of representatives of the legislative and executive power, because it covers custody but not prosecution (for criminal offences committed outside judicial work), as is the case with the latter. While it is the National Assembly that decides on the immunity of representatives of the people, the Government that decides on the immunity of ministers and the Constitutional Court that decides on the immunity of a Constitutional Court judge, in the case of judges, it is not the Supreme Court, as the highest organ of judicial power that decides on their immunity but the National Assembly as the highest organ of legislative power, which testifies to the fact that the Constitution did not take properly into account its own principle of the division of power.

The ban on pursuing activities incompatible with the judicial function (Article 100 of the Constitution) prevents a judge from holding a post or performing such work that is legally established to be incompatible with the judicial function. Many judges, however, have failed to take this into account, especially those holding the post of the president of a court.

The rule of "accidental judge" ensures that each judge should receive "an accidental case" and each case "an accidental judge", which prevents the deliberate handing of certain cases to a certain judge, that is, the rigging of the case allocation procedure. This guarantee is stipulated by the Law on Courts (Article 30 par. 1); presidents of courts, however, have tended to disregard it, because when it came to politically sensitive cases, they formed "special boards of judges", consisting of obedient judges, irrespective of the established roster. Exceptions to this rule still occur, but due to searching for competent rather than obedient judges. Bringing order back into the judiciary presupposes, among other things, a consistent application of the roster for the coming year established by the president of a court towards the end of a calendar year. Exceptions will be possible only due to objective reasons (illness, absence, being prevented from attending, etc.).

Juror judges participate in judicial proceedings in order to monitor the work of the judicial power, thus contributing to the idea of an independent judiciary. Although they do this on the basis of the Constitution (Article 99 par. 1), their participation in the role of members of boards of judges has long been reduced to a mere formality. This practice endures as a necessary but empty form; the actual work is done by idle pensioners, without any will to participate in the proceedings in real terms.

The responsibility of a judge has its constitutional basis in the general provision stating that everyone has the duty to perform an official function conscientiously and responsibly (Article 53 par. 2). However, the Law on Courts contains no provisions on the responsibility of judges. In view of this, it would be necessary to pass such provisions, all the more so since international judicial standards insist on this.

Relieving a judge of duty is envisaged by the Constitution, but is only possible in the following cases: 1) if a judge has been convicted for a criminal offence and sentenced to an unconditional prison sentence of at least six months, or for any punishable offence making him/her unsuitable for the function of a judge; 2) if he/she performs the



function of a judge incompetently or negligently; 3) if he/she permanently loses working ability (the last one being outside the sphere of personal responsibility). The Law on Courts, however, adds another reason for doing so (Article 46 par. 4): if he/she performs functions, duties and work incompatible with the function of a judge. This additional provision lacks a constitutional basis because it places a judge in a position that is less favourable than that guaranteed him/her by the Constitution; it is also quite unnecessary because the activities incompatible with the function of a judge can be classified as negligent performance of the judicial function. The procedure for relieving a judge of duty is initiated by the president of the Supreme Court of Serbia, and the existence or non-existence of valid reasons for doing so is established in the course of a General Session of the Supreme Court (involving the president and all the judges of this court). The decision on relieving a judge of duty is passed by the National Assembly, but only after the Supreme Court has established sufficient grounds for doing so. If the Supreme Court does not establish the existence of such grounds, no such decision may be passed. This is an instance of the principle of division of power being manifested in practice. However, it wasn't observed in practice. In the case mentioned above, when about thirty prominent judges, leading members of the Judges' Association of Serbia, were relieved of duty, this was done even though a General Session of the Supreme Court was never convened. The newly-established National Assembly has suspended this decision and enabled the judges who were unconstitutionally relieved of duty to return to their posts.

The financial situation of judges. The salaries of judges must be appropriate to their status, responsibility and the respect their profession commands. Unfortunately, they are at the level of the existential minimum. Moreover, they are below the level of those of the representatives of legislative and executive power at the same level in terms of hierarchy. This remains so even after the recently adopted Law on the Salaries of Employees of State Organs. Nothing can lead a judge more

into temptation than financial problems (Đ. Tasić). That can amount to the risk of succumbing to corruption. The most notorious causes are detention cases, commercial law cases, enforceable decisions and commutation of sentences. Some judges who have worked as members of electoral commissions have also succumbed to corruption; criminal proceedings have been initiated against some of them.

The budget of the judiciary is the financial prerequisite for its independence. The financing of the judiciary, however, is not in accordance with the principle of division of power. The funds for the financing of the judiciary are still provided out of the joint budget, proposed and executed by the Government and established by the National Assembly.

The establishment of judges' associations is based on the right of all citizens to form associations (Article 44 of the Constitution). In Serbia, there exists the Judges' Association of Serbia. The current political and judicial authorities treat the Judges' Association and its activities with respect.

Publicly, everybody is in favour of the independence of the judiciary. In practice, however, this is mostly rhetorical. The Constitutional Courts do not function; courts do not exert sufficient influence when it comes to electing presidents of courts; in many courts, there are judges occupying the post of acting presidents, whose status is far from clear; the salaries of those employed in the judiciary are still lower than the salaries of those employed in the executive or the legislative branch of the administration; one minister lamented that the courts had not yet become DOS's (he did say "ours"), so that they could issue arrest warrants whenever it pleased him; one ambassador knew that Milošević would be arrested twenty days before the judge who issued the arrest warrant; a Prime Minister knew that Milošević would not be arrested as long as he occupied that post; one governor took it upon him to relieve an acting president of court because the latter had passed the wrong decision; one general got very angry because an investigative judge released some people from custody; one police captain promised the perpetrators of unresolved criminal offences that they would receive



lighter punishment if they turned themselves in; a close associate of the President of Yugoslavia announced to the press, and not to the authorised judicial organ, that there existed definitive proof of the republican government's connections with organised crime.

As long as the above-mentioned phenomena (and the like) persist, the position of the judiciary will remain marginalized, despite all the talk about the need for an independent judiciary. The judiciary does not need big promises but the real support of all concerned if it is to become that which it should be: an independent and respectable branch of the administration in a unified state organisation.

It is encouraging that the first steps in that direction have already been taken: the unconstitutional decisions on relieving of duty a large number of judges have been suspended; new presidents have been elected in about eighty municipal, commercial and district courts; a new president of the Supreme Court of Serbia has been elected; establishing judges' associations is no longer an "illegal activity"; judges are no longer divided into "suitable" and "unsuitable", "patriotic" and "unpatriotic" and the like.

The Organisational Structure

Courts are not organised in such a way that would allow them to exercise judicial power efficiently, which is the reason why they are slow and inefficient. This is particularly true of courts of the first instance (especially speaking of civil lawsuits), where months pass before cases begin to be dealt with and years pass before they are decided. The situation is not satisfactory in courts of the second instance either. Even the Supreme Court of Serbia is burdened with a large number of cases, especially those dealing with administrative proceedings. This state of affairs makes it imperative that the judiciary should be organised in such a way that **a)** courts of the first instance start functioning, **b)** specialised courts take over "cases rightfully theirs" from the overall corpus of cases, **c)** courts of appeal take over second-instance

authority entirely and **d)** the Supreme Court should become a court of cassation.

The first step in that reform might be the passing of the **law on courts and judges**. To facilitate matters in this area, the Centre for the Advancement of Legal Studies has prepared two versions of such a law: one "for today" and one "for tomorrow". The "Model for today" (by Dr Zoran Ivošević) was written on the basis of the current Constitution. The "Model for tomorrow" (by Dr Vesna Rakić-Vodinelić) was written without relying on the current Constitution. Both models are based on international standards pertaining to the independence of the judiciary.

In April this year the Ministry of Justice established a task force to prepare the entire law on courts and judges. A draft version of this law has been prepared, resulting in a public debate on the reform of the judiciary organised by the Judges' Association of Serbia.

Somewhat unexpectedly, the Representatives' Group of the Democratic Party of Serbia (DSS) in the National Assembly has taken a shortcut in the direction of reforms. It has submitted four bills to the National Assembly for approval (on the organisation of courts, on judges, on the seats and areas of jurisdiction of courts and on the High Council of the Judiciary), resulting in the fragmentation of the unified character of the judicial power. The shortcut bypassed communication by means of a public debate, disregarding the opinions, suggestions, critical remarks and proposals of judges. What can happen as a result is that the judiciary, as many times before, gets bypassed in the establishment of the judicial power, this time - on account of political divisions in the ruling coalition.

The draft version and the proposal submitted by DSS differ considerably.

1. The draft version of the Ministry. The draft version of the Ministry envisages: **1)** municipal and district courts as courts of the first instance of general jurisdiction; **2)** commercial courts as courts of the first instance of specialised jurisdiction; **3)** courts of appeal as courts of the second instance of general and specialised jurisdiction; **4)** the ad-



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ministrative court, as a specialised court for administrative proceedings; 5) the Supreme Court, as a court of cassation and the highest court instance in the Republic.

Courts of the first degree of general jurisdiction have traditionally been a "bottleneck" of the judicial power. If they are organised in such a way that they are able to deal with the influx of cases over a reasonable period of time, the entire judiciary will become more efficient. A normal rate of case absorption will be ensured if the first-instance jurisdiction is divided between municipal and district courts, so that district courts will lose the second-instance jurisdiction altogether but get a much broader first-degree jurisdiction in return, especially in the case of civil lawsuits. In this way, our judiciary would get two kinds of courts entrusted solely with the first-instance jurisdiction.

Municipal courts, until now the only courts with a purely first-instance jurisdiction, would retain simpler criminal cases and civil lawsuits, as well as all out-of-court proceedings, enforceable decisions, land registry and registry office proceedings, whereas they would be relieved of more complex criminal cases and civil lawsuits.

District courts, until now primarily courts of the second instance and partly courts of the first instance, would become solely courts of the first instance, but occupying a higher place in the court hierarchy than municipal courts, because they would deal with more complex criminal law cases and civil lawsuits. Hence the rank of a district court judge would be superior to that of a municipal court judge.

Commercial courts would be specialised courts of the first instance, retaining the jurisdiction of the current commercial courts in its entirety.

Courts of appeal would be courts of the second instance without any first-instance jurisdiction whatsoever. They would decide on appeals against the decisions of first-instance courts. There would be four such courts in Serbia, each of them covering first-instance courts from a particular area of the territory of Serbia.

Courts of appeal of general jurisdiction would decide on appeals against the decisions of municipal and district courts.

The commercial court of appeal would decide on appeals against the decisions of commercial courts.

A specialised Administrative Court would take over the jurisdiction of the Supreme Court of Serbia in deciding on administrative proceedings.

The Supreme Court of Serbia, relieved of the jurisdiction over criminal law cases and civil lawsuits, as well as administrative proceedings, would become a court of cassation in the real sense of the word. What would remain for it to do is deal with extraordinary legal remedies, provide legal views and opinions in principle, see to it that the law is consistently implemented by courts, give its opinions on draft laws and other regulations of importance for the implementation of the judicial power, and to perform other tasks as a representative of the judicial power.

This already shows that the new court system would be entirely different from the present one. The draft version presents a **law of discontinuity**. According to it, the courts established on the basis of the old law would cease to function on December 31st 2001, whereas the courts established on the basis of the new law would start functioning as of January 1st 2002.

The cessation of functioning of the old courts, however, would have no influence on the status of the judges. According to Article 101 par.1 of the Constitution, the function of a judge is permanent, so that it would outlive the reform of the court system. But in view of the fact that the function of a judge cannot be performed without a court of law, the judges who remain without their posts would be entitled to new ones, and those can only be provided in the courts established in accordance with the new law. As all the judges would be left without their posts, they would all be entitled to new ones under equal conditions for all. Hence they would get them in the course of the **general re-appointment of all the judges affected**. The agreement of a judge would not be necessary for this re-appointment. True, it is necessary in the case of transferring a judge from his/her former post to another



court of law (Article 101 par. 4 of the Constitution), but as there would be no former courts in this case, the agreement of a judge would not be required.

In the case of those judges who do not act in accordance with the decision on re-appointment and do not report for work in a new court within 60 days, it shall be considered that they no longer wish to be judges.

In the course of the general re-appointment of judges, court personnel may be reduced in those courts where the number of judges is going to be reduced.

The draft version of the law aims at **modernising the judicial power** by applying international standards pertaining to the independence of the judiciary, introducing a judiciary council in the process of appointing judges and relieving them of duty, developing guarantees of the independence of the judiciary, establishing the disciplinary responsibility of judges who perform the judicial function negligently, introducing legal measures to be applied in the case of relieving a judge of duty unlawfully, regulating the relations between the courts and the citizens, establishing the procedure for dealing with judicial documents, a greater influence of the judicial power on determining the budget for financing the judiciary, introducing special clothes for members of the judiciary and establishing a court guard.

2. The proposals submitted by the Representatives' Group of DSS retain the current court structure and the designations for courts of the first instance of general jurisdiction, so that municipal courts would remain first-instance courts and district courts both first- and second-instance courts. Commercial courts would retain their jurisdiction while changing their name to trade courts. The Higher Commercial Court would retain its jurisdiction while changing its name to the Higher Trade Court. The Court of Appeal would decide only on appeals against decisions of district courts in the first instance currently handled by the Supreme Court. That is why there would be only one court of this kind in the Republic. The Administrative Court would also be established to

cover the entire territory of the Republic, and would take over the jurisdiction of the Supreme Court and district courts in dealing with administrative proceedings.

These proposals do not do away with the current court system but rely on it with a view to retaining it while introducing some modifications. That is why their aim is a **law of continuity**. On account of this approach, they do not deal with the situation of judges affected by the changes. These judges will retain their posts when the new law comes into effect even though the jurisdiction of the court in question may be reduced by half.

As they aim at preserving the current situation, these proposals do not contain provisions on the disciplinary responsibility of judges, the relations between the courts and the citizens and judicial documentation, nor do they aim at creating the preconditions for a cleaning-up of the judiciary.

The proposals divide the entire corpus of the judicial power into four segments; only one of these, the High Council of the Judiciary deserves to be the subject of a separate law because it pertains both to the judiciary and the prosecutor's office.

3. The judiciary of the decentralised Serbia. Today, Serbia is a centralised state. There do exist units of local self-management and territorial autonomy in it, though these are more in the nature of decorative elements of the Constitution than something actually to do with reality. This is particularly true of territorial autonomy units. Both have been divested of power for a long time, whereas one has of late been excluded from the constitutional being of Serbia. That is why the need for a decentralisation and regionalisation of Serbia is being mentioned more and more often, and hence in the context of the judiciary. But as the judiciary cannot be established independently of the structure of the state, a foundation must be created first upon which the judiciary of a decentralised Serbia could be built. This foundation could be provided by a regional state.

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Corruption in the Judiciary

The criminal law regulations currently in effect contain provisions pertaining to the criminal offences of taking and giving bribes and misuse of professional capacity. Article 243 of the Criminal Code of Serbia also pertains to judges, sanctioning violations of the law on the part of judges for the purpose of securing advantages for themselves and other persons. Also sanctioned is the giving of false statements before a court of law by witnesses and experts (Articles 206 and 207 of the Criminal Code of Serbia), as well as abuse of trust on the part of lawyers (Article 179 par. 2 of the Criminal Code). However, criminal offences pertaining to corruption are rarely discovered and offenders are rarely brought to trial.

The draft law on changes and amendments of the Criminal Code of the Republic of Serbia, currently undergoing the parliamentary procedure, does contain several new criminal offences in the sphere of corruption, two of which pertain to the judiciary.

- A new law should be passed to provide the basis for a reform of the judiciary.
- Courts should have a greater influence in the process of selecting judges and presidents of courts through the establishment of a judiciary council that would deal with the proposals for appointments.
- The independence of the judiciary should be ensured by means of a system of guarantees, where particular importance should be given to the security of the function of a judge, the residential security of judges, the immunity of judges, a ban on activities incompatible with the professional activities of judges, the rule of "the accidental judge" and the influence of judges on appointing and relieving judges of duty.

- A special judicial budget should be established and the financial situation of judges should be brought to the level that would be appropriate to the importance of the function of a judge and the responsibility it carries.
- A stimulus to the conscientious performance of the function of a judge should be provided by a system of disciplinary responsibility of judges.
- Judges should be given the right to form judges' associations for the purpose of realising their professional aims and interests and additionally securing their independence.



Prosecutors

- Major changes and the appointment of new prosecutors are expected to take place
- Changes of material and procedural law are expected
- The number of legal cases involving corruption offences is very small
- Corruption is reported very seldom
- So far the authorities have not been exerting any pressure on prosecutors

During the period of communist rule, public prosecutors were always under very strong pressure and acted very much according to the directives of the authorities. This practice continued in the "Milošević period," especially by way of pressure exerted on senior prosecutors and the selection of prosecutors and their deputies on the basis of party membership. In order to be appointed to almost every post of any importance, including the judiciary, it was necessary to be a member of either the Socialist Party of Serbia (SPS) or the Yugoslav Left (JUL). Things have now changed considerably, although there is still noticeable interest by some parties in infiltrating their people into certain positions.

The new democratic authorities are evidently working on the reconstruction of the entire legal system, including the prosecution organs, albeit at a slow and sensible pace. What has been done so far is the appointment of a new republican public prosecutor, the replacement of the district prosecutor in Belgrade and of some district prosecutors in major towns in Serbia. A process of re-electing public prosecutors and their deputies, judges and presidents of courts is expected to take

place in the near future, when changes in these areas will make it possible to place the judiciary on a new and more sound basis.

A new Criminal Law and Law on the Criminal Procedure are also expected to be adopted in October or November 2001 - this will make it possible for prosecutors to assume a completely different position, similar to those of the Western European legislations.

It should also be pointed out that a consultative gathering was organised by the US Treasury Department, under the auspices of the Justice Ministry, to discuss the problem of suppressing corruption crimes and preventing money laundering.

Formal conditions

Prosecutors are independent and perform their duties on the basis of the Constitution and the law (the Law on Public Prosecutors and the Law on the Criminal Procedure).

Once word reaches the public prosecutor, in any way possible, that a crime has been committed, the prosecutor will undertake all necessary actions stipulated by law - police investigation, seeking information from other state organs of authority, the questioning of citizens - to establish relevant facts on the basis of which a decision can be taken whether or not to initiate criminal proceedings.

Bribery by private individuals by other private individuals is not punishable by law; the Criminal Law of the Republic of Serbia defines that this action is treated as a criminal act only if perpetrated by a public official or a person with responsibilities (art. 46 of the Criminal Law of Serbia).

Very few inquiries into suspected corruption crimes were begun in the past years (just eleven were filed in 2000, and so far just one case has ended in a conviction).

Municipal prosecutors hold the powers of acting in criminal cases connected with corruption. There exist no written directives from the district or republican-level prosecutors for action in such cases.



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The status quo

Before the political changes, the executive branch and political parties exerted their influence through elected municipal, district and republican prosecutors. The new authorities have so far exerted no such pressures on the prosecutors, and have assured prosecutors that there would be no such pressures. The media have been exerting pressure on the prosecutors to speed up the process of indicting criminalized former high officials and privileged individuals, but this pressure could obstruct the prosecutors in their efforts to do a proper job.

No cases of corruption in the prosecution organs have been reported in the past decade, although this possibility cannot be absolutely ruled out, as the nature of such crimes makes them very easy to conceal.

In the past few years very few inquiries into suspected corruption crimes were initiated (just eleven in 2000, and so far just one case has ended in a conviction).

The main reason for this lies in the fact that under the Criminal Code both bribe-giving and bribe-taking are defined as criminal acts; this means that a bribe-giver reporting a bribe-taker would automatically also incriminate himself.

Positive regulations stipulate that a person who gave a bribe at the demand of a public official and reported that action before it was discovered or before learning that it had been discovered can be freed of responsibility. Our view is that this solution does not provide sufficient encouragement for potential bribe-givers to point a finger to bribe-takers.

- The number of deputy prosecutors must be increased in order to shorten criminal procedures.

- The material position of prosecutors must be improved to prevent the most competent personnel from moving to better paid jobs, and to prevent consideration of existential questions from obstructing their work.
- The participation of prosecutors in the pre-trial procedure must be boosted in order to help the police collect admissible evidence.
- The prosecution authorities' data systems must be computerised to speed up communication with the police and other state authorities such as the Accounting Service, Financial Police, Inspectorates etc., as well as with other prosecutors and courts.
- Persons volunteering information about bribe-giving must be legally protected from criminal prosecution ("witness protection").



Police

- The Minister is answerable to the Parliament and the President.
- A new Police law has been proposed.
- There exist no special units for fighting corruption or special means of doing so.
- The public has very little confidence in the police.
- The political parties making up the ruling coalition compete trying to reinforce their position within the police. Moreover, the coalition parties continue to directly interfere in the designation of the most important police officials. For the time being, one-party arbitration has been replaced with multiparty arbitration.
- The Minister of Internal Affairs has started to introduce some elements of decentralisation.

Formal Provisions

1.

In Serbia, the Minister of Internal Affairs, like all other ministers, is appointed and relieved of duty by the Parliament (Article 73, Par 10 of the Constitution of Serbia). The Minister is answerable to the Parliament, which is also entitled to establish the organization and authority of the ministries and administrative organs (Article 94 of the Constitution).

However, the Minister of Internal Affairs, like all other ministers, is bound to apply not only the laws and other acts enacted by the Parliament and the Government, but also the acts of the President of the Republic (Article 94 of the Constitution). The President of the Republic,

as well as the Parliament, may require of the Minister to report on the activities of the Ministry of Internal Affairs and on the security situation in Serbia (Article 9 of the Law on the Internal Affairs of the Republic of Serbia).

The Law on [Army and Police] Ranks⁵ increases the President's powers with respect to the police, enabling him to have direct control over the police in Serbia. He is entitled to promote members of the police force to the rank of a general and appoints officials to those posts for which the rank of a general is required. Since the rank of a general is required for all the important posts within the Ministry, the President has the authority to decide on appointments to all the top posts. This constitutes a considerable derogation of the Constitution of the Republic of Serbia, which states in Article 90 Par 5, that the *Government* is authorised to appoint and relieve of duty officials in all the ministries. Insofar as the police are concerned, this authority is actually reduced to the appointment of deputy directors of directorates. In addition to this, the President of the Republic promotes graduates of the Police Academy to the rank of sub lieutenants and he appoints them to their respective posts. Finally, the President of the Republic has the power to pardon or to reduce a disciplinary measure, such as suspension of promotion to a superior rank for all the persons that he has promoted to the rank of a general or a sub lieutenant. Thus the President of the Republic appears to be the highest disciplinary instance for those members of the Ministry whom he has promoted to the rank of a general or sub lieutenant and appointed to their first posts.

Consequently, all those who enter service or obtain the highest rank are somehow bound to the President of Republic.

However, the bill on the police in Serbia, proposed to the Minister of Internal Affairs of Serbia in July 2001, provides for the institution of the Director General of Police. The status and the authority of the Director General of Police are approximately those of the Commissioner of Police. The post is envisaged as independent, the appointment to be based

⁵ *The Official Gazette of the Republic of Serbia*, no. 53/95.

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on merit, and the procedure for relieving him of duty is also included in the bill.

2.

There is no permanent institution established by a legislative body or through some other arrangement with a view to dealing with complaints against police corruption.

One of the twenty-three Committees of the National Assembly of the Republic of Serbia is the Committee for Security. It "deals with proposals of legal or other acts and with other questions in the field of defence and security of the Republic of Serbia and its citizens, and with exercising control over the activities of security services in accordance with the law". In addition to this, there exists a Committee for Complaints and Proposals. The formulation of its mandate (Article 70 of the Rules of Procedure) is identical to that of the counterpart Committee in the Federal Assembly (dealing with questions related to control of the Government and other agencies and officials answerable to the National Assembly).

The mandates of these Committees do not include obligation to deal with public complaints against police conduct in general and against police corruption in particular.

These bodies deal with public complaints in general. They are composed of MPs who represent their respective political parties. Their term of office is tied to the term of office of the legislative body which has established these Committees. Therefore, they cannot be established as independent entities.

In September 2001 the New Democracy Party, a member of the ruling coalition, whose president is a Vice-President of the Government and the Minister of Internal Affairs, submitted a proposal to the National Assembly of Serbia for the establishment of a new parliamentary committee, to deal solely with fighting corruption.

To a great extent, the proposal was inspired by the models existing in Canada and England and Wales.

3.

The role of civil society in the above-mentioned Permanent Commission is guaranteed by:

1) its composition: citizens of Serbia residing in Serbia, who have at least ten years of judicial, administrative or academic experience and who have the reputation of honest and staunch defenders of the rule of law and human rights may be appointed (by the Parliament) to serve as members of the Permanent Commission;

2) its obligation to deal with complaints submitted by any member of the public, including non-governmental organizations, who considers the conduct of any member of the police force in the line of duty to be improper, regardless of whether the said member of the public is affected by the subject-matter of the complaint or not.

4.

In Serbia, the proper instruments for investigating and prosecuting cases of corruption/bribery are:

- The Penal Code of the Republic of Serbia (PCS) for both "Acceptance of a bribe" (Article 254) and "Giving of a bribe" (Article 255).
- Law on Internal Affairs of the Republic of Serbia (LIARS, 1991), Article 39 and Article 50, Par 11-14.

The law in Serbia provides for punishment for the acceptance of gifts or promises of gifts by public officials, and for giving bribes as well.

As far acceptance of bribes is concerned, the three items of Article 254 of PCS are virtually identical to the corresponding Paragraphs of Article 179 of PCY referred to above.

Article 255 of PCS sanctions the giving of gifts or promises of gifts. A person who gives or promises a gift or a benefit referred to in Par 1 of Article 254 (i.e. Par 1 of Article 179 of PCY) shall be punished by six months to five years in prison. A person who gives or promises a gift or benefit with a view to inducing an offence referred to in Par 2 of Article

254 (Par 2 of Article 179 of PCY) shall be imprisoned for a maximum of three years.

Implicitly, police corruption/bribery (both acceptance and giving of bribes) are dealt with based on LIARS, which stipulates that authorized members of the Ministry and officials performing certain duties shall not engage in activities incompatible with their official duty, as specified by an enactment of the Minister (Article 39 of LIARS). Moreover, LIARS (in Article 50) specifically prohibits to members of the Ministry:

- illegal acquisition of personal or material gain for oneself or for another person in connection with the work (Par 11);
- pursuing activities incompatible with their official duty (Par 12);
- any act constituting a criminal offence committed in the line of duty or in connection with it (Par 13).

The Code of Police Ethics, proposed as an Appendix to the above-mentioned bill on the police in Serbia, should be considered as a means of fighting police corruption. The Code stipulates that police members shall oppose any act of corruption.

Corruption committed between private individuals is not punishable by law. The notion of corruption pertains to public officials only.

In its work, the police force may use the means that are at its disposal for fighting other criminal offences, as provided by the Law on General Criminal Proceedings, for the purpose of preventing and exposing corruption. Any illegal collection of evidence, be it in the preliminary stages or in the course of criminal proceedings shall be sanctioned in that such evidence shall be considered non-existent and not admissible before a court of law.

There exist no police units in Serbia whose sole purpose would be fighting corruption. In the period between October and December 2000, based on the proposal of Boža Prelević, a co-Minister of Internal Affairs, in the transitional Government of Serbia, a special unit was established, whose main task was fighting corruption. The unit was subsequently disbanded, leaving those police units dealing with commercial law offences as the main force fighting corruption. The financial police,

operating within the framework of the Ministry of Finance, also has an important role in fighting corruption.

What is the Actual Situation?

1.

Managing the police is still considered to be an exceptionally important political function. As a consequence of this, whenever there is a period of political instability, the leading politicians wish to appoint their own man the Minister of Internal Affairs. Thus, in the transitional Government of Serbia, functioning between October and December 2000, on account of the impasse in the negotiations of the political parties involved, the Ministry of Internal Affairs was one of the four ministries managed by three co-Ministers. Following the victory of DOS in the December election, the ministerial post was taken over by the president of one of ruling coalition parties, Dušan Mihajlović. After a conflict within the ruling coalition had become public knowledge earlier this year, one of the ministers most often taken to task afterwards was the Minister of Internal Affairs. The accusations levelled against the Minister, whether true or not, are treated as a political issue in public.

2.

The position of the President of Serbia with respect to the police has been a strong incentive for autocratic deviation on the part of the person who was entrusted with this responsibility at the time when the Constitution was adopted and also later on (Milošević). The highest officials of the MIARS continued to report directly to Milošević even when he was no longer the President of Serbia. This clearly confirms his responsibility for the adoption and implementation of the security policy in Serbia.

The current President of Serbia is without any significant political influence and does not use his authority to influence the work of the police.

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3.

Respect of human rights in Yugoslavia lags behind the practice in almost all European countries; this is particularly true in comparison with the developed democratic countries. During the previous regime the top of the police hierarchy and its medium-level officials, were engaged in private business dealings, obtaining privileges for themselves and their close relatives in this way. This has opened the door wide to corruption while limiting the readiness and capacity of the police to implement the law impartially. The subordination of the Serbian police to Slobodan Milošević and the close cooperation between its top officials and the new class in power were the principal factors of using the police for political purposes by the regime. That is the reason behind the failure to take measures for improving the attitude of the police in the sphere of fighting corruption. As a matter of fact, the police protect the regime from the citizens, and the regime protects the police from the law.

4.

A key factor is the confidence of the public in the state and in its anti-corruption agencies. Without the necessary level of trust, the public's involvement in the fight against corruption cannot be effective.

Public opinion surveys reveal a substantial lack of confidence in the police and a very negative perception of their involvement in corruption. According to a public opinion survey carried out in Serbia during the period 23 - 31 January 2001,⁶ the police profession was considered to be one of the most corrupt. Forty percent of those interviewed consider that "**almost all**" members of the police are corrupt while another thirty-nine percent consider that the "**majority**" of members of the police are corrupt. When answering the question "Who demands bribes?", nineteen percent of those interviewed put the police in the

⁶ *Corruption in Serbia*, ed. By Boris Begović and Boško Mijatović, Belgrade, Center for Democratic Liberal Studies, 2001.

second place (after medical practitioners - 26% and before customs officers - 17%).

5.

After the formation of the new Serbian Government, the situation is changing, although there is a rather widespread opinion that the changes are not as fast as they should be.

Some measures have been taken against police corruption.

According to a statement of the Minister of Internal Affairs of Serbia, D. Mihajlović published at the beginning of September 2001, approximately one thousand of members of the Ministry have been sanctioned for corruption.

A written report of the Ministry gives the following figures for the period February - July 2001:

- Criminal proceedings have been instituted against 110 members of the Ministry,
- 16 members of the Ministry have been imprisoned,
- 173 members of the Ministry have been suspended,
- 99 members of the Ministry have been dismissed.

It was not specified on which grounds these measures had been taken.

6.

Although a strictly centralized policing system is maintained formally, the new Minister has introduced some elements of decentralization by concluding separate agreements with local authorities in order to give them more power with respect to policing.

The most important changes occurred in the general attitude of the Ministry and the police hierarchy with respect to human rights and civil liberties. No cases have been registered of political and other extra judicial killings, disappearance, torture, and other cases of cruel, inhuman, or degrading treatment or punishment. Arbitrary arrest, detention



or exile, arbitrary disturbance of one's privacy, family, home, or correspondence does not appear to be an important concern of the public.

The fact that the Ministry has presented a report to the competent Committee of the Parliament should not be neglected because such an event did not happen for years.

Freedom of speech, of peaceful assembly and association, of expression of religious beliefs or of movement within the country, foreign travel, emigration and repatriation, have been not violated in any significant measure.

- Control exercised by authorised parliamentary bodies should become regular and efficient.
- New independent institutions of external control and supervision (Board of Supervision, ombudsman) should be introduced without delay.
- Setting up a particular unit within the Ministry should substantially increase internal control.
- Cooperation with foreign police forces should be better coordinated, which would make international assistance more effective.

Public Service

- State administrative organs are often identified with public services.
- The application of regulations covering the state administration is expanded to public services, which has the following consequences: dependence on the budget financing of public services, reduction of their creativity and market orientation in their work, growing bureaucratisation of society, and unnecessary administration.
- The existing legislation generates arbitrary behaviour and irresponsibility.
- Since October 5, 2000, no major changes of the situation have taken place.
- Laws are filled with regulations granting high officials discretionary powers.
- Existing legislation features no division between officials and appointed officials.
- A culture and practice of officially publishing handbooks does not exist.
- No law on ministerial accountability exists, with the result that that accountability is most often non-existent.
- Ministers interfere in the operational affairs of departments.
- There exists no mechanism to protect civil servants.
- No campaigns are conducted to inform the public about procedures for issuing permits.

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- No legislation or other regulations exist which make obligatory the keeping of registers on the acceptance and presentation of gifts and services.
- No mechanisms exist which prevent pressures on civil servants.
- No legislation exists preventing nepotism.
- There exist no major restrictions on employment possibilities after termination of employment in the civil service.
- There exists no legislation regulating decision-making mechanisms covering public complaints about the work of public officials.

Positive law regulations

1.

According to Article 94 of the Constitution of the Republic of Serbia, state administration business is conducted by ministries. The activities covered are: enforcement of laws and other regulations and general enactments of the National Assembly and the Government, as well as general enactments of the President of the Republic, resolution of administrative affairs, the performance of administrative supervision and other administrative business defined by law.

The Law on the Ministries of the Republic of Serbia (*Official Herald of the RS*, Nos. 7/91, 8/91, 76/91, 20/92, 87/92, 67/93, 23/96, 5/97, 47/99, 38/2000 and 4/2001) states that: "State administration business defined by law and by regulations adopted thereto is conducted by ministries and administrative organs within ministries". Under Article 2 of the said law, the organs of the autonomous provinces, cities, municipalities as well as enterprises and other organisations can be authorised by law to conduct certain state administration activities. Under Article 28, paras. 1-4 of that law, the minister represents the ministry and directs its work. The minister secures all the necessary conditions for the

work of the ministry, and in connection with that takes appropriate decisions and manages funds needed for its work. Ministers are accountable for their work and that of their ministry to the National Assembly and the Government.

The ministries are autonomous in the enforcement of their constitutionally- and legally-defined powers. Administrative organs are formed within the ministry to perform specific state administration jobs, while separate organisations are formed for the performance of professional activities.

The Law on Employment in the State Authorities of the Republic of Serbia (*Official Herald of the RS*, Nos. 48/91 and 66/91) and subordinate legislation of the National Assembly and Government regulate the grading of civil servants and senior officials in the administrative organs and other state authorities and public services.

2.

The Law on the State Administration was adopted in 1992 (*Official Herald of the RS*, Nos. 20/92, 48/93, 53/93 and 48/94). Under this law, state administrative organs transact business on the basis of the Constitution and the law. Authorised personnel, within the authority of the state administrative organs, enforce regulations, assess evidence (on the basis of facts established, and other circumstances, according to their convictions), issue enactments and perform other administrative tasks and measures. Individual enactments, measures and activities of the state administrative organs are based on laws or other regulations adopted on the basis of laws.

Ministers cannot perform any other public, professional or other activities incompatible with their post. The same goes for other senior officials appointed by the Government, except when the Government grants them authority.

Employees of the state authorities and appointed officials have a duty to perform their jobs conscientiously and fairly, in which process they may not be guided by their political convictions or express those



views and advocate them. The establishment of political parties and other political organisations, or their internal forms, in the state administrative organs is prohibited.

The operation of the state administration is funded from the budget.

State administrative organs, enterprises and other organisations are legally bound to enable the public unimpeded realisation of their rights and obligations, to provide all necessary data and information, to render legal assistance, to cooperate with the public, to respect personalty and protect the reputation of the civil service.

State administrative organs are legally bound to evaluate petitions, complaints and suggestions submitted by the public, to act according to them and to inform the public about outcomes.

The grading of senior officials managing state administrative organs (ministers and other officials) is defined in an identical manner as in the federal administrative organs. One example is Art. 39 of the Law on the State Administration of the Republic of Serbia, under which "the internal organisation and job classification in a state administrative organ is regulated by an enactment issued by the minister, or senior official managing a separate organisation, with the approval of the Government".

The state administration in the Republic of Serbia is founded on the principle of centralisation and dispersion of business by way of regional organisational units. Internal organisation and management are based on line-hierarchy-staff organisation.

Local administration is regulated by the Law on Local Administration (*Official Herald of the RS*, Nos. 49/99 and 27/2001). Local administration is exercised in cities and municipalities. Local self-administrative organs have no administrative powers, except in cases where they have been granted such powers by law.

3.

The operation of public services in the Republic of Serbia is regulated similarly to the operation of the administrative organs, by the Law

on the Public Services of the Republic of Serbia (*Official Herald of the RS*, Nos. 42/91 and 71/94). This law defines public services as institutions, enterprises, organisations and other forms of association which perform activities which make it possible for the public to realise their rights and for individuals and organisations to fulfil their needs.

Institutions are formed in the areas of education, science, culture, physical culture, catering for the needs of secondary-school and university students, health protection, social welfare, children's care, social insurance, animal health care. Enterprises are formed in the areas of public information, postal and telecommunications services, energy, roads, urban utilities and others defined by law. The institutions and enterprises listed above can be established by the republic, autonomous provinces, cities, municipalities and other legal and physical entities.

Public institutions and enterprises are managed by a managing board and headed by a director. The status of public institutions and enterprises is defined by a charter of foundation (law, decree or decision) and a statute, while their manner of operation is regulated by rules of procedure. Administrative organs perform administrative and professional supervision of the work of public institutions and enterprises. The financing of public institutions and enterprises is budgetary, from the sale of services and goods, donations, and in other ways.

Enactments issued by public services (institutions and enterprises) have the character of administrative enactments, and are subject to appeal. Administrative suits to assess legality can be filed against irrevocable enactments issued by public services.

The current situation and practice in the application of regulations

The current situation in the Republic of Serbia in regard to existing legislation and enactments is conducive to arbitrary conduct and irresponsibility, both in the state administrative organs and public services

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performing activities for the requirements of the public and organisations (public transport, the health sector, education, social insurance etc.).

Few changes have taken place in the period since October 5, 2000. No new laws covering the state administration and public services have been adopted. Existing regulations and enactments are burdened with emphatically monocratic and hierarchical relations, leaving very little room for creativity in the work of personnel employed in the state administration and public services. On the other hand, legislation is filled with various discretionary powers for senior officials heading state administrative organs and public services, as well as powers for decision-making and the control of funds earmarked for financing the activities of administrative organs and public services. There is insufficient supervision and accountability of those who hold such powers. Regulations of this kind are slow to change. Preparation of new laws on the Government and state administration has begun, but the expert groups only submitted the drafts to appropriate Government commissions early in September this year.

The state administration has an exclusive position in the legal system. In his way the state administration's right to act as a public service or enterprise (so-called managerial conduct) is limited. State administrative organs are predominantly executive organs of the state, with clearly-defined obligations and responsibilities (especially in the case of ministries).

Ministers make decisions monocratically, as ministry staff do not enjoy the necessary autonomy and responsibility in their work.

The Law on Employment in the State Authorities of the Republic of Serbia (*Official Herald of the RS*, Nos. 48/91 and 66/91) lists the principles defining employment procedures, job allocation, professional duties, occupations, pay scales and salary calculation, etc. But little progress was made in this law towards establishing the necessary criteria for employment and promotion according to a merit system. Concrete questions of the position of civil servants and senior officials are

regulated by subordinate legislation of the National Assembly and the Government.

The level of democracy and legality of conduct in the state administrative organs depend mainly on the individual qualities and competence of the senior officials who head them. Employees do not have the right to sign opinions and enactments which they prepare, except in certain supervisory activities. Laws are authoritarian in regard to employees, yet discretionary in regard to senior officials.

- Profound and comprehensive reconstruction of legislation in the areas of administration and public services.
- Employment and promotion of staff must take place on the basis of their professional qualities and personal integrity in the performance of their jobs.
- There must take place a consolidation of material, organisational and procedural legislation in the sphere of state administration and public services, in which process subjective elements must be replaced by objective ones.
- The independence and responsibility of employees of the state administration and public services must be ensured.



Public Procurement

- There is no law regulating public procurement in the Republic of Serbia.
- Public procurement is regulated by provisions dispersed among a number of different laws.
- Direct agreement is considered equal with public tenders and is not limited to minor investments or urgent cases.
- There are no regulations guaranteeing the transparency of public procurement, except for the formal obligation of the investor to secure equal conditions for all interested parties in the bidding.
- Investors enjoy a discretionary right to choose the offer they deem the most favourable.
- The law defines no different conditions between the parties inviting tenders - the same procedures are valid for the republic, city, municipality or legal entity.
- In case the investor chooses an offer less favourable than one made by a competitor, the party which suffered damages has no right to seek cancellation of the contract, but only damages to the amount of the costs of participating in the competition, rather than the full damages suffered because of failing to win the contract.
- Statutory provisions in some enterprises and local administration organs do grant parties which suffered damage broader possibilities to file complaints, but this has also shown itself to be inefficient.

Legal provisions

The area of public procurement in the Republic of Serbia encompasses the purchase of goods and services, construction activities and other activities for the needs of the state authorities and public services. Payment takes place from the budget, public funds or other moneys (voluntary taxes, solidarity funds etc.). Decisions on public procurement and contracts are made by the government, within its competences, as well as the state administrative organs, parliamentary services, and other organs obtaining goods and services or performing works (refurbishings, construction, reconstruction and other).

As a rule, public procurement takes place by: **a)** public tenders and bidding, **b)** written offers and **c)** direct agreement.

Serbia is the only state in Europe without a law on public procurement (even Montenegro has a Law on Public Procurement). Public procurement regulations in Serbia are dispersed among a number of laws regulating various aspects of contractual activities, such as the Law on the Construction of Facilities (*Official Herald of the RS*, 44/95, 24/96 and 16/97), the Law on the Acquisition and Disposal of Immovable State Assets, the Law on Foreign Investments, the Law on Concessions, the Law on Build able Land etc.

The tender procedure is regulated by the Law on Capital Projects, according to which such projects can be contracted for by way of one of two statutory tender procedures: **a)** public bidding, and **b)** sealed offers.

In principle, access to public procurement by way of tenders is not restricted. But some restrictions can be imposed only in the case of specific acquisitions and deliveries, commissioning of works and sale of equipment, etc. Exceptions are very limited, covering only movables, in which case the statutory procedure is public bidding with direct offers in sealed envelopes, publicly opened by a special commission in the presence of the bidder (see arts. 7. and 15. of the Law on the Assets Owned by the Republic of Serbia, *Official Herald of the RS* Nos. 53/95, 54/96. and 32/97).



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Unsuccessful tenders shall be repeated; a repeat failure may be followed by bidding through sealed offers which are opened publicly. The most favourable offer is taken to be the final one and must be accepted. These questions are regulated by the Law on the Assets Owned by the Republic of Serbia (*Official Herald of the RS*, Nos. 53/95, 3/96, 54/96 and 32/97), the Law on the Commodity Reserves of the Republic of Serbia, the Law on the Construction of Capital Projects, and others, and the Decree of the Government of the Republic of Serbia on the Types of Movables Acquired and Disposed of by Direct Agreement (*Official Herald of the RS*, No. 27/96).

The Law on the Construction of Facilities (*Official Herald of the RS*, Nos. 44/95, 24/96 and 16/97) says in its article 36, para.1 that the construction of facilities can be contracted for by way of a public competition, tenders or direct negotiation by two parties. In this process direct agreement is treated as fully equal with public competition and not limited solely to minor investments of urgent cases. According to art. 36 of that law and Rules of Conditions, Manner and Procedure of Commissioning the Construction of Facilities (*Official Herald of the RS*, No. 25/97), the investor invites tenders to select competent contractors (qualification stage). Contractors qualified for carrying out certain works are selected, and out of the ranks of those chosen offers are invited and the most favourable bidder chosen, and a contract concluded with that bidder; this means that the selection is a two-stage process. The selection of the most favourable bidders is carried out by a commission. The law does not feature any provisions securing transparency, except for the formal obligation of the investor to ensure equal conditions for the participation of all interested parties in the competition.

The process of selecting the bids is completely non-transparent. Investors enjoy a discretionary right to choose the offers they personally deem the most favourable.

Furthermore, the law makes no distinction among those inviting tenders - the same procedure applies to the republic, cities, municipalities and legal entities.

Unless legal protection of the participants in the tender process is especially defined, regulations of the Law on the General Administrative Procedure or another law, depending on the nature of the matter (an administrative or civic commercial matter, etc.) shall apply.

In case the investor selects an offer which is not the most favourable, the participant in the bidding who suffered damages thereby has no legal right to demand cancellation of the contract. Given that such cases are not regulated by law, they are adjudicated in keeping with the current practice of the Serbian courts. In the event of an investor selecting an offer less favourable than one made by a competing party, that party has no right to demand a cancellation of the contract, but is entitled to seek appropriate damages. These damages correspond to the costs of the participation in the tender, rather than the damage suffered by failure to conclude a contract. The courts assume this position in line with the Law on Contracts and Torts, art. 103, para. 2: "If a ban on the conclusion of a certain contract has been imposed on one party only, the contract will remain in force unless the law stipulates other remedies for certain cases, and the party which violated the legal ban will suffer appropriate consequences".

Public procurement of food products, supplies and minor equipment can be carried out by inviting offers in sealed envelopes, and in certain statutory cases (urgency etc.) also by direct agreement with a supplier who is found or puts up an appearance without a public advertisement. In those cases there will be stricter control by senior officials or the organ performing supervision of personnel authorised for procurement (office supplies and such). Regulations allow for such deviations from the law, provided internal general enactments secure impartiality and prevent malfeasance.

Regulations on public procurement and procedures and manner thereof are also contained in the Law on the Commodity Reserves of the Republic of Serbia (*Official Herald of the RS*, No. 18/92), and the Law on Public Enterprises and Performance of Activities of General Interest of the RS (*Official Herald of the RS*, No. 25/2000)



Information about public procurement is distributed through the Chamber of Commerce of Serbia and regional Chambers. Regulations covering public procurement are available to the public, as they are published in the official gazettes and economic and other bulletins, as well as in the daily press.

The situation and practice in the application of regulations

In the fragmented system of public procurement, which features administrative and territorial divisions and divisions among branches, no single tender commission for public procurement has been established, but instead numerous such commissions exist in various organs and tender procurement subjects, as well as in the administrative units (municipalities, cities, provinces, etc.).

Although regulations and statutory procedures do exist, there is no efficient supervision and control (inspectorate), and abuses do take place in practice. This is particularly evident in the area of the acquisition of goods for commodity stocks, the commissioning of capital projects, acquisition through intermediaries etc. Bypassing and not applying the law and regulations, direct agreement and acquisitions through intermediaries with commissions, division of profits etc. are quite frequent forms of corruption in public procurement. So far their participants have mainly remained uncovered and thus unprosecuted.

Performance of works in foreign countries is attended by even more malfeasance, as supervision is less strict. On top of everything, such cases usually involve major deals with suppliers of equipment and technology, and building contractors. At the same time, foreign countries' legislations permit commissions and similar to be paid to those selecting partners based in their countries. This often leads to the purchase of poor-quality or outdated equipment from foreign suppliers. Disputes are resolved by international joint commissions, arbitrations etc.

One of the biggest problems is the prevention of nepotism. There are no regulations to cover this issue. The reluctance which exists to adopt such legislation can be explained by the fact that many of the

firms taking part in public tenders are owned by the family members or close friends of senior officials.

There is no control of the property owned by senior officials and officials in charge of public procurement, and of their income and lifestyles, except in the case of complaints of suspicion that a criminal offence might have been committed, in which case such controls are performed by the police.

All this shows very clearly just how much the procedure of selection in the public procurement process is subject to the discretionary powers of authorised personnel and how non-transparent it is. Statutory decisions in some enterprises and local administrations provide parties who suffered damage with broader rights of complaint, but this has also proved to be not efficient enough. The adoption of a law on public procurement in Serbia - legislation to regulate this exceptionally important field of activity - is therefore one of the priority tasks facing the new authorities.

- A law on public procurement must be adopted which will insist on transparency, accountability and integrity.
- Public procurement must stimulate open competition.
- There must be a division of responsibilities among personnel in charge of planning, contracting, realisation etc., to reduce the possibility of linkages of interests between investor, consultant and contractor.
- Decisions on procurement must be made by a minimum of two persons.
- Personnel in charge of procurement must be regularly rotated.
- If the costs of the realisation of a project exceed the contractual sum by 15%, the main tender board must convene and decide the further course of events.

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- A central state body in charge of public procurement should be formed; it should be independent of the ministries and organs performing the procurement. This body (agency) would be in charge of complaints in connection with breaches of procedure, whether or not motivated by corruption.
- The body would be empowered to decide on remedial measures. Its bureau should be adequately competent, in line with its responsibility, technically and financially, as well as being staffed with highly proficient personnel.
- Other bodies which should be set up include: an anti-corruption commission and an Ombudsman answerable directly to parliament who would also be in charge of complaints and evidence about administrative errors connected with public procurement.

Investigative Agencies (Anti-corruption Commissions)

- The fight against corruption has been listed among the priorities in the work of the Government of Serbia.
- The Serbian Government has formed a Commission to look into malfeasance in the economy and financial operations in the 1989 - 2000 period.
- There are difficulties in collecting evidence.
- Public expectations are great.
- The commission is not empowered to work with the public directly.

Creating of Commission

Beginning

The authorities formed in the FRY at federal and republican levels after October 5 have announced the start of an intensive campaign against corruption at all levels and in all structures of society.

When it was formed, the Government of the Republic of Serbia tasked the office of one of the seven deputy prime ministers, Dr Vuk Obradovic, with the coordination of the anti-corruption campaign.

Members

Soon after, the Government formed a Commission to Inquire into Malfeasance in the Economy and Financial Operations (hereinafter: Commission), made up of:



1. Dr Vuk Obradović, Serbian Deputy Prime Minister and President of the Commission,
2. Mlađan Dinkić, Governor of the National Bank of Yugoslavia (NBY),
3. Dušan Mihajlović, Serbian Deputy Prime Minister and Minister of the Interior,
4. Božidar Đelić, Serbian Minister of Finance and the Economy,
5. Aleksandar Vlahović, Serbian Minister of the Economy and Privatisation,
6. Marija Rašeta Vukosavljević, Serbian Minister of Transport and Telecommunications,
7. Prof. Dr Dragoslav Šumarac, Serbian Minister of Urban Planning and Construction,
8. Slobodan Milosavljević, Serbian Minister of Trade, Tourism and Services,
9. Goran Novaković, Serbian Minister for Mining and Energy,
10. Slobodan Vuković, Serbian Police Inspector dealing with economic crime,
11. Slobodan Lalović, Commission Secretary.

The appointments to the Commission were based on qualifications; the government took care to include the ministers responsible for the areas directly involved: finances, trade, the economy and others.

Procedures and Instruments

The task of the Commission is to look into major irregularities in economic and financial operations in the 1989 - 2001 period.

The documents regulating the work of the Commission are the Foundation Charter, Rules of Procedure, Operational Plan of Work and the Law on a Single Tax on Extra Profit and Extra Property Acquired by Taking Advantage of Special Facilities.

The basic idea was to create the necessary conditions for restoring to the rightful owners as much as possible of the wealth acquired by taking advantage of the special facilities which were available only to legal and physical persons close to the former regime, as well as establishing the responsibility of those legal and physical persons who broke the law in that process.

The object of the Commission's work is therefore the economy in the 1989-2001 period.

The operational plan of work more precisely defines the tasks, working groups and deadlines.

The basic instrument used in the Commission's work is the Law on a Single Tax on Extra Profit and Extra Property Acquired by Taking Advantage of Special Facilities (hereinafter: Law), which is intended to restore to the republican budget funds acquired by privileged individuals and enterprises.

The types of accountability have also been defined: the Commission does not establish criminal responsibility; it deals only with malfeasance in economic and financial operations, which if proven lead to the application of the Law as a form of sanction.

The basic form of communication of the Commission with the Government of Serbia, with the Parliament, and with the individual working groups is the submission of Reports.

All reports submitted by the working groups to the Commission, on individual subjects such as money issue, showcase buildings and others, are published in the media, whereby the Commission ensures the transparency of its work.

Commission Activities

The Commission was formed as a provisional government body with a clearly defined task. When that task has been fulfilled, the Commission will cease operation.



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The Commission is made up mainly of government ministers; given that the Government of Serbia is relatively small and that almost two-thirds of the Commission's members are in that government, we cannot talk about separation of function of a Commission members.

The consequences of that situation are that on the one hand certain decisions have far less difficulty in being reached and winning the support of the highest state institutions, while on the other political colouring is very much in evidence.

The Rules of Procedure provide for replacement of Commission members for the usual reasons, but so far no-one except the president has been replaced.

Problems in Implementing the Law

The most illustrative example are the pronounced and evident political divisions within the ruling DOS coalition in regard to the application of the Law.

The following objections have been raised in regard to the Law: retro-active effect and thereby unconstitutionality, lack of precision, impossibility of implementation in practice (the problem of the 5-year document-keeping period, the specific nature of the tax procedure, etc.).

All this took place at a moment the Law was implemented in practice and payment of dues ordered, or more exactly, in the period provided for voluntary tax return submission. The consequence is the very small number of such voluntary returns.

After dr Obradović's removal from the post of Commission head, the Serbian Government was quick to appoint a new man.

The man appointed was Aleksandar Radović, director-general of the Republican Public Revenue Administration, which is in charge of collecting the taxes under the Law.

It would not be overly bold to say that the majority of problems the Commission encountered in its work were political.

Formally there are no "prohibited areas" for the Commission.

The Law defines the area of its coverage as very broad: some 20 transactions are defined as taxable and almost no area of economic activity is excluded.

But what happened in practice was the following: obstructions in the collection of documentation needed for the Reports which are the basis for initiating a tax assessment procedure.

The obstacles were manifold. One example is that the large working groups made up of public officials employed under the past administration claimed they had had no obligation of keeping files, that documents had been lost due to the length of the period covered (12 years), that papers had been destroyed in the NATO bombing etc..

Public Expectations

At the very beginning of its work, the Commission decided to make all its reports public, first at news conferences by competent ministers or heads of working groups, and later in written form, ensuring transparency of work.

But the great pressure and expectations of the public, eager to see justice done, resulted in premature announcements of results by some Commission members.

The immediate consequence was media popularity and the scoring of political points, but it then turned out that the prematurely-published reports were full of inaccuracies and errors, leading to numerous subsequent difficulties, because the original documents and accurate information needed to complete the legal procedure were non-existent.

The inaccuracies were of course corrected, but this took time and affected the collection of the tax under the Law.



Work with Citizens

As far as the possibility of direct approach of citizens to the Commission is concerned, it exists, but the Commission abides by its Operation plan of work quite strictly.

A mistake was made when no-one explained to the public the organisational nature of the Commission's work.

Dr Vuk Obradovic's office was charged with the fight against corruption, and its plan of work had future programmes linked with the establishment of an Anti-Corruption Agency, a Government platform on the fight against corruption, and among other things received public communication on that subject, which it then passed on to the Interior Ministry or resolved by itself, where possible.

This means that the office rather than the Commission was charged with contacts with the public.

The Commission only has its Operation plan of work and abides by it strictly, and no-one has explained this to the public.

The consequence is that in the absence of an Ombudsman, and investigating agency or similar body, the public approaches the Commission directly, with various grievances, sending written communications and evidence, and often coming in person.

Given that it is not possible to come to their aid in the manner they expect, the basic objections heard are that nothing at all has changed since October 5 last year, that the same people continue to occupy managerial posts, and that everything continues to be done in the same time-honoured manner.

On the other hand, many of the communications are biased, subjective, false, without evidence or simply at a level of local gossip. Anonymous reports are relatively few in number.

In any case, there is definitely a need for an organisation, agency or bureau which the public could approach in connection with the subject of corruption.

- A politically independent agency tasked with combating crime should be formed.
- A mechanism should be set up for controlling the work of that agency's staff.
- The commission should be answerable to the parliament and the government.
- A separate body which would deal with public complaints should be established.



Ombudsman

- No Ombudsman exists at the moment.
- Legal projects are being considered by the Government.
- The process of adoption has been slowed down by political reasons.

The existing legislation of the Republic of Serbia does not contain the institution of Ombudsman or a body with similar competences.

A commission of the government of Serbia finalised in the first half of this year a draft Law on the Defender of Civil Rights, which has not yet reached parliament. The centre for Anti-War Action has independently drafted a study on the Ombudsman and a model law, and forwarded it to the competent institutions.

These documents anticipate the establishment of a Defender of Civil Rights, whose status and powers would be similar to those enjoyed by an Ombudsman in comparable legal systems.

A Defender would submit to the National Assembly assessments of the work of the public administration and recommendations, which would then be published in the Official Herald of the RS and the information media.

Failure to act upon the recommendations of the Defender would be sanctioned with publication of public information at the expense of the transgressing organ. The Centre's proposal also calls for fines to be imposed.

The political crises in the ruling coalition have considerably slowed down the process of adopting this and other badly-needed laws.

Besides draft laws at republican level, the draft law on local administration also anticipates the institution of a "public defender", acting as an Ombudsman at local level. This is all the more important as the draft

Law on the Defender of Civil Rights limits the Defender's powers in connection with local government organs.

- The institution of Ombudsman should be introduced by the adoption of a Law on the Defender of Civil Rights.
- The planned changes of the Constitution of Serbia should be used to strengthen the functional, organisational and financial independence of the Ombudsman.
- The definition of criteria for the election of an Ombudsman should ensure that the post is filled by a competent individual well-informed about the work of the administration and pertinent regulations, while a requirement that the Defender is elected by a qualified parliamentary majority should ensure that the elected official is one about whose moral characteristics there is broad consensus.
- The procedure for relieving a Defender of duty must be similar to that applied to judges in the Constitutional and Supreme courts.
- It must be ensured through legislation that the public have direct access to the Defender and that the procedure the Defender conducts on their behalf is free of charge and confidential.
- The public must be informed about the Defender's powers, operation, findings and recommendations.
- It must be ensured through legislation that the Defender has the greatest possible powers in regard to access to information on the work of the public administrative organs.
- The Defender must not assume the role of detective or public prosecutor, as that would lead to a weakening of the confidence between the Defender and public administrative organs, and in the long run reduce the efficiency of the Defender's work.
- The Defender must not have executive powers.



Media

- Freedom of speech and of the press is guaranteed.
- Private ownership is dominant both in the printed and the electronic media.
- Legal regulations existing in the sphere of the electronic media are insufficient.
- The media are not safeguarded against political control and there are various forms of political influence on the media.
- Independent journalistic research on corruption cases is very rare.

No legal regulations currently in effect guarantee the right of citizens to request and receive information/documents in the possession of state organs. The only thing that the citizens are guaranteed is the right of access to personal data on the basis of the federal Law on the Protection of Personal Data (1998), whereas the federal and republican laws on public information stipulate that it is the duty of state organs to make information accessible to the media. The expert group formed by the Independent Journalists' Association of Serbia and the Media Centre, which has drafted the new laws on public information and broadcasting, has announced that a law which would guarantee citizens free access to information in the possession of state organs is being prepared.

The federal and the republican Criminal Codes stipulate that one is to be prosecuted for giving away a state, professional, military and business secret. However, the criteria for determining a secret are usually regulated by law in a very general way, which enables the executive organs to interpret these criteria themselves. The fact that execu-

tive organs are authorised to determine what constitutes a secret means that they may use this to deny the media access to information.

In FR Yugoslavia and in Republic of Serbia, freedom of the media is regulated by the Constitutions and the Public Information Law. Both Constitutions currently in effect - those of Yugoslavia and Serbia - guarantee freedom of speech and of the press, but do not deal with their protection. Freedom of information is dealt with in more detail by the Public Information Law. In Serbia, the legal regulations in this area are undergoing transition. A new Public Information Law, along with a new Broadcasting Law, is being prepared right now. Both drafts should enter the parliamentary procedure in autumn. The two laws have been drafted by an independent expert group established by the Independent Journalists' Association of Serbia and the Media Centre. The expert group has received assistance from the European Commission, the Council of Europe, UNESCO, OSCE, and Article 19 in order to make the draft laws conform to European legislature and its standards in guaranteeing freedom of speech and of the press. The Public Information Law currently in effect in Serbia is a part of the law which was adopted in 1998, during the Milošević regime, and was known as the most repressive media law in Europe. (Following its adoption in 1998, the media in Serbia were fined a total of over DEM 2,5 million on 67 different occasions). After the democratic change in the country in October 2000, the Serbian Public Information Law was virtually suspended. In December 2000, the Federal Constitutional Court proclaimed most of its repressive provisions unconstitutional. In February 2001, the Serbian Parliament suspended the Law, retaining only the provisions referring to freedom of public information and setting up, registering and closing down a media outlet. The draft media laws (on public information and on broadcasting) stipulate the establishment of two independent bodies, the Press Council and the Broadcasting Council, which would protect the freedoms guaranteed by the Constitution and the Public Information Law.

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In Serbia, there is no open censorship of the media. Censorship is forbidden by the federal and republican constitutions and the federal and republican laws on public information. However, freedom of expression is limited by the existing Criminal Code provisions on slander and libel, by political pressure on the media, by non-transparency of the work of the government and state officials and by unequal treatment of the media on the part of officialdom.

Despite great progress with respect to freedom of the media after the overthrow of the previous regime in Serbia, the new authorities still resort to political pressure to influence the information presented in the media. The managing boards of the majority of public media are composed of representatives of the ruling political parties; they have a lot of influence on appointing the key members of the editorial staff in the media and influence the media contents through them. Political pressure on the media has been manifested in several instances recently: the Chairman of the Managing Board of Kragujevac Radio and Television, Milan Aksentijević, resigned from his post to protest against the pressure exerted by the ruling parties on the journalists in these two media outlets; the news editor of Serbian Television, Milorad Petrović, resigned from his post because of the attempts at political instrumentalization of the national television on the part of some ruling parties. The acting director general of TV Novi Sad, Aleksandar Kravić, pointed out that certain decisions about the functioning of this television were made outside it, by means of a political consensus of the ruling parties, the way it used to be under the previous regime. The Independent Journalists' Association of Serbia issued several press releases (March, April 2001) appealing to the government to refrain from exerting political pressure on the media. In the latest statement (September 2001), IJAS noted that political pressure on the media had grown along with the increase of political tensions among the member parties of the ruling DOS coalition.

Another form of indirect censorship is the non-transparency of the work of public administration. Although the Public Information Law stipu-

lates the obligation of government bodies to provide access to information within their sphere of work, this information is difficult to obtain and there are no sanctions for acting contrary to this legal provision.

According to journalists working for the independent media, government officials do not treat all the media in the same way and several instances have been reported of some media having the privilege of getting exclusive information from official sources or getting it before the others. In March 2001, IJAS requested that the government should stop favouring the state media over the others.

The Law on Public Information only specifies that monopoly in the sphere of public information is forbidden without going into any details. At the time this law was passed the concentration of media ownership was rather diffuse, so that no need for a more detailed set of regulations dealing with this area was envisaged.

In FRY there is a spread of media ownership, including state (national and local public media), private and mixed property. Different kinds of property are present in all types of the media - the press, radio and television. In all three, private ownership predominates. According to official data, in June 2001 there were 253 TV stations, 504 radio stations and 641 newspapers or magazines in Yugoslavia. However, the number of radio and TV stations is greater, due to the fact that some of those operating in Serbia are unregistered and operate without any legal permits. The estimated total number is between eight hundred and one thousand; less than 200 of these are public radio and TV stations.

Only in the sphere of the press, and specifically in daily newspapers and news magazines, are the privately owned media a more influential and more used information source than the state media. In terms of quality and circulation, the private press is rather above the state press.

In the broadcasting media, the situation is different. Although the private media outnumber the state ones, the latter are in a more advantageous position, as the state radio and television are the only ones



having full national coverage. The vast majority of the private media are local media with a limited range.

In Serbia, private radio and TV stations are a serious rival to the state media when it comes to influencing the audience. The state radio has an advantage in terms of accessibility, but it has lost its credibility during the previous regime and has been regaining it rather slowly. Its main competitor is the ANEM network of local radio stations, most of which are privately owned, with a high credibility rating of independent and democratically oriented media. The state television has two private rivals - the BK television and TV Pink, which has recently launched a news program; these two stations cover about 70% of the territory of the republic. The above-mentioned private media have great production and professional capacities. Still, the Serbian state TV is the most watched and trusted news source.

The previous regime in Serbia restricted the development of the private media in various ways. One of these was the revision and - in several cases - complete suspension of the privatisation process through which the previously state-owned media had been transformed into share-holding companies. In this way, some companies became publicly owned again; alternatively, through a reassessment of the share-holders' input, government bodies were proclaimed to be their major share-holders, with a controlling interest. The new Serbian government made possible a revision of these decisions and redressed the wrongs done to some of the privatised media (the Novosti company, for example). However, not all cases of "problematic ownership" have been solved. A major one concerns the radio and television company Studio B, which, in 1996, was turned from a private into a public enterprise, run by the government of Belgrade. This case seems important because for years Studio B had been the only independent TV station in Serbia with a large share of the audience and oriented towards pursuing public rather than commercial interests.

Further development of the private, especially local media, which provide news services and are oriented towards meeting public inter-

ests in their news coverage, is severely hampered by a very poor advertising market. During the previous regime, these media outlets were helped by donors, as this was the only way for them to survive and continue to act as an alternative to the state propaganda. After the fall of the Milošević regime, many donors stopped providing financial assistance to these media, and they are now faced with a very difficult economic situation.

The new political framework in Serbia has brought about a big change on the media scene. The media stopped being the main propaganda tool of the government for mobilising support for its policies and creating a negative image of any opposing view. However, the legislative and regulatory frameworks have not yet safeguarded freedom of the media against political control and the interference of political power centres with the media. The new managing boards of the national and local public media are composed mainly of representatives of the ruling political parties, thus allowing political influence when it comes to appointing editors. The legislation which prevents this form of political control is being prepared but has not come into effect yet. Only recently has this practice begun to change in Serbia, and the newly-elected board of the Radio Television of Serbia is composed of public figures without political affiliations.

The Serbian Media Task Force for Cooperation with the Stability Pact for South Eastern Europe, as well as the Independent Journalists' Association of Serbia have warned the public several times in the last few months about the continuation of political interference with the public media in the sphere of editorial policy and urged the government to refrain from this practice. In June 2001, the news editor of the Serbian state television (RTS), Milorad Petrović, resigned from his post and withdrew his candidacy for the post of RTS editor-in-chief because of, as he put it, "enormous political pressure from certain ruling parties" on the national television. Another case disclosed publicly the attempts of the ruling parties to influence the appointments of journalists to the top managerial positions in the national broadcasting media. Gordana Suša,



a well-known Serbian TV journalist and president of the IJAS, commenting on the unsuccessful appointment of the new RTS editor-in-chief, for which post she had also applied, accused the two leading parties in the ruling DOS coalition (the Democratic Party and the Democratic Party of Serbia) of making a deal with a view to sharing influence on the appointment to the key RTS posts - those of the director and the editor-in-chief. Allegedly, she was not appointed to the post of the editor-in-chief because the DPS did not support her candidacy, while the new RTS director was elected owing to the support of the DP. Another similar public complaint was voiced by the acting director general of TV Novi Sad, Aleksandar Kravić, who said that his candidacy for the post of the director of TV Novi Sad was opposed by the Democratic Party of Serbia and he was not appointed to the post, although he had the support of other DOS coalition member parties.

The public media are still prone to praising the government and its policies rather more often than to covering critical views of its work on a regular basis. The national state broadcasting media in particular are uncritical of the central government and never call into question any of its policies of their own initiative.

In Serbia, the publicly-owned media are openly in favour of the government. The government is given a lot of publicity and presented in either a positive or a neutral context, very seldom negatively. Critical views - whether coming from the opposition, non-governmental organisations or individuals are not presented negatively, as the case used to be, but are mainly ignored. The activities and views of the opposition rarely make the news. For example, in June, the opposition party Serbian Renewal Movement (SPO) complained that after nine months of the new editorial policy in Studio B, "not one of the party representatives had yet been invited to appear on the city RTV station, which is financed by the whole of Belgrade".

Still, the public media - especially the national television - are the most trusted information source in Serbia. One of the reasons for this is that their reporting is not openly propagandistic the way it used to

be, and is therefore much more informative than before. In addition to that, the need for a balanced treatment of conflicting political views is still not a part of the political culture of the audience. The "professional ideology" of journalists in the public media considers the role of the state media to be promoting the government, while it is the private media that should publish critical views. A vast majority of these journalists do not dispose of the concept of the "public service" media, more accountable to the public than to the government.

During the undemocratic Milošević regime, journalists in Yugoslavia and Serbia in particular were endangered in a number of ways. The journalist Slavko Ćuruvija was murdered and several journalists were sent to prison. The various dangers that journalists were exposed to are extensively documented.

Fighting corruption is a very new practice in Serbia. Under the Milošević regime, which was criminalized to a high degree, there were no serious attempts at fighting corruption, and journalistic access to information on corruption was very limited. Reporting on corruption was quite a dangerous thing. The new DOS government placed the eradication of corruption at the top of its priority list and established a special committee to deal with investigation into such cases.

Immediately after the change of government in October 2000, the media published a flood of texts on corruption involving officials of the previous regime. These texts dealt with financial malversation in state companies, personal wealth of the top regime figures, painting a picture of the devastated economy and low living standard of the majority of the population. On the last day of the election campaign for the December 2000 parliamentary election, the daily Blic published a special 24-page supplement entitled "How the state has been robbed", containing articles on abuses committed by Socialist Party (SPS), Yugoslav Left (JUL) and Serbian Radical Party (SRS) government officials, dealing with their illegal acts and the "plundering" of public property.

The majority of subsequently published texts on corruption concerned the issues of export-import permits, tobacco smuggling, im-



port of used cars, trade in stolen cars, illegal construction, allotment of apartments, getting pre-time pensions, buying land at unrealistically low prices, the privatisation process, etc.

After this first wave of texts on corruption, the topic was not at the top of the media agenda again until very recently. Journalists are more prone to follow court cases involving corruption than to do their own research on this topic. Corruption (and organised crime, which usually goes together with it) are written about in quite a general way, stressing the need to fight it. Towards the end of August and at the beginning of September the topic gained prominence again, due to the claims on the part of the Democratic Party of Serbia that the Serbian government was unsuccessful in fighting crime and corruption. The media, however, mostly carried old stories and repeated the already published facts about the crimes committed during Milošević's rule. On television in particular, corruption and crime were discussed in very general terms, as a menace that should be eradicated but without concrete examples and research.

Over the last three years, there have existed great differences concerning the legal regulations on and the practice of establishing and registering media. Whereas no particularly discriminative practice was in evidence in the case of the printed media, until the year 2000 the state control over broadcasting frequencies and licences was often used to suppress the development of the independent electronic media and to further the development of those that were close to the regime or broadcast entertainment programs only. The conflicting legal regulations (the conflict between the federal Law on the Telecommunications System and the republican Law on Radio-Television, the incoherent character of the latter, which virtually precluded the possibility of establishing new electronic media), the fact that the Serbian Government had direct control over the allocation of frequencies, irregular application procedures, overt favouring of the regime-oriented stations, failure to issue licences to operating stations for long periods of time, while at the same time requiring them to pay for using their frequen-

cies, all of the above contributed to a state of real chaos in the sphere of broadcasting in Serbia. At the moment, there are no accurate data on the number of broadcasters (it is estimated that there are between eight hundred and one thousand of them) because many of them operate without any licence whatsoever.

At the republican level, a new Law on Broadcasting has been drafted. The new regulations envisage the introduction of an independent regulatory body, whereby the issue of licences will be completely separated from the influence of the powers-that-be and will be carried out through a public application procedure based on clearly defined criteria.

It is expected that the new laws will be passed during the autumn and that a large number of currently operative radio and TV stations will have to cease broadcasting once the new laws on telecommunications and broadcasting have been adopted.

The Criminal Codes of Yugoslavia and Serbia contain provisions pertaining to prosecution on account of libel/slander and public insults. Under the Milošević regime, these provisions were used in order to suppress the publication of information on influential politicians. The last journalist to be sent to prison in accordance with the provisions of this law - Zoran Luković, a reporter of the Dnevni telegraf daily, was sentenced for implying that Milovan Bojić, the Deputy Prime Minister in the previous Serbian Government, was connected with the murder of a doctor working at the hospital whose director Bojić was at the time; he was released from prison on the basis of a decree issued by the new President of Yugoslavia at the beginning of 2001. Even today, the Criminal Code provisions represent obstacles for journalists wishing to report freely on public figures. Hadži Dragan Antić, the ex-general manager of the Politika media company, sued several reporters from the Politika, Borba and Večernje novosti dailies who had written about his wrongdoings and abuse of managerial position immediately after his dismissal in October 2000. The lawsuits are still pending.



There have been several proposals urging that the libel/slander provisions in the Criminal Code be replaced by civil law provisions, in keeping with the international practice in this area. In Serbia, the proponents have been the International Press Institute (IPI) and its branch for South East Europe, the South East European Media Organisation).

In FRY, journalists do not have to have a licence in order to pursue their professional activities, nor is membership in professional journalists' associations a prerequisite for practising their profession. While the new Law on Public Information was being drafted, proposals that a licence for journalists should be introduced were put forward, but they were rejected in the course of the public debate on the law.

In FRY, journalism is not among the prestigious professions, either in terms of its public reputation or in terms of journalists' earnings. Most journalists' salaries do not differ much from the very low average salaries in FRY. In Serbia, journalists employed with the public media earn on average between DEM 100 and 300. In the commercial media, the average salaries are in the DEM 200-300 range, and only those in top managerial positions earn more. Most journalists in the commercial media are employed on a part-time basis, thus earning even less; they augment their earnings by contributing to several media outlets. It is customary for journalists, on account of their low earnings, to do part-time work for other media outlets in addition to the work they perform at their regular workplace.

In June 2001, Milan Pantić, a Jagodina correspondent of the Vecernje Novosti daily, and a reporter of the Jagodina Radio & Television, was killed in front of his house. Pantić had written about the wrongdoings committed at the Jagodina brewery, the Novi Popovac cement plant, and the Resava clothes manufacturing company. Before the murder, Pantić had received several anonymous phone calls threatening him because of the articles he had published. Because of such threats, the Pantić family had had to change their phone number two years before. Several journalists reported having received death threats for writing about corruption. In March 2001, a correspondent of Radio Belgrade

and the Danas daily, Brana Filipović from the town of Bor, was beaten up in a public place for writing about corruption concerning the production of and trade in gold at the Bor gold mine. In June, Pantić's colleague Predrag Ilić from Paraćin reported that his family safety had been threatened on account of his articles about the wrongdoings at the cement plant in this town. The journalist Miroslav Mijatović from Banja Koviljača has received death threats for mentioning the corruption charge against the director of Radio Podrinje marketing service, Dragan Vucetic, a member of the Socialist Party of Serbia, in a bulletin of the Otpor [Resistance] movement.

After Pantić's murder, the Independent Journalists' Association of Serbia (IJAS) initiated the establishment of the Task Force for the Safety of Journalists, composed of representatives of the Federal Secretariat for Information, the Serbian government, the police and the media. IJAS and the Media Centre, together with the Serbian government and the Serbian Ministry of the Interior, have launched the "Stop the Mafia" campaign, aimed at protecting journalists exposed to threats for their work. A special SOS phone line for journalists receiving threats and in need of protection has been established. The campaign also includes obligation on the part of the police to treat the murder of a journalist in the same way as that of a policeman or a judge and to give priority to cases of threats made to and pressure exerted on journalists. IJAS will organise training courses for journalists dealing with personal security. The campaign "Stop the Mafia" is also designed to draw attention of the public to the danger of organised crime and thus help efforts to fight it. Several media outlets in Serbia publish an advertisement for the "Stop the Mafia" action every day, with the message that journalists will continue to expose cases of corruption and crime despite the dangers they are exposed to.

Since the democratic change in Yugoslavia, libel lawsuits against journalists have been relatively rare. Most often, the plaintiffs are the key figures of the previous regime who accuse journalists of defamation in connection with their alleged abuse of power. In view of the fact



that the Law on Public Information has been suspended, lawsuits are initiated based on the Criminal Code only. No case has been recorded of the Public Prosecutor initiating libel proceedings against a journalist ex officio.

In all the media in FRY factual reporting is in evidence more often by far than analytical and investigative reporting. Analytical and investigative reporting is very rare indeed; if it is to be found in any significant degree, it is in the printed media only, more often than not in weekly news magazines. Specialising in investigative journalism is almost non-existent among our journalists. The media often lack the funds necessary for serious investigative undertakings. Despite this, *Vreme*, *Nin*, and the weekend edition of *Danas* regularly publish analytical and investigative pieces focused on the main topic of the issue. Among the electronic media, the investigative approach is most in evidence in the programs of Radio B92 and the independent media productions such as TV mreža, VIN and URBANS.

In Republic of Serbia there are just a few regular training courses for journalists with a tradition of many years: the studies of journalism at the state-owned University of Belgrade lasting four years, the course for journalists at the Novi Sad School of Journalism lasting one year, and the specialisation course for TV reporters at the privately-owned Karić Brothers University (Belgrade). Specialisation courses for journalists are also organised, subject to demand, by the Belgrade School of Journalism, the Media Centre, ANEM, BBC, IREX and the European Centre for Broadcasting Journalism. These are specialised courses, lasting from several days to several weeks, or several months in some rare cases (the Belgrade School of Journalism organises 3-month courses). IREX has organised seminars for journalists working for local TV stations. ANEM organises general-type and specialised courses for journalists working for the media that are members of the ANEM network. The Media Centre, in collaboration with the Danish School of Journalism, is currently preparing a school for journalists working in the printed media. As of this year, the Journalists' Association of Serbia will organise a Journalists' Academy lasting two years.

None of these deal specifically with investigative journalism. At this moment, there is only one course specialising in investigative journalism - the School of Investigative Journalism established by the Yugoslav journalist Miroslav Filipović, in collaboration with the Council of Europe, operating in particularly underdeveloped areas of Serbia like Sandžak and the Southern Serbia (Bujanovac and Medveđa).

- A law should be passed to guarantee access to information in the possession of state organs as a common right of all citizens.
- All the exceptions to freedom of information should be defining in one place.
- Criminal prosecution for libel should be replaced by civil lawsuit.
- When providing information about their work, government bodies should treat all the media in the same manner and provide information under equal terms for all.
- By re-allocating the national frequencies, the governments should allow full national coverage to private radio and TV stations and break the monopoly now held by the state broadcasting media.
- In order to provide a diversity of voices, the governments should promote a diversity of media ownership.
- Public revenues should be used to help the survival and further development of the private - especially local - media as well, when they are faced with insolvency due to a poor advertising market.
- The government in Serbia should allow the re-privatisation of all the media whose ownership transformation was prevented by the previous regime (such as the Studio B company).
- As the process of concentration of media ownership in Serbia has already begun, it is recommended that the new draft law on

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broadcasting should be adopted as soon as possible, in view of the fact that it prevents cross-ownership and the establishment of monopoly in the sphere of the media.

- The authorities should allow full democratisation of the media sphere. In particular, they should insist on equal access of all the protagonists on the political scene to the public media, on a diversity of views and on a balanced presentation of conflicting political views.
- The government in Serbia should pave the way for the transformation of the national state radio and television channels into public service media, which will not be controlled by any particular segment of the political scene.
- The media should write about corruption more often and keep this topic as one of the priorities on the media agenda.
- The media should educate the public about the long-term consequences of large-scale and especially small-scale corruption in social life.
- The media should trace, through their own research, any indications of the new government officials' involvement in corruption.
- It is recommended that the media publish as many analytical and investigative pieces as possible.
- It is recommended that a certain number of journalists should specialise in analytical and investigative reporting.
- In view of the fact that the professional level of our journalism is relatively low, professional education of journalists on a regular basis is a necessity.
- It is recommended that there should be several types of investigative journalism courses.

Civil Society

- The work of non-governmental organisations is still regulated by laws on citizens' associations and social-political organisations.
- The new tax regulations are not flexible enough towards NGOs.
- A large number of civil society representatives have entered the structure of the new regime.
- The monitoring of public administration's work by NGOs is still insufficiently developed.

The Terminology

In FR Yugoslavia civil society has developed in fits and starts; the phases of its development essentially followed those of the socio-political system as a whole, or rather, shared its lot. Methodologically speaking, and bearing in mind the notional framework of the National Integrity System, we should first define the notion of civil society in terms of the real social circumstances in Serbia and Yugoslavia

Civil society, which is an aggregate term encompassing a number of social communications and ties, institutions and social values, revolves around the concept of a free individual - the citizen and his or her vested human rights. A civil society encompasses citizens and citizens' associations, where the citizen acts in a dual capacity: as an individual person, and as the "owner" of a number of rights inherent to a human being. The most important collective entities in a civil society are citizens' associations (NGOs), civil institutions, and social movements. Institutions directly linked to civil society include the family, the church, charities, private foundations, universities and the school sys-

tem in general, to the extent that they are independent of the government. This also includes free, autonomous media.

Later on in our discussion we shall attempt to focus on NGOs as the most prominent part of civil society.

As far as the definition is concerned, an NGO is a legal personality, is established on a legal basis, and seeks no profit from its activity. We shall focus here mainly on public benefit organisations, as opposed to mutual benefit organisations. The former are much more important in the post-communist countries, where former regimes allowed and even fostered the work of a number of mutual benefit organisations (e.g. Fishermen's and Beekeepers' Associations, sports clubs, etc.), while restricting public benefit organisations, whose *raison d'être* would have been activities aimed at effecting social changes.

A variety of terms have been used to depict institutions that belong to the non-profit sector. The following are the most commonly encountered ones:

"The charitable sector" is a term that emphasises the support that the organisations it denotes receive from private charities.

"The independent sector" is a term that emphasises the important role these organisations play as a "third sector", outside the realms of government and private business.

"The voluntary sector" is a term that emphasises the significant input that volunteers contribute to the management and operation of NGOs.

"The tax-exempt sector" is a term stressing the fact that under the tax laws of many countries NGOs are exempt from taxation.

"Non-governmental organisations" (NGOs) is a term used to depict the third sector organisations in the developing world and countries undergoing the transition from communism to democracy.

"The non-profit sector" is the term preferred by Anglo-American scholars who subscribe to a taxonomic approach to the classification of NGOs. This term implies that the organisations belonging to this sector do not exist primarily to generate taxable profits for their owners.

All of these definitions depict a part of the phenomenon of the third sector, although they fail to provide a comprehensive definition, mostly due to the highly diversified nature of the third sector organisations. While some of the definitions overlap, each depicts some of the essential features of the third sector. This partial accuracy is due to the methodological approach, in view of the fact that the above definitions strive to define the third sector as a residual category. Third sector organisations are not-for-profit, non-governmental organisations, capable of independent pursuit of their mission. These organisations, being legal entities, are formed on the basis of the freely expressed will of freely associated citizens, and they are usually dedicated to effecting a social change that arises from a common set of values.

Such common values include peace, democracy, protection of human and minority rights, sustainable development and regional cooperation, among others.

Phases of Development

We can distinguish three periods in the development of civil society in Yugoslavia after the Second World War.

The first period - during the period of Communism, that is to say, the historical era of self-management socialism, when there was no real pluralism in society but merely a semblance of it, maintained by means of a relatively large number of organisations dedicated mainly to welfare and humanitarian work, formally independent of the ruling Communist Party but actually operating under its watchful eye and surveillance. Under such circumstances, it was not at all possible to criticise the regime in real terms, let alone control it.

The second period - from the formal introduction (in legal terms) of multiparty elections, at the beginning of the 1990s (the first multiparty election was held in 1991) to the downfall of the Milošević regime in October 2000. During this period citizens' freedoms were suppressed and the legal system was largely abused through deviations in the

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administrative and judicial practice aimed at suppressing the democratic tendencies in society. Despite the difficult overall conditions, groups of citizens did manage to organise themselves and contribute to the dismantling of the authoritarian regime, which certainly would not have been possible had opposition parties been acting alone on the public scene. The turning point came when the opposition presented a united front at the election and when, at the same time, non-governmental organisations made a mass appeal to the citizens to vote in as large numbers as possible.

The third period, which is the shortest by far, started with the democratic changes towards the end of 2000 and has lasted to the present day. It is a period of mere 12 months, but crucial from the point of view of opportunities for the development of civil society. The circumstances point to the fact that, following a ten-year delay, Serbia has entered a period of thorough reforms, that is to say, a period of transition towards a truly democratic system, where the establishment of strong institutions capable of preventing corruption is a major task of civil society.

In the text that follows, we shall consider civil society organisations to be non-governmental, non-profit organisations.

Situation assessment

In Serbia and Yugoslavia, the legal acts from the Communist era regulating the activities of NGOs are still in effect. These acts were passed towards the end of the 1980s and referred to citizens' associations and socio-political organisations, not non-governmental organisations. It is, we can say, a relict of the first phase of the development of civil society. New bills on non-governmental organisations are undergoing standard parliamentary procedure both in the federal Parliament and the Parliament of the Republic of Serbia. It is not realistic to expect that these bills will be passed into laws soon, what with the priorities of the Serbian Government, stemming from the extremely difficult situation it inherited from the previous regime, and the usual speed of our Parliaments' work.

It is, therefore, more realistic to rely on the administrative practice of the organs authorised to register non-governmental organisations as an indicator of the attitude of the authorities towards non-governmental organisations. According to the legal regulations still in effect, these are "citizens' associations". The organs in question are the federal Ministry of Justice and the Ministry of Internal Affairs of the Republic of Serbia. On the basis of their administrative practice, we can conclude that legal regulations are relatively liberally applied and that it is possible to register a domestic non-governmental organisation without undue difficulty, within the period of time stipulated by law.

What poses a greater problem for the functioning of civil society organisations is the new set of tax regulations currently in effect in Serbia. As opposed to other areas of domestic legislature, the fiscal system was reformed within a relatively short period of time, in March and April 2001, as one of the priority issues for the new regime. The new Serbian tax law contains the term "non-profit organisations". This refers to organisations that have not been established in order to make a profit through the sale of goods and services. In principle, this is standard practice. As such, these organisations are exempt from paying income tax unless they have a surplus above a certain level (300,000 dinars) at the end of the fiscal year. The problem with this arrangement is that it is not flexible enough, especially bearing in mind the level of expertise of our tax officials, and represents an obstacle to sustainable development of non-governmental organisations, many of which would have to be capable of supporting themselves in the coming mid-term period, when foreign donations begin to decrease, primarily by providing various kinds of services. It is understood that any surplus at the end of the fiscal year must be channelled into further functioning and development of non-governmental organisations because it is their *differentia specifica*, the quality that makes them non-profit organisations.

In the current circumstances, non-governmental organisations risk being categorised as profit organisations and being exposed to taxation if it is established that they charge for the services they provide.



Some other aspects of the administrative practice of tax organs may yet prove bad; for example, tax organs are sometimes inclined to impose taxes on foreign donations, grants that non-governmental organisations receive primarily from abroad for the purpose of financing their projects. What this demonstrates in principle is a lack of understanding of the role and position of non-governmental organisations as representatives of the third sector. This situation is brought about by a lack of quality legal regulations pertaining to non-governmental, non-profit organisations, and may be characterised as insufficient legal security. That is why the interested parties should endeavour to secure the passing of a quality legal framework as soon as possible.

As far as freedom of public activity and public assembly is concerned, no significant limitations of these freedoms guaranteed by the Constitutions of Serbia and FR Yugoslavia are discernible. Naturally enough, the regulations stipulating that it is necessary to report a public assembly to the organs of internal affairs beforehand were abused during the Milošević regime in order to suppress the democratic tendencies among the citizens. Today, civil society organisations operate freely, and no legal or administrative obstacles to their activities are visible.

As regards the cooperation between the Government and civil society organisations, the experiences following the democratic changes are mainly positive. A great number of independent intellectuals and representatives of civil society have entered the structures of the new regime; they are well acquainted with the functioning, structure and potential of civil society, which makes them potentially expert mediators between the first and the third sector. It may be noted that the new powers-that-be are open to cooperation with non-governmental organisations in principle, but are rather inert and preoccupied with the problem of the functioning of their own structures, which remain largely unreformed. This, unfortunately, means that the representatives of the public sector, preoccupied by trying to master the technology of governing the state, are failing to forge a real partnership with the non-

governmental sector in the great task of rebuilding the country and effecting its recovery.

The situation, however, varies depending on the level of state organisation. The cooperation between non-governmental organisations and the authorities is certainly most successful at the local level, as opposed to the cooperation with representatives of the republican or federal Governments, which is sluggish and hesitant, especially at the federal level. Non-governmental organisations that successfully cooperate with the central government are mainly those with considerable expert potential. It is in the capacity of think tanks that they can directly assist the activities such as drafting new regulations and promoting them to the general public. In spite of this, it is not standard practice yet to forward proposals of new legal regulations to as wide a circle of stakeholders as possible for the purpose of consultation. The time pressure to implement the reform programme of the Government as soon as possible may sometimes provide a good excuse to avoid criticism by not presenting the public with the proposed legal regulations.

The situation is somewhat different when it comes to activating the advocacy function of non-governmental organisations in pointing out negative social phenomena such as corruption or promoting new social concepts (transparency, for example). The authorities are somewhat reluctant to accept such initiatives.

The monitoring and supervision of the work of state organs by non-governmental organisations is still underdeveloped. Some organisations specialising in protecting human rights are characterised by highly developed activities in this area. Civil society organisations have relatively rarely come up with expert and unbiased evaluation of the work of public administration; the activities of Transparency International Serbia are pioneering in this respect, first of all in its evaluation of the work of certain municipalities and specific activities aimed at improving their work.

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- Liberal legal regulations should be adopted to regulate the establishment and work of non-governmental, non-profit organisations in the Republic of Serbia, for the purpose of helping the process of transition of society and the state.
- Tax regulations, especially those regulating indirect taxation (turnover tax) and income tax should be revised, so that the non-profit character of non-governmental organisations in Serbia could be clearly established.
- The provisions essential to the financial transparency of non-governmental organisations should be implemented by means of obligatory publication of annual financial results and stimulating the auditing of statements of account.
- The republican government should be more open to the non-governmental sector and establish closer cooperation through a broader and more intensive exchange of information.
- The Government should make use of the non-governmental organisations' potential when it comes to informing and educating the public about the reforms that it intends to carry out by forming a partnership-type relationship between the first and the third sector.

- Problems arise due to the overall situation in society and the situation in the judiciary.
- There exist no legal regulations covering former judges.

The professional rights and duties of lawyers are regulated by the federal Law on the Legal Profession from 1998. The law in question does not regulate entirely the matters pertaining to the legal profession but leaves that up to a large degree to bar associations.

Bar associations are established on the territorial principle. There is the Bar association of Serbia, encompassing nine regional bar associations. The Bar Association has passed its Code and Statute.

The law lays down some cases when members of the legal profession have to be sanctioned. Thus Article 27 of the federal Law on the Legal Profession stipulates when a lawyer is to be struck off the Bar Association register, either temporarily or permanently. For example, a lawyer's licence to practise his/her profession is temporarily taken away from him/her while he/she is held in custody.

A lawyer may lose his/her licence permanently if he/she loses his/her working ability, if he/she is banned from practising the legal profession in the course of criminal proceedings as a safety measure, or if he/she is convicted for a criminal offence making him/her unworthy of practising the legal profession. If a lawyer is sentenced to an unconditional prison sentence of at least six months, he/she also loses his/her licence permanently.

The Bar Association Code lays down, in Articles 51 through 55, that the disciplinary organs determined by the Statute are authorised to pass disciplinary sanctions. Minor offences shall be punishable by fines, whose amount is to be calculated on the basis of the lowest and the highest fee stipulated by the statutory provisions on legal practitioners' rates. The amount of the lowest fine is five times that of the lowest fee, and the amount of the highest fine is five times that of the highest fee.

Legal Profession

- The law lays down the basic requirements.
- The sanctions are implemented by the organs authorised by the statutes of bar associations.



Articles 123 through 127 specify which professional offences and acts that discredit the professional reputation of a member of the legal profession are to be considered grave and which ones minor. The gravest offences are punishable by being struck off the Bar Association register for a period of six months to five years.

The Statute of the Bar Association of Serbia (published in "The Official Gazette of the Republic of Serbia no. 43/99) stipulates that decisions on disciplinary measures to be implemented by Bar Association organs are to be arrived at through a first- and second-instance procedure. In some cases, the Supreme Court of Serbia is to be the organ of the third instance in the passing of a decision.

It is not the standard practice of The Bar Association of Serbia to publish information on disciplinary sanctions passed by its organs.

The situation and the problems of the legal profession are directly connected with the problems that the entire society is faced with, in particular with the problems faced by the judiciary. The disintegration of the old system of values and the lack of a new one have led to a general moral erosion among members of the legal profession as well. The internal mechanisms of professional association have proved insufficient for protecting the reputation of the legal profession.

The most drastic example of this is when some lawyers promise their clients illegal services and "speeding up" court proceedings through real or fictitious connections with corrupt judges and prosecutors. It often happens that a client pays for such services and ends up losing money and without the service(s) promised.

The fact that there are a great many lawyers, that they are able to charge less and less for their services and the slowness of court proceedings place lawyers in an unenviable position, conducive to unfair competition, which is detrimental both to professional legal representatives and to their clients. Thus lawyers who have a small number of clients find themselves forced to take on cases even when it is not absolutely certain that they will be paid for their services. On the other hand, those lawyers who are sufficiently well known already can afford

not to take on cases when the client is unable to pay an advance for their services.

The provisions of procedural legislation and the deficiencies of the court proceedings often result in vastly increased expenditures on lawyers' fees, several times in excess of the amount of the original claim for damages. Lawyers are often unable to charge for the services rendered ex officio to defendants in criminal proceedings over a period of up to a whole year.

Due to high state taxes, the high price of renting premise for business purposes and the like, many lawyers are forced to work in their own flats or to join forces in large partnerships and, finally, to specialise in high-profit legal services. Over the last few years, lawyers have often specialised in the real estate business or in the re-registration of companies, because in these areas they could reasonably expect higher earnings than in the case of representing parties before a court of law.

On the other hand, on account of financial, moral or political reasons, hundreds of judges left the judiciary during the years of crisis and set themselves up as lawyers. Few of them have returned to the ranks of the judiciary since the political changes of 2000. The former judges now working as lawyers are often seen by their colleagues as unfair competition because they are personally acquainted with many active judges. This issue is not regulated by the legislation currently in effect.

The membership of the Bar Association of Serbia has increased several times over the last few years, not just due to the influx of former judges but also due to the fact that many companies have gone bankrupt and a number of institutions have been dissolved, so that the legal practitioners from such firms have crossed over to the Bar. Also, a large number of lawyers have come to Serbia as refugees from the former Yugoslav republics.

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- A new Law on the Legal Profession should be passed so as to ensure that the selection is based on professional and moral qualities.
- The procedural legislation is in need of an overhaul as well, with a view to minimising the possibilities at the disposal of lawyers to slow down court proceedings (this especially pertains to the possibility granted to lawyers to postpone hearings on account of illness, having taken on a case immediately prior to a hearing, submitting new evidence and making alterations to lawsuit claims in the course of court proceedings).
- It is necessary that the state should provide incentives for the work of bar associations and to give them a significant role in regulating the issue and the revocation of licences to lawyers on the basis of their professional and moral qualities. It is less costly for the state if a professional organisation does this, because the organisation has a vested interest in increasing its reputation.

Accounting/Auditing Profession

- The law regulates the manner of practising the profession.
- Conflict of interest has been prevented.
- The organ in charge of finances exercises control.
- The Code sanctions bribes.

In Serbia, accounting is regulated by the federal Law on Accounting, which was passed in 1996 and subsequently amended on three occasions (the last of these being in "The Official Gazette of the Federal Republic of Yugoslavia" no. 22 of the year 2001). The Law on Auditing Accounting Reports was also passed in 1996, to be amended on two subsequent occasions.

Among other things, these laws stipulate who can be an accountant (Article 6 of the Law on Accounting) and an auditor (Article 18 of the Law on Auditing). Article 15 of the Law on Auditing stipulates the conditions under which the federal organ in charge of finances may revoke the licence of an auditing firm.

In Article 25, the Law on Auditing stipulates the conditions under which an auditing firm or an individual auditor may not audit on account of potential conflict of interests. This provision pertains to business and family relations of an auditor and an auditing firm with the company being audited or with its manager or founder.

In Articles 31a through 31d, the Law on Auditing authorises the federal organ in charge of finances to conduct administrative supervision of auditing firms. In order to prevent wrongdoing, this organ may file charges of commercial law violation, demand the initiation of criminal law proceedings, pass an administrative decision or revoke a licence.

Articles 33 and 34 of the Law on Auditing stipulate fines for specific commercial law violations committed by auditing firms, ranging from 9.000 to 150.000 dinars (DEM 300 to 5,000). These articles also contain provisions on the amount of fines for authorised officials of auditing firms, ranging from 900 to 9.000 dinars (DEM 30 to 300). These pertain to being employed with two auditing firms at the same time, failing to keep a professional secret or abusing a professional secret for personal gain. Apart from being fined, the individuals and firms involved may be banned from pursuing their professional activities.

The Law on Accounting gives the Association of Accountants and Auditors public authority pertaining to the acquisition of professional titles in accounting (Article 66). On the basis of this provision, the Asso-



ciation establishes accounting and auditing standards, following which it organises professional training and examinations.

The Assembly of the Association of Accountants and Auditors passed the Code of Professional Ethics of the Accounting Profession in 1993. This Code is in conformity with the Code of IFAC, the international association of accountants.

The Code contains the basic principles of professional conduct. Chapter nine contains grave violations of the rules of professional conduct, some of which are identical to the violations specified in Articles 33 and 34 of the Law on Auditing, while all other violations are considered to be minor. The forms of punishment stipulated by this Code include caution, fines, ban on pursuing professional activities for a period of 6 months to two years and being struck off the register of auditors. These disciplinary measures are implemented by the Association's Disciplinary Committee, in a manner prescribed by the Statute of the Association of Accountants and Auditors of Serbia (Articles 50 and 51).

Among grave violations of the Code are the giving and taking of bribes and mediating in it.

In practice, sanctions tend to be passed rarely.

- The state should grant the Association of Accountants and Auditors of Serbia more authority by law.
- The Association of Accountants, with increased legal authority, should endeavour to strengthen internal mechanisms for protecting the reputation of the accounting profession.
- The Association of Accountants should be open to the complaints of citizens and companies, so that as many controversial situations as possible could be resolved without resorting to administrative and court proceedings.

Medical Profession

- There exists no medical association.
- The question of conflict of interests has not been covered by legal regulations.
- There exist various projects of the law on the medical association.
- The financial situation in the realm of health care is bad; many medical practitioners have left the country or are planning to do so.

The realm of health care in Serbia is regulated by means of the laws on health care and health insurance. The Ministry of Health Care is preparing new laws to regulate this matter, as well as an entirely new law on the medical and pharmaceutical associations.

A patient who is not satisfied with the service he/she has received may complain only to the management of the health institution where he/she was treated or initiate a lawsuit before a regular court of law.

In Serbia, there is no medical association or any other organisation authorised to operate in the manner of professional associations, for example, those of lawyers and accountants. There does exist the Serbian Medical Society, which is a voluntary-membership organisation. The Serbian Medical Society has its Medical Practitioners' Code of Ethics, which contains provisions specifying their duties, but the Code does not stipulate sanctions for those who violate its provisions, because such sanctions would have to be based on the law. In addition to this, the voluntary character of membership in this Society precludes the possibility of the applicability of any sanctions that an organ of it might pass to all medical practitioners.

Within the framework of the Serbian Medical Society there exists the Ethics Committee. However, it does not deal with the complaints of



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individuals dissatisfied with the medical service they have received but offers its views on various problems in principle.

There also exists an association of private medical practitioners with its own court of honour.

The law currently in effect allows private practice but forbids medical practitioners employed in the state sector from pursuing private practice. What tends to happen, however, is that many doctors work in state medical institutions while at the same time pursuing private practice; no cases of sanctions on account of this have been recorded. As this kind of behaviour on the part of medical practitioners is not sanctioned, conflict of interest is not sanctioned either (there is no law in Serbia regulating the prevention of conflict of interests).

Cases of "moonlighting" have also been recorded: when a doctor to whom state-owned facilities are available provides private service to his/her clients outside regular working hours.

The health care sector is in a bad situation, faced with the same problems as our society as a whole. The salaries of medical practitioners employed in the state sector are very low, and medical institutions, with the exception of just a few of them, are poorly equipped. As a result of the years of isolation our country has been exposed to and the bad financial situation, Serbian doctors are badly informed about the latest scientific developments. Those of them who opt for private practice have to invest a lot of money in it. Due to such a set of circumstances, every year many medical practitioners go to foreign countries, where they have much more favourable working conditions, and this factor also contributes to the general deterioration of health care.

The right of patients to choose their doctor is limited by their financial situation. Health care beneficiaries who cannot get adequate medical services in the state sector, or cannot get them fast enough, can seek the services of a private practitioner only if they have enough money to pay for them in full; the possibility of getting a refund out of the health care funds afterwards is minimal. Also, the medicines dispensed free of charge through the network of state-owned pharmacies

can only be obtained on the basis of a prescription issued by a state medical institution.

A law on the medical association has been proposed with a view to resolving some of the problems that the health care sector is faced with. More than twenty proposals have been submitted over the last several years, but none of them has reached the parliamentary procedure stage. There are four projects being proposed at the moment, and there exist considerable differences among them.

The Serbian Medical Society and the association of private medical practitioners, the proponents of these legal projects, insist on the autonomous character of the medical association to be established. On the other hand, according to the proposal of the Ministry of Health Care, the Statute of the association and the appointment of the association leadership would be subject to the Ministry's approval.

Another problem in the health care sector which is manifested from time to time is the matter of the secrecy of medical documentation. Cases have been recorded of abuse of such documentation, for example, in order to discredit political opponents, but such acts have not been sanctioned even though the giving away of professional secrets is sanctioned by the Criminal Code.

- A law should be passed to regulate public procurement, which has proved to be a source of great abuse, as well as a law on conflict of interest.
- A law should be passed on the medical association, which should be independent in its work. The state would not have direct control over the work of the medical association.
- The new law should in particular create the conditions for regulating the issue of work in the private and in the state sector.
- Legal regulations should be introduced to cover the rights of patients, such as the right to choose a doctor and the right to pro-



tection of privacy through the protection of secrecy of medical documentation. The law should also specify the exceptions to this rule - when secrecy may be violated, to what extent and following what procedure (e.g. when this is necessitated by needs arising in criminal law proceedings).

Local Government

- Municipalities are still disempowered.
- The organs of a municipality are the assembly, executive council and municipal administration.
- The president of a municipal assembly has extra-institutional influence.
- The existing draft law on local administration does give the local authorities wider powers, but not appropriate sources of revenue.
- Excessive politicalisation is the biggest obstacle for the control of the work of the local authorities.

Local administration in Serbia is organised at municipality level. In the period before the coming to power of Slobodan Milošević, municipalities had broad powers and considerable sources of income. One example is that the so-called social property on their territories was managed by the municipalities themselves, while local schools, courts and other institutions were locally-financed. The consequence was often wasteful spending of state funds for satisfying the ambitions of local bigwigs.

After 1992, when opposition parties took power in some municipalities, the republican authorities, mainly on political grounds, gradually eroded the competences of the local authorities, concentrating power at republican level, as part of a comprehensive centralisation of Serbia, which all led to the other extreme - local authorities were for example not even empowered to rename streets or increase local bus fares without consent from Belgrade. State property has been redefined as property of the Republic, which may entrust a municipality with the utilisation of that property.



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In that situation the most important prerogatives of municipal authorities were confined to the issue of building permits, granting licences for the use of build able land, renting out real estate (whereby municipal authorities boosted their incomes), control of the local media (an important factor of political influence) and in the area of the organisation of the work of utilities, for which purpose there was usually not enough money.

After last year's political changes, the public expected the situation to change in the direction of an enhancement of the rights and responsibilities of the local administration organs of authority, a plank in the platforms of the current ruling parties while they were in the opposition.

Since this summer, the Serbian Government has had before it a draft local administration law, designed by the PALGO centre non-governmental organisation, which considerably improves the position of municipalities within the existing constitutional system.

Under the 1999 local administration law, local government is exercised in municipalities and towns, in particular in the city of Belgrade.

Cities as territorial entities are defined by law and a minimum of two municipalities are formed on their territories. Such urban municipalities have smaller powers and incomes than "non-urban" ones, as a considerable segment is controlled by the city. The city also transacts state administration business with which the state has entrusted it, and besides municipal income also benefits from 10% of the sales tax set aside for financing public expenditure in the Republic which was collected in the city.

Belgrade, the capital city, has a special status, and gets 15% of the said tax income.

Under the law, citizens participate in local administration through elected representatives, through referendums and the realisation of popular initiatives.

Municipal council members are elected on the basis of a "free, comprehensive, equitable and direct electoral right, at secret votes." (art. 123, para 1 of the Local Administration Law). Active and passive voting

rights are enjoyed by adult and able-bodied Yugoslav citizens residing on the territory of the municipality (electoral candidates with at least six months of permanent residence).

A novel feature of the draft law is giving certain rights to foreign nationals who have residence on the territory of the municipality, have been in it for a longer period, or have been involved in commercial activities based on that territory.

Local council members are elected in electoral districts defined by the municipal assembly and which should be similar in size, albeit with some deviations - the subject of abuses at past elections. A candidate is considered elected if he or she wins a relative majority of votes of those voters who have cast their ballots, regardless of the precise share in the overall vote. This feature is the result of a political forecast made by the past regime that in a situation where opposition parties are dis-united, the ruling parties' candidates would win sufficient relative majorities. This system replaced the former two-round one, whose re-introduction is now being proposed. Many parties are also calling for a proportional vote system to be also applied to municipal level elections.

This all indicates that local elections are also very much subject to political colouring - the political affiliation of the candidate was always far more important in the voting process than their individual qualities and platforms. As result, in most cases the elected local council members simply implemented party policies.

Article 17 of the Local Administration Law defines the local government as a legal entity; the draft law has a similar provision.

The fundamental deed of a local administration entity is its statute, in which it defines in keeping with the law the business it transacts, the organisation of its organs of authority and other relevant questions.

The municipality's organs of authority are its Assembly, made up of elected local council members, the Executive Council ("municipal government") and the municipal administration.



The law also stipulates that local assembly sessions are public and that exceptions to this can be defined by the Statute. Such exceptions are usually foreseen for cases of war, an immediate threat of war and states of emergency, and were applied during the NATO bombing in 1999. Similarly to article 88 of the current law, the draft law anticipates that the public operation of the local assembly can be suspended for reasons defined by law and the Statute. In every case, the decision to exclude the public is made by a majority of the local council members who are present.

In article 87, the law stipulates that the president of the local assembly calls a session of the assembly when it is needed, and at least once in three months. The president also has a duty to call a session upon a written request of one-third of all local council members or the executive council, within a maximum of 10 days.

The legally-defined role of the president is to chair the meetings of the local assembly, but in practice the president also plays a representative role. It is also symptomatic that local assembly presidents are erroneously called "mayors" or "municipal presidents" (even in municipalities with predominantly rural populations). This is all because the local assembly presidents have much more actual influence on local politics than are their formal competences. Another reason is that the Serbian public has always had a tendency to personify government.

The draft law promotes a new institution of Municipality President, the holder of executive powers, who would in one option be directly elected (art. 46 of the draft law).

A mayor would be elected in cities in the same manner and with similar powers.

The executive council is elected and dismissed by majority votes of the total number of assembly members. Its basic role is to execute decisions of the assembly, supervise the administrative organs and annul those decisions not in accordance with the statute and assembly decisions, and to decide on questions which the assembly empowers it to do (article 89).

The municipal administration directly implements regulations and other enactments of the assembly and executive council, performs professional services and those of administrative supervision, and implements regulations with which the municipality has been entrusted (art.92).

The draft law also stipulates that the president of the municipality, as the holder of executive power, appoints and relieves of duty the head of the municipal administration.

The existing law stipulates that the municipality can entrust to a legal or physical person the transaction of certain business, or establishment of public services (art.6).

The draft law has a novel feature in that it requires that these activities can be commissioned on the basis of the principles of competition and transparency.

The existing law defines special organisation for municipalities in the province of Kosovo (which it lists explicitly) where the assemblies would be made up of separate nationality councils (a Serb and Montenegrin council, an ethnic Albanian council, and a council of nationalities of those who are uncommitted or of other nationality), but this provision was never put in practice as these municipalities are de facto outside Serbia's legal system.

The draft law anticipates the establishment of ethnic relations councils in those municipalities where any single ethnic community makes up at least 5% of the local population or where all minority communities together make up at least 10% of the population. Such a council would be empowered to indicate to the local assembly any irregularities in its by-laws, whereupon the assembly would have to review them.

An important novelty under the new law are local police forces.

The law lists all sources of financing municipal budgets; this has also been done in the draft law, where the sources of income have been broadened. The law also includes a provision under which insufficient collection of municipality-destined tax revenue can be made up



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for by the Republic from its budget, depending on the size of the revenue collected by the Republic.

The draft law defines new revenue sources for municipalities. In a large part of the revenue sources the municipality will be able to set the rates and define facilities and exemptions. The municipality will be able to take public loans and to appear with free funds on the secondary financial market.

The local administration entity protects its rights in procedures before the Constitutional Court (assessments of constitutionality and legality of regulations infringing upon the defined rights of municipalities and cities) and the Supreme Court (suppression of the execution of activities or individual enactments by the state authorities, art. 214 of the law).

The draft law foresees the institution of a *Civic Defender of Local Administration*, with ombudsman powers at local levels, to be elected from among the ranks of "respected and politically impartial figures". It also anticipates the establishment of a *Council for the Development and Protection of Local Administration* whose aim would be to promote local administration and control the work of the executive authorities.

After the model law was submitted to the Serbian Government, the working group was expanded to include other experts besides representatives of the competent ministries, which resulted in the publication of a working version of the proposed law. The public debate is still under way. Representatives of local authorities are not satisfied with the scope of the changes anticipated by the new law - they have organised the signing of a petition whose basic demand is the return to municipalities of property (which the Republic of Serbia took over when it centralised the ownership of former social property and transformed it into state property), and the elimination of the ceilings on municipalities' gross budgets. The local authorities have also suggested to the central government that tax percentage levels (in particular sales tax) be established in consultation with local authorities.

- A new Law on Local Administration must be adopted to return to municipalities the powers and autonomous sources of income foreseen by the European Charter of Local Government.
- Municipal property should be either introduced or restored.
- The direct election of a mayor, an important developmental institution, should be returned to the government proposal.
- The ceiling imposed on municipal budgets, a factor which discourages development and free enterprise in the municipality, should be scrapped.
- Municipalities should be granted financial autonomy to introduce their own taxation in order to strengthen the entrepreneurial nature of the local community. This is an important developmental factor as it makes possible a creative approach by the municipality in attracting capital, human resources, ideas, investment etc. Financial autonomy frees the important developmental potential of the country and should be activated; municipalities **must no longer** be kept in a passive and dependent position.
- The state should promote the law as much as possible in order to raise public awareness of the importance of local self-rule and interest in the control of the work of elected officials.
- Non-governmental and professional organisations should exert influence on the public (something the very nature of things makes difficult for the national government to do) to distance local self-rule from political views in regard to questions of national significance, to ensure that the electorate focuses on the most favourable programme for the development of their local community.
- To enhance the operation of the local authorities, a number of other new laws should regulate in a modern manner the areas of public procurement, the organisation of public services, conflicts of interest, and other issues.



Criminal Law of the Republic of Serbia and Corruption

The existing Criminal Law of the Republic of Serbia defines the following criminal offences relating to corruption:

Acceptance of Bribes, Article 254

(1) A public official who demands or accepts a present or some other benefit, or accepts a promise of a present or other benefit, in exchange for performing an official action within one's official competencies which one is not allowed to perform, or not performing an action that one is obliged to perform, shall be punished by imprisonment from one to ten years.

(2) A public official who demands or accepts a present or some other benefit, or accepts a promise of a present or other benefit, in exchange for performing an official action that within one's official competencies one is obliged to perform, or not performing an action which one is in any case not allowed to perform, shall be punished by imprisonment from six months to five years.

(3) A public official who, after performing or failing to perform an official action as specified in paragraphs 1 and 2 of this Article, demands or accepts a present or other benefit, shall be punished by imprisonment from three months to three years.

(4) Authorised employees of enterprises, institutions or organisations who commit an action described in paragraphs 1-3 of this Article will be punished by the penalties defined for that action.

(5) Any presents or benefits received as a result of bribery will be confiscated."

Offering Bribes, Article 255

Persons promising or giving public officials a present or some other benefit so that those officials may perform an official action within their

official competencies which they are not allowed to perform, or not perform actions that they are obliged to perform, or those mediating in the bribing of a public officials as defined herein, shall be punished by imprisonment from six months to five years.

Persons promising or giving public officials a present or some other benefit so that those officials may perform an action that within their official competencies they are obliged to perform, or not perform actions which they are in any case not allowed to perform, or those mediating in the bribing of a public official as defined herein, shall be punished by imprisonment of up to three years.

The perpetrator of actions defined in paras. 1 and 2 of this Article who bribed a public official at that official's request and reported the action before it was brought to light or before learning that it had been uncovered, may be freed from prosecution.

The provisions of paras. 1 - 3 of this Article shall also be applied when bribes were offered or given to authorised personnel in enterprises, institutions or organisations, or public officials in federal organs.

Any presents or benefits received shall be confiscated, and in the case defined in paragraph 3 of this Article shall be returned to the person who had given the bribe.

Abuse of Official Position, Article 242

Public officials who by abusing their official position or competencies, exceeding their official authority or failing to perform their official duties acquire benefits for themselves or other persons, or inflict damage or seriously injure the rights of other persons, shall be punished by imprisonment from six months to five years.

If the illegal gain acquired by the commission of an action defined in paragraph 1 of this Article exceeds a value of 70,000 dinars, the perpetrator shall be punished by imprisonment from one to ten years.

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If the illegal gain acquired by the commission of an action defined in paragraph 1 of this Article exceeds a value of 220,000 dinars, the perpetrator shall be punished by imprisonment of at least three years.

Authorised personnel in enterprises, institutions or organisations committing an action defined in the preceding paragraphs shall be punished by the penalties defined for that action.

Apart from the criminal offences listed above, the law also defines others linked with corruption, such as Violations of Laws by Judges (Art. 243), Illegal Exemption from Arrest (Art. 244), Disclosure of an Official Secret (Art. 249), Illegal Mediation (Art. 253), Abuse of Authority in the Economy (Art.139) and others.

The draft law defines several new criminal offences. However, the number of amendments submitted during the adoption procedure makes uncertain which of the provisions below will be adopted and in what form.

Money Laundering (Article 139v)

(1) Authorised personnel in a legal entity or physical or natural persons who invest or place in circulation funds or property known to have been acquired in an illegal manner shall be punished by imprisonment from six months to five years.

(2) If the illegal gain acquired by the commission of an action defined in paragraph 1 of this Article exceeds 4,000,000 dinars, the perpetrator will be punished by imprisonment from one to ten years.

(3) The funds and property as per paras. 1 and 2 of this Article will be confiscated.

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(The *alternative* punishment covers more serious forms of the criminal offences defined herein, where the illegal gain exceeds sums defined in the law.)

Unauthorised Expenditure of Budgetary Funds (Article 255b)

Persons who during the procedure of distributing budgetary or other state-owned funds acquire benefits for themselves or others shall be punished by imprisonment from one to five years / *at least three years*.

Corruption in Public Procurement (Article 255v)

Persons who by taking advantage of their position in the procedure of public procurement or a procedure of choosing a contractor or provider of services acquire benefits for themselves or others shall be punished by imprisonment from six months to five years / *at least three years*.

Corruption in the Privatisation Procedure (Article 255g)

Persons taking advantage of their position in the procedure of the change of ownership of social or state capital to acquire benefits for themselves or others shall be punished by imprisonment from one to five years / *at least three years*.

Corruption in the Judiciary (Article 255d)

Judges, side judges, public prosecutors or deputy prosecutors who by conditioning a verdict or other action in the judicial procedure acquire benefits for themselves or others shall be punished by imprisonment of up to three years / *from one to ten years*.

Corruption in the Administrative Organs (Article 255dj)

Public officials who in the performance of state administrative jobs by conditioning a decision or other action in the administrative procedure acquire benefits for themselves or others shall be punished by imprisonment of up to three years / *from one to ten years*.

Abuse of the Position of Defender or Counsel (Article 255e)

A defence attorney or counsel who with intent to influence the outcome of a judicial procedure offers or provides any benefit for an ex-



pert witness, a witness or other person on whom the actions of the court in a legal matter may depend, shall be punished by imprisonment of up to three years / *from one to ten years*.

Corruption in the Health Service (Article 255ž)

Health-care personnel who set conditions on the provision of medical services or use their positions in health-care institutions founded by the Republic of Serbia for providing private medical services, and thereby acquire benefits for themselves or others, shall be punished by imprisonment of up to one year / *at least three years*.

Corruption in the Education Sector (Article 255z)

Teachers or other persons assessing the proficiency of schoolchildren or university students who by setting conditions for awarding a certain grade acquire benefits for themselves or others shall be punished by imprisonment of up to one year / *at least three years*.

Restricting Media Freedom (Article 255i)

Authorised personnel in state-owned information media who with intent to acquire benefits for themselves or others prevent the publication of information of general interest shall be punished by imprisonment of up to one year / *from one to ten years*.

Match-Fixing (Article 255j)

Persons fixing the results of sports events with intent to acquire benefits for themselves or others shall be punished by imprisonment of up to three years / *up to five years*.



Comment of the Government of Serbia

Foreword

Having reviewed the draft version of the report of experts, the ministries of the Government of Serbia concerned submitted certain suggestions and remarks concerning the document in question. Some of the remarks pertain to legal regulations currently in effect, whereas some regulations are in the process of being passed, that is, being reviewed or undergoing the parliamentary procedure. In view of the fact that the general public is acquainted with the work of the Anti-corruption Commission, it is not dealt with in this report.

Financing of political parties

The financing of political parties is regulated by the Law on Financing Political Parties. Part of the funds used for financing political parties is provided from the budget of the Republic. The overall amount of these funds is determined for every month; it is set at 500 average net income amounts per employee in the Republic, as paid out in the month preceding the month when the Republican budget is passed, based on the statistical data published. The table below shows how much money was taken from the budget for the purpose of financing political parties in October 2001:

Political party	Amount
Democratic Opposition of Serbia	1,347,104
Socialist Party of Serbia	283,198
Serbian Radical Party	176,042
Party of Serbian Unity	107,156
Total	1,913,500

Auditor General

An expert team has been established under the auspices of UNDP, featuring representatives of the National Assembly, the Ministry of Finance and the Ministry of Justice. In phase one of the project of introducing the Audit Control institution, the team analysed the work of top auditing organs in Slovenia and Germany; what remains to be done is bring to a close the analysis of the French Court of Accounting. The model to be implemented will be chosen by the end of the year, whereupon the team will start work on the new law, with the help of experts provided through UNDP.

Judiciary

The selection of judges independently of the influence of courts has been conducted on the basis of the Law on Courts currently in effect. Even though he is not legally obliged to do so, the Minister has requested opinions concerning the candidates from court personnel, presidents of courts and employers with whom the candidates have been working. In accordance with the Law on Courts still in effect, the Government may exert influence on the selection of judges of higher courts through the ministry in charge. In other words, the influence of courts on the selection of judges is more evident today, in view of the fact that the ministry in charge did request the opinions of courts where the candidates were employed on the occasion of the last appointment of judges. The Ministry of Justice no longer articulates or transmits political influences when it comes to appointing judges, especially in the case of presidents of courts, as it used to do under the previous regime.



What the last appointment of judges showed was the need to pass a new law that would regulate the appointment of judges in accordance with the principle of independence of the judiciary. Judges have the opportunity for professional training and getting acquainted with changes in the legal systems of other countries.

A set of laws on the judiciary, forming part of the Government's draft paper on the reform of the judiciary, has been submitted to the National Assembly for review.

The Ministry of Justice particularly insists on the establishment of a special budget for the judiciary, with a view to improving the financial position of judges, so that it should reach the level corresponding to the importance of the function they perform and the responsibility they have.

An initiative has been introduced to review the responsibility of judges and determine instances of unprofessional and negligent conduct, so as to bring to an end the current state of passivity and lack of motivation, which had set in to a considerable degree and threatens to absorb the sins committed by some judges in the past.

The Center for legal education is going to be found by the Government of Serbia and Serbian Judges Association. The Center will be financed by OSCE.

Police

Citizens may address the Ministry of the Interior through the authorised Committee of the National Assembly; the Ministry has the duty to reply within a legally determined period of time. In this way, citizens have an active role in the mechanisms of controlling the work of the police.

The appointment of heads of departments and ministerial assistants is carried out by the Government of the Republic of Serbia. The President of the Republic may, but need not, confer ranks to these high-ranking functionaries; the actual rank is not of essential impor-

tance for the performance of the functions mentioned above. Hence the claim on the part of the experts that the Constitution of Serbia is derogated in this way is not correct, for the President of the Republic does not appoint officials of the Ministry of the Interior.

Also, the president of the Republic is not the highest disciplinary instance; it is a regular court deciding on complaints lodged against the professional conduct of police officers.

Even though the mandates of National Assembly Committees do not contain provisions on their being obliged to review public complaints about the conduct of the police in general and about corruption in the ranks of the police, these Committees may request reports on its work and even on corruption among its ranks; the police has the duty to submit these reports within a legally stipulated period of time, in accordance with the Law on State Administration.

The claim that there exist no police units whose sole function would be fighting corruption is incorrect. In the department dealing with organised crime, there does exist a unit for fighting corruption.

The accusations that have been made against the Minister of the Interior have been checked and the authorised organs have been notified of the findings; therefore, there is no need for the public to treat them as political questions, regardless of whether they are true or not.

The claim that under the previous regime the middle ranks of the police hierarchy went in for private business, piling up privileges for themselves and close relatives, thus opening the door wide to corruption, belongs to the sphere of speculation. Also, various criminal proceedings have been instigated against the previous Minister of the Interior and high-ranking officials for abuse of professional position.

Public services

Brochures explaining the duties of officials and the rights of citizens do get published, but this, unfortunately, still occurs sporadically. The Ministry of Justice and local governments, as well as the Agency for

the Advancement of the State Administration, publish their own papers, dedicated to those employed with organs of the state administration. Local government organs, e.g. the New Belgrade municipality, publish brochures aimed at helping citizens realise their rights.

Ministers and the officials directly answerable to them do not interfere with the operative part of the functioning of a department. A minister organises the work of a ministry and ensures that it is carried out lawfully and efficiently. The minister passes plans and programmes of work, whereby the content and the scope of the work of organisational units, as well as the deadlines for performing their tasks, are determined in accordance with the law. Ministerial assistants, the ministry secretary, heads of departments, units and groups are entrusted with managing organisational units, and are answerable to the minister for the work of these units as well as their own.

The officials occupying particularly sensitive posts are not rotated because no such obligation is laid down by the law. Officials may be relieved of duty by being transferred to another post, which the minister in charge decides upon.

There exist mechanisms for protecting public officials from the political pressures exerted by ministers and other politicians. When an official considers an order given by a functionary unlawful, it is his/her duty to point this out to the said functionary. The official in question has to carry out a repeated written order, unless carrying it out would constitute a criminal offence. If an official does not caution a functionary that his/her order is unlawful, and proceeds to carry it out, he/she will be responsible for doing so (Articles 21, 22 of the Law on Working Relations in State Organs).

Employment and promotion are carried out in a manner prescribed by the law and corresponding sub-legal acts. The discretionary authority of a functionary enables him/her to make a selection among the candidates who fulfil the conditions laid down in advance.

Public procurement

At its session of November 1st 2001, the Government of the Republic of Serbia accepted the bill on public procurement and passed it on to the National Assembly for review. This law will regulate the process of public procurement in a very detailed manner, with a view to stimulating competition among bidders, increasing the transparency of the procedure and obtaining goods and services under the most favourable conditions for the state. This law will encompass all direct and indirect beneficiaries of budget resources, compulsory welfare organisations and public companies.

Public procurement is to be conducted by means of open tenders, except in very precisely defined exceptions. There are no restrictions concerning the accessibility of tenders.

Apart from public tender, the law envisages the possibility of restrictive procedures, enabling only those bidders that fulfil certain technical, financial and personnel requirements to participate. In this case, the buyer has to issue a public tender in the first phase for the purpose of establishing the qualifications of potential bidders, whereas in the second phase the candidates are invited to submit their bids (Article 66).

The law lays down the manner of announcing public procurement, so as to place all interested parties in an equal position. All the advertisements in connection with public procurement are to be published in "The Official Gazette of the Republic of Serbia". The buyer may advertise in other media as well, but only after having advertised in "The Official Gazette". The criteria for evaluating the bids may be: the most favourable bid in economic terms or the lowest price. The most favourable bid economically may be based on various criteria, on the basis of the object of public procurement.

Decisions on the outcome of a tender must be published in "The Official Gazette".



Procedures for preventing nepotism and conflict of interests in public procurement have not been specifically laid down. However, the new law lays down a procedure defined in a very detailed manner; together with the transparency of the entire procedure, it does not leave room for any deviations of that kind.

The law also does not envisage the control of the assets, income and lifestyle of functionaries and officials in charge of public procurement, but the draft version of the law on determining, collecting and controlling public revenues contains an article which makes "cross-checking" possible, that is, comparing the value of assets with the total amount of taxes paid to the Republican tax revenue service, on the basis of which additional (illegal) income will be discovered.

Anti-corruption Commission

Having been established on January 25th 2001, the Government of the Republic of Serbia formed the Commission for Investigating Abuses in the Areas of the Economy and Financial Transactions soon afterwards, on February 16th 2001. The Commission's achievements so far (as of November 15th 2001) are as follows:

- It has passed 340 decisions.
- 316 of its decisions have been handed to their recipients.
- The total tax base established: DEM 298,974,365.
- One-off tax established on the basis of the above: DEM 227,430,175.
- 237 one-off taxpayers thus established have fulfilled their obligations so far.
- 61 taxpayers thus established have lodged complaints.
- 27 taxpayers thus established have availed themselves of the possibility of paying by instalments, the total amount being DEM 77,552,190.
- In the case of the following companies, the case has been dismissed: "Trajal", "Energoprojekt", "Jugoelektro" and the agro-industrial combine "Mačvanin".

- In 29 cases enforced tax collection has been effected.

Total one-off tax collection as of November 15th 2001: **DEM: 25,903,751.**

Ombudsman

The Ministry has prepared a draft law on the ombudsman. This democratic institution has been analysed thoroughly, through direct cooperation with the Council of Europe and OESC. According to the law drafted by the Ministry, the ombudsman is an independent parliamentary body monitoring the work of state organs by giving its opinions, and indirectly participates in all the phases of the development of the text of the law, right until it is passed.

Media

The issue of taxing unsold copies of newspapers and magazines has been continually discussed in public. The Government has passed a decree treating these as expenditures, thus exempting them from taxation. The legal basis for this decision is contained in Article 2 paragraph 2 item 5 of the Law on Sales Tax, according to which the Government of Serbia establishes the amount of expenditure to be exempt from taxation. In order to prevent the abuse of this tax exemption provision, the decree prescribes the manner and conditions for establishing the amount of expenditure to be exempt from taxation. Article 7 of the decree, as a transitional measure, lays down the obligation of calculating expenditures resulting from unsold copies from April 1st 2001 to the moment of the decree coming into effect. The expenditures thus calculated will be exempt from taxation. This decree clearly shows the intention of the Government of Serbia to create the conditions conducive for better business operations of the media in Serbia.

In the period from June 18th to September 10th 2001, the Government paid back all legal and physical persons that had been fined in

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accordance with the provisions of the Law on Public Information. The overall amount paid back from the current budget reserves amounted to 15,058,007 dinars, paid into the current accounts of 20 media outlets and 30 authorised media representatives.

Non-governmental Organisations (NGOs)

One of the main objections voiced by the experts in connection with the work of NGOs pertains to the tax laws, which have been described as not flexible enough in their treatment of organisations of this type. The fact remains, however, that donations are exempt from taxation on the basis of Article 11 paragraph 1 item 5 of the Law on Sales Tax ("The Official Gazette of the Republic of Serbia" no. 22/01), bearing in mind that the procedure for tax exemption is strictly formalised for the purpose of ensuring thorough control. NGOs are also exempt from taxation when it comes to taxation of services in the case of supplying financial aid for humanitarian purposes, to be used for the payment of services that will be provided to the beneficiaries in the form of aid. A contract of providing aid has to contain a clause to the effect that the contract in question does not provide for covering the expenses of taxation (Articles 12, 17, 41, "The Official Gazette of FR Yugoslavia", no. 30/96, ... 40/01). This kind of policy on the part of the state clearly shows the intention of the Government to facilitate things as much as possible for non-governmental organisations, while at the same time leaving as little room as possible for abuse.

The draft law on non-governmental organisations has been prepared and submitted for review.

Local Government

The criticism addressed by experts, to the effect that the current draft law on local government does increase the scope of authority of local governments while failing to provide adequate sources of income,

is partly unfounded, for the law does envisage increased participation of municipalities in sales taxation by 3%.

On the basis of the Law on Local Government, a yearly law will be passed, determining the yearly scope of municipal/town budget resources based on public revenues, and their participation in the taxation of sales of goods and services and income taxes, thereby determining increased rates of participation of municipalities/towns, depending on the scope of authority transferred to municipalities/towns. The new law on local government transfers certain revenues which until now have entirely belonged to the Republican budget to municipalities and towns, while also increasing the rate of participation in unrestricted sales tax from 5% to 8%. This is to say that that portion of overall tax collected on their territory belongs to them without any restrictions being imposed.

According to the expert team's report, local governments suggest to the central authorities that the percentage rates for some taxes (first of all the sales tax) should be determined on the basis of mutual agreement. It should be pointed out that this agreement is effected through a parliamentary procedure. In the procedure of passing the said law, the proposals of municipalities/towns will be taken into consideration, so that the suggested rates will be corrected, depending on how justified these proposals are, before the final version of the draft law is established. Also, once the draft law has been finalised, representatives of the people at the National Assembly of the Republic of Serbia will submit amendments, some of which may be accepted, which in a way, provides a means of making mutual agreements with Serbian municipalities.

As one of the essential next steps concerning local government, the experts point out the introduction of, or return to municipal ownership. The Government is prepared, among other things, to reintroduce municipal ownership; however, the Law on Assets Owned by the Republic of Serbia, which determines what is to be considered state property, has been passed on the basis of the Constitution of FR Yugosla-



via. In other words, until the federal Constitution is changed, it is not possible to give the assets that are now state property back to municipalities.

The objection that the limitations placed upon the amount of municipal budgets constitute a restrictive factor in the development and business climate of municipalities, accompanied by the suggestion that they should be abolished, is absolutely grounded, and the Government does not propose to limit municipal budgets. The only limitations imposed pertain to that part of the budget to do with the income from sales and income taxes, which, in the year 2001, amounts to no more than 18.2% of the overall municipal/town budget. This percentage can by no means be a restrictive factor in the development and business climate of municipalities.

The proposal that municipalities should be given financial autonomy has been met even by the current regulations. Municipalities have the right to determine the rates entirely autonomously, but only pertaining to their local revenues, all in accordance with the law. The rates are to be determined bearing in mind the financial situation of the citizens. Concerning taxation, it cannot be expected that municipalities/towns should be given that kind of fiscal sovereignty, because according to the Constitution currently in effect, that kind of fiscal sovereignty belongs solely to the Republic.



Indicators

Formal provisions

What actually happens

Executive

<ul style="list-style-type: none"> ● Can citizens sue Government for infringement of their civil rights? 	Yes.	<p>Private citizens can file against the federal state and its authorities lawsuits before regular courts if any of their rights have been violated by a decision or action of a state organ of authority.</p> <p>Private citizens who deem a regulation (law or decree) to be unconstitutional or in a contravention of a law can file with the Federal Constitutional Court a motion for an assessment of its constitutionality or legality.</p>
<ul style="list-style-type: none"> ● Are there procedures for the monitoring of assets and life-styles, e.g. disclosure provisions for the chief executive, Ministers and other high level officials? If disclosure provisions exist, are the disclosures checked or subject to random checking? And are they either made by an independent body or made available to the public/media? 	No.	<p>No bills to that effect have ever been tabled to the federal parliament.</p> <p>During the establishment of the federal government in October 2000, ministers from the DOS coalition made public statements about the property they owned. No one looked into the veracity of their statements, nor is there an established procedure for any such inquiry.</p>
<ul style="list-style-type: none"> ● Are there conflict of interest rules? If so, are these generally observed? 	Yes.	<p>The FRY Constitution (art. 100) states explicitly that a member of the federal government cannot perform any other public function or professional activity. But some members of the federal government are also deputies in the parliament.</p> <p>The Constitution is available to all citizens.</p>
<ul style="list-style-type: none"> ● Are there registers for a) gifts and b) hospitality? If so, who keep them and are these kept up-to-date? Do the public/media/political opponents have access to them? 	No.	



Indicators

- Are members of the Executive obliged by law or by convention to give reasons for their decisions?

- Is there regular consultation with civil society when policy is being developed?

- Are there clear rules against political interference in day-to-day administration, i.e. formal rules requiring political independence of civil servants?

- Do Ministers or equivalent high-level officials have and exercise the power to make the final decision in ordinary contract award and licensing cases? Is this power limited to special circumstances?

- Do sales of public assets take place which are seen as unduly favouring those with close links to the ruling party?

Formal provisions

- Yes.

- Yes.

- Yes.

- No.

- No.

What actually happens

The federal parliament controls the work of the Government (FRY Constitution, art. 78). A federal deputy has the right to query ministers or the government about matters within their competences.

Interpellation exists in the rules of procedure of both parliament chambers.

Consultations usually take place with expert groups and/or other interested institutions or associations.

The operational work of the administration is defined by law. In practice this rule is violated, so that we can say that politicians exert influence on the work of the administration, either by speeding up or obstructing the adoption of certain decisions and their execution, or by preventing the adoption of such decisions where there is a vested interest.

In the past period, certain ministries had the power to decide on such matters, particularly as regards the granting of import and export licences. Last year, however, a foreign trade law was adopted in which the licence regime was abolished.

It was a frequent occurrence in the period of the past regime.

No such cases have been reported in the past year's time.



Indicators

Formal provisions

What actually happens

Legislature

<ul style="list-style-type: none"> ● Are there clear and well-understood conflict of interest rules that are an effective barrier for parliamentarians to use their positions for personal benefit? 	No.	<p>The Law on the Election of Federal Deputies to the Chamber of Citizens of the Federal Assembly and the Law on the Election of Federal Deputies to the Chamber of Republics of the Federal Assembly do not bar deputies from holding other public office, including economic posts.</p>
<ul style="list-style-type: none"> ● Are there arrangements for the monitoring of private interests and personal incomes of elected officials and member of their immediate families? 	No.	<p>No initiatives for regulations to that effect have been submitted to the federal parliament.</p>
<ul style="list-style-type: none"> ● Do legislators who oppose the government have a reasonable opportunity to express their views in the Legislature? Are debates open to the public? 	Yes.	<p>Sessions of both chambers of the parliament and their commissions are open to the public. The chambers, commissions and committees can decide to exclude the public from their meetings exceptionally, or during debates on certain issues (Rules of Procedure of the Chamber of Citizens of the Federal Assembly, art. 218, Rules of procedure of the Chamber of Republics, art. 220). Sessions of both chambers of the Federal Assembly used to be broadcast by Channel Two of state television (RTS). But since that channel has suspended its coverage, sessions are broadcast by YUinfo television, with smaller territorial coverage.</p>
<ul style="list-style-type: none"> ● Do select committees meet in public? Are their reports made public? 	Yes.	<p>Journalists can cover the work of parliamentary committees. Committee reports are available to the public.</p>
<ul style="list-style-type: none"> ● Is the legislature required to approve the budget? 	Yes.	<p>Like all draft laws, deputies can file amendments to the government's budget proposal.</p>



Indicators

- Are there significant categories of public expenditure that do not require legislative approval? Which?
- Are there rules concerning gifts and hospitality?
- If so, are these registers kept up to date? By whom?
- Is there a realistic mechanism to compel deputies to report gifts and services received?
- Is there an institution looking into deputies' assertions (as regards gifts and services)?
- What powers of sanction are in place against parliamentarians?

Formal provisions

- No.
- No.
- No.
- No.
- No.
- Yes.

What actually happens

Under the two chambers' Rules of Procedure, federal deputies can be cautioned, ruled out of order or expelled from a session. Federal deputies enjoy immunity from prosecution (FRY Constitution, art. 87). The deputy's Chamber decides on the application of his or her immunity. Federal deputies can be stripped of their mandates by the political parties which nominated them, if they resign their party membership or are expelled from their parties (Law on the Election of Federal Deputies to the Chamber of Citizens of the Federal Assembly, art. 94, and the Law on the Election of Federal Deputies to the Chamber of Republics of the Federal Assembly, art. 99).

Sanctions defined by the Rules of Procedure are applied often.

The Federal Assembly has stripped a number of deputies of their immunity from prosecution.



FR YUGOSLAVIA

Indicators

- Is there an independent Electoral Commission (if not, are the arrangements for elections in the hands of agencies who are widely regarded as being non-partisan)?
- Is the Executive entitled to appoint members in addition to those who have been elected? If so, are they entitled to vote?
- Are convicted criminals barred from running for election?
- Is the legislature generally ready to lift the immunity enjoyed by one of its members, regardless of the party to which the member belongs, where there are serious grounds for believing that he/she may be guilty of a serious criminal offence?

Formal provisions

Yes.

No.

No.

What actually happens

The federal electoral commission is in charge of the elections to both chambers of the federal parliament. At the elections held in the past, the federal electoral commission and district electoral commissions were not independent but operated under the control of the then ruling parties (SPS and JUL). Although the commissions did include representatives of other parties, majorities were held by judges who were SPS and JUL members.

The elections of federal deputies are regulated by laws explicitly stating that deputies are elected by citizens on the basis of a free, general, equal and direct right, at secret votes.

There have been no cases where immunity was not applied to a deputy from the ruling majority.



Indicators

Formal provisions

What actually happens

Political Party Funding

<ul style="list-style-type: none"> ● Are there rules on political party funding? 	<p>Yes.</p>	<p>A law on the financing of political parties, adopted in December 2000, exists in the FR Yugoslavia.</p>
<ul style="list-style-type: none"> ● Are substantial donations and their sources made public? 	<p>No.</p>	<p>The law on the financing of political parties defines sources of income as public knowledge and stipulates that records must be kept on the structure, type and size of income (art. 10). In practice, parties seldom make public major donations and donors' names.</p>
<ul style="list-style-type: none"> ● Are there rules on political party expenditures? 	<p>Yes.</p>	<p>Political parties may spend funds only in legally-prescribed manners, they must keep books and file annual financial statements with the accounting service of the National Bank of Yugoslavia.</p>
<ul style="list-style-type: none"> ● Are political party accounts published? 	<p>No.</p>	
<ul style="list-style-type: none"> ● Are accounts checked by an independent institution? 		<p>Political parties are legally bound to keep books. Control of their financial operations is carried out by the competent state organ.</p>
<ul style="list-style-type: none"> ● Does that institution start investigations on its own initiative? 	<p>Yes.</p>	<p>There is no information that such investigations have been conducted lately.</p>



Indicators

Formal provisions

What actually happens

Judiciary

- Do the courts have jurisdiction to review the legality of the work of the executive organs (presidency, prime minister, other ministers and senior officials)? If they have jurisdiction, do they apply it in practice? Does the Government (and to what extent) abide by court rulings? Is there an impression that the Government enjoys special treatment from the courts?

No. Only Government enactments can be the subject of judicial proceedings.

The Federal Court determines the legality of administrative regulations adopted by federal authorities.

Some citizens have won lawsuits against federal organs representing the state of the FRY (e.g. compensation suits filed by veterans of war).

- Are judges and examining magistrates genuinely independent?

No.

Judges of the Federal Court and Federal Constitutional Court are often subject to political influence.

In recent times, especially problematic was the role of the Federal Constitutional Court, in connection with a dispute surrounding the October 2000 election results, as well as the assessment of the constitutionality of a decree of the Federal Government dealing with cooperation with the war crimes tribunal at The Hague.

Judges' positions are not permanent, as they are elected by the parliament for nine-year terms of office.

- Are appointments based on merit?

During the appointment procedure, proficiency is not the only criterion to be considered. Influence can also be exerted by the ruling party or parties, as the election takes place in the parliament.

- Are appointments of judges of higher-instance courts free from government influence? Are their appointments the result of a political balance of forces and relations?

The Government can influence the appointment of judges through the parliamentary caucus of the ruling political group.



Indicators

- Is there a visible practice of unjustified and excessive delays in starting court proceedings?
- Is the duration of judicial proceedings excessively long, i.e. are verdicts brought in a reasonably short time? If there are delays, list the reasons?
- Is the keeping of court records reliable? If not, what are the main problems?
- Besides complaints filed to courts directly, are there separate institutions (possibilities), which the public can approach with complaints about irregularities in the work of courts?
- Is access to the courts easy, and are legal procedures thereof unnecessarily complicated?

Formal provisions

Yes.

There are parliamentary committees.

Yes.

What actually happens

The delays in some cases cannot be explained by the "customary" overload of cases.

Most trials last a long time.

Court filing systems are generally reliable.

This manner of protecting civil rights has proved to be inefficient and little use is made of it. There are proposals for establishing an Ombudsman.



Indicators

Formal provisions

What actually happens

Prosecutors

- Are public prosecutors independent?

Under the Law on the Federal State Prosecutor, the prosecutor is independent.

The Prosecutor is elected and dismissed by the Federal Assembly, which means that politicians have the power to elect a person who would implement their interests.

- Are there any cases of corruption in the prosecuting agencies?

No.

- Which legal instruments are available to prosecutors for investigating and prosecuting corruption and bribery cases?

None.

The prosecution of corruption criminal offences is not within the competencies of the Federal State Prosecutor.



Indicators

Formal provisions

What actually happens

Police

- Is the commissioner of police independent? i.e.
- Are appointments required to be based on merit?
- Is the appointee protected from removal without relevant justification?

The institution of the Commissioner of Police does not exist in Yugoslavia. The Minister of Internal Affairs is the highest authority within the Ministry of Internal Affairs. The Minister of Internal Affairs is responsible to the Prime Minister.

The federal Minister of Internal Affairs is the Vice-President of one of the most powerful parties in the country, which indicates that this post is still considered to be a very important function in political terms.

- Is there an independent mechanism to handle complaints of corruption against the police?

No.

There do exist Assembly committees that receive citizens' complaints but these cannot be considered independent bodies, as they are composed of representatives of political parties.

- In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

No data available.

- Which legislative instruments can be used by the police for the investigation and prosecution of cases of corruption/bribery?

The federal Criminal Code sanctions the taking of bribes by public officials.

There exist no specific means at the disposal of the federal police to use for the purpose of prosecuting these criminal offences.



Indicators

Formal provisions

What actually happens

Public Service

<ul style="list-style-type: none"> ● Do ministers respect the independence and professional capacities of their subordinate senior state officials? 	No.	<p>Ministers have no such obligation, and the situation in practice depends on each individual minister, so that no universal answer is possible.</p>
<ul style="list-style-type: none"> ● Is there a systematic policy of fighting bureaucracy, opening up the administration to the public, and improving its efficiency? 	No.	<p>Regulations prevent a systematic struggle against bureaucracy. One of the reasons is that the following laws, whose adoption was foreseen in Article 77, para. 10 of the FRY Constitution have still not been adopted: laws on the federal government, on the federal administrative organs and federal organisations, and on the position of employees of the federal authorities.</p>
<ul style="list-style-type: none"> ● Are brochures published which explain the duties of the civil service and the rights of citizens? 	No.	
<ul style="list-style-type: none"> ● Are there periodic surveys (polls) in which the users of public services rate their quality? 	No.	<p>With the help of donations or funds from the state budget, some scientific institutions, agencies and media conduct surveys from time to time.</p>
<ul style="list-style-type: none"> ● Do civil servants have an obligation to explain their decisions? 	Yes.	<p>In administrative matters which they handle autonomously on the basis of specific authority granted by senior officials, civil servants have an obligation under the Law on the General Administrative Procedure, <i>Official Gazette of the FRY, No. 33/97</i>, to explain all their decisions in more complex matters, and in simpler ones only when the client so demands.</p>



Indicators

- Is it clear to ministers and their immediate subordinates that ministers may not interfere in the operational activities of the departments they head?
- Are departments and services in ministries and the government open towards the media? Is information available on a regular basis, or do ministers and department heads have to authorise its release in advance?
- Can the public easily establish the identities of civil servants handling their cases?
- Are senior officials accountable for corruption or the poor performance of their subordinate staff?

Formal provisions

- No.
- No.
- Yes.
- Yes.

What actually happens

Ministers, or senior officials heading other federal organs, are responsible and interfere in the operational work of departments to the extent they feel competent, while the right to influence the work of departments and their employees has been granted to appropriate senior officials.

Laws, the Decree on the Formation of Organs, Organisations and Services, and the Decree and Instructions for Office Work, as well as other regulations covering information, define the right to release data and information to the public as the *prerogative of the official who heads the organ, organisation or service*. Other senior officials and staff members can release data and information only with the explicit consent of their superior officials and only within the boundaries of those authorisations.

In principle, clients can establish communication with the civil servants handling their cases, and can get information from them about the timeframe for the resolution of their cases. There exist no regulations providing for explicit bans on issuing information. But in some cases senior officials issue instructions for the identities of staff working on certain cases to be withheld in order to protect the organ and staff from possible pressure by the client.

Under the law, senior officials are accountable for their work, for that of the organ or organisation or service they head, and for the work of the staff of the organ, organisation or service. Accountability in the event of serious violations of powers and duties in the performance of duty is political, material and criminal. These regulations are contained in a law dating back to 1978.



FR YUGOSLAVIA

Indicators

- Are there mechanisms to protect civil servants reporting corruption or other malfeasance? If they exist, do civil servants trust them to protect them if they blew the whistle on a superior or a colleague?

- Are records kept of gifts and hospitality received by civil servants employed in sensitive posts?

- Is there regular rotation of civil servants employed in particularly sensitive posts?

- Are there periodic campaigns to inform the public about procedures and criteria for administrative decisions (granting permits, tax assessments etc.)?

- Are there clear rules requiring political independence of the civil service?

- Are there mechanisms to protect civil servants from pressures exerted by ministers and other politicians? If there are, what are they?

Formal provisions

- No.

- No.

- No.

- Yes.

- No.

What actually happens

There is no mechanism for protecting employees reporting their superiors for corruption or other malfeasance.

No legislation exists which makes obligatory the keeping of official records of gifts and services accepted by senior officials and other civil servants.

Periodic rotation of officials performing certain duties does not exist; no such obligation is defined by legislation. Only in the event of irregularities or disciplinary or other violations by a public official shall that official be replaced from his or her post as a disciplinary measure.

The federal Ministry of the Interior has conducted a campaign informing the public about the procedure for obtaining FRY citizenship.

The Constitution and laws define political independence of the public services ("...professional members of the armed forces and the police force of the Federal Republic of Yugoslavia may not belong to political parties" - Art. 42, para. 4, Constitution of the FRY).

The 1978 law mentioned above stipulates that a public official will refuse to carry out an instruction from a senior official which would constitute a criminal offence, but must carry it out if the senior official repeats it in written form.



Indicators

- Is there legislation establishing criminal and administrative sanctions for bribe-taking by civil servants?

- Does employment and service promotion depend primarily on competence?

- Are there regulations preventing nepotism?

- Are there rules (including registers) covering acceptance of gifts and hospitality by all civil servants?
 1. If there are, are records updated and who keeps them?
 2. Are those responsible for registers empowered to investigate suspicious cases?
 3. Have they staff to look into allegations?

- Are their post-civil service employment restrictions?

Formal provisions

Yes.

No.

No.

No.

No.

What actually happens

Criminal law defines penalties for accepting and giving bribes. Laws in the area of administration define disciplinary accountability for accepting bribes (e.g., Law on the Customs Service). Disciplinary accountability for accepting and giving bribes does not exclude criminal accountability.

Employment and promotion do not depend fully on competence. Under Article 321 of the 1978 law, as well as subsequent alterations and amendments to the law adopted in 1989, employment of federal administrative organs' staff and senior officials is based on a public competition, in accordance with the general enactment on systematic job specification.

There is no legislation regulating acceptance by and provision of presents and services to civil servants. There are no services keeping registers to that effect.

There are no major restrictions on employment possibilities following termination of service in the public sector. Restrictions can be defined by service regulations, in connection with employment which had the character of a state or official secret.



FR YUGOSLAVIA

Indicators

- Are there mechanisms to process complaints by the public in connection with the work of the civil service?

Formal provisions

No.

What actually happens

Under Article 44 of the FRY Constitution, citizens have a right to publicly criticise the work of the state authorities and senior officials, to submit to them complaints, petitions and suggestions, and to receive a reply if they so demand. However, this civil right is not protected by corresponding sanctions for those who violate it.



Indicators

Formal provisions

What actually happens

Public Procurement

<ul style="list-style-type: none"> ● Are there attempts to minimise bureaucratic requirements? 	<p>No.</p>	<p>The jobs performed in this way are bureaucratic by nature.</p>
<ul style="list-style-type: none"> ● Does public procurement require competitive bidding, with precisely-defined exceptions? Is access to the bids limited in any way? 	<p>Yes.</p>	<p>But restrictions can be imposed for the acquisition of military equipment and other specific procurements and deliveries, commissioning of works and sale of equipment etc., but only under specific legislation, such as national defence regulations, etc.</p>
<ul style="list-style-type: none"> ● Are there strict formal requirements that limit the extent of sole sourcing? 	<p>Yes.</p>	<p>In cases where repeated tenders are unsuccessful, public procurement can be contracted for by direct negotiation.</p>
<ul style="list-style-type: none"> ● Is information about public procurement widely distributed to the private sector? 	<p>No.</p>	
<ul style="list-style-type: none"> ● Are regulations on public procurement available to the public? 	<p>Yes.</p>	<p>Regulations on public procurement are available to the public - they are published in official gazettes and economic and other bulletins, as well as the daily press.</p>
<ul style="list-style-type: none"> ● Are procurement decisions made by a central tender commission or by commissions set up by administrative entities? 	<p>No.</p>	<p>Decisions on public procurement and contracts are made by the government (within its competencies), as well as state administrative organs, parliamentary services, the National Bank of Yugoslavia and other organs procuring commodities or services or commissioning works (refurbishings, construction, reconstruction activities, etc.).</p>
<ul style="list-style-type: none"> ● Is procurement bidding outcomes (winners) made public? 	<p>Yes.</p>	<p>Information about public procurement are distributed through the Chamber of Commerce of Yugoslavia.</p>



FR YUGOSLAVIA

Indicators

- Is there a procedure to request review of procurement decisions?
- Can an unfavourable decision be reviewed in a court of law? If the court accepts the complaint, what is the procedure that follows and does the party, which suffered damage, receive fair compensation?
- Are there provisions for blacklisting companies proved to have offered bribes in a procurement process?
- Are there procedures for preventing nepotism/conflicts of interest in public procurement?
- Is there monitoring of the assets, incomes and lifestyles of officials in charge of public procurement?

Formal provisions

Yes.

Yes.

No.

No.

No.

What actually happens

Participants in public tenders have the right to file grievances about the legality of the procedure to the competent ministry; the decision issued thereto is binding.

The party which suffered damage is not entitled to go to court and seek cancellation of a contract concluded with a competitor, but can only seek compensation. The courts usually award only compensation covering the costs of the participation in the bidding, rather than the full amount of profits lost by failure to win the contract.

There exist no specific regulations about blacklisting companies or individuals who offered bribes during the tender procedure or made other illegal actions.

No, except in cases where a criminal offence has been reported or is suspected. The control is carried out by police.

Indicators

Formal provisions

What actually happens

Media

● Is there freedom of information laws and/or do procedures exist to ensure that members of the public can obtain information/documents from public authorities?

No.

The only thing that the citizens are guaranteed is the right of access to personal data on the basis of the federal Law on the Protection of Personal Data (1998), whereas the federal and republican laws on public information stipulate that it is the duty of state organs to make information accessible to the media.

● Does the country have an "Official Secrets Act" or something similar - if so, is it used as a tool to effectively secure censorship of the media by the government?

Yes. The federal and the republican Criminal Codes stipulate that one is to be prosecuted for giving away a state, professional, military and business secret.

The criteria for determining a secret are usually regulated by law in a very general way, which enables the executive organs to interpret these criteria themselves. In practice, this is most often the case with military secrets, because the Law on National Defence gives a very broad definition of military secret; as a consequence of this, one can come across military data that do not endanger the security of the country in the foreign media while their publication in the domestic media has been forbidden.

● Is there a law guaranteeing freedom of speech and of the press?

Yes. Freedom of the media is regulated by the Constitution and the Public Information Law.

The regulations currently in effect do not contain any legal remedies for realising these freedoms.

● Is there censorship of the media?

Censorship is forbidden by the federal and republican constitutions and the federal and republican laws on public information.

There is no open censorship of the media. Freedom of expression is limited by the existing Criminal Code provisions on slander and libel, by political pressure on the media, by non-transparency of the work of the government and state officials and by unequal treatment of the media on the part of officialdom.



FR YUGOSLAVIA

Indicators

- Is there a spread of media ownership?
- Is there a competition within the **(a)** print media, **(b)** television, **(c)** radio - and do antimonopoly laws exist to secure competition and, if so, are they enforced?
- Is there an antimonopoly law ensuring competition? To what extent is it observed in practice?
- Is there a growing independent media sector - including Internet media, informal journals and newsletters, and is this growing?
- Is the publicly owned-media independent of government control as to editorial content? If not, is the publicly owned media in practice relied upon, by the public at large, as a credible news source?

Formal provisions

Yes.

Yes.

No.

What actually happens

There is a spread of media ownership, including state (national and local public media), private and mixed property.

Private ownership is dominant both in the printed and the electronic media.

There is a lot of competition among the printed media. It is only in this area that the private media are more influential than the state media. No TV or radio station in the UHF range covers the entire territory of FRY.

The antimonopoly provisions pertaining to media ownership are very few because the media concentration of ownership is still rather diffuse.

The independent media are numerous and diverse, but their financial, technological and personnel resources are small.

The survival, and in particular the development of the independent media require the assistance of the state and foreign donors because their operation has become very difficult due to the market conditions.

The new political framework in FRY and in its republics (in Montenegro since 1997, in Serbia since December 2000) has brought about a big change on the media scene. The media stopped being the main propaganda tool of the government for mobilising support for its policies and creating a negative image of any opposing view. Still, the public media - especially the national television - are the most trusted information source in both Serbia and Montenegro. The media operating at the federal level are uncritically disposed towards the federal authorities.



Indicators

- Does any publicly-owned media regularly cover the views of government critics? Does the publicly owned media routinely carry stories critical of the administration (e.g. quoting opposition politicians etc.)?
- Have journalists investigating cases of corruption been physically harmed in the last five years?
- Does the media carry articles on corruption?
- Do media licensing authorities use transparent, independent and competitive criteria and procedures? Do media entities (print, audio-visual and other) have to obtain special licences/permits from public authorities? If so, is this a device is used to censor the media?
- Are libel laws used, in effect, to censor the media and curb the dissemination of information about persons who influence the community?
- Are libel laws or other sanctions (e.g. withdrawing of state advertising) used to restrict reporting of corruption?

Formal provisions

- No.
- Yes.
- Yes.
- Legal regulations in Serbia and Montenegro differ a lot. In Montenegro, a license is necessary for audio-visual media outlets only, whereas in Serbia it is necessary for all media outlets.
- Yes. In FRY, libel/slander is an offence punishable by a prison sentence.

What actually happens

- Press releases of political parties are published. As for the remainder of the program, the opposition's views receive little publicity in Serbia, and neutral at that, whereas they receive a lot of publicity in Montenegro, and negative at that.
- During the Milošević regime, journalist Slavko Ćuruvija was murdered and several journalists were sent to prison.
- Reporting on corruption began after the change of government in October 2000. This topic became less prominent afterwards, but re-emerged during August-September 2001 on account of a conflict in the ruling DOS coalition. Independent journalistic research on corruption cases is very rare.
- Until the year 2000 the state control over broadcasting frequencies and licences was often used to suppress the development of the independent electronic media. The criteria for issuing licences were neither transparent nor independent. New regulations are being prepared, and these envisage the existence of a regulatory body for the allocation of frequencies and issuing licences for the operation of the audio-visual media.
- Under the Milošević regime, these provisions were used in order to suppress the publication of information on influential politicians. Even today, the Criminal Code provisions represent obstacles for journalists wishing to report freely on public figures. In September 2001, Vladislav Ašanin, the editor-in-chief of the Montenegrin daily Dan, was sentenced

Indicators

- How well are journalists paid?



Formal provisions

What actually happens

to five months in prison, to be suspended over a period of two years, having been sued for libel by Serbian businessman because his paper had reprinted a series of articles published in the Croatian Nacional paper. Milo Đukanović, the Montenegrin President, also sued the Dan paper for libel.

There have been several proposals urging that the libel/slander provisions in the Criminal Code be replaced by civil law provisions, in keeping with the international practice in this area.

In Serbia, journalists employed with the public media earn on average between DEM 100 and 300. The average figure is somewhat higher in Montenegro, where the average earnings are slightly higher. In the commercial media in Serbia, the average salaries are in the DEM 200-300 range, and only those in top managerial positions earn more.



Executive

- The Federal Republic of Yugoslavia has no law on obligatory reporting of property owned by state officials, or a law on administrative control.
- Government members are not permitted to hold other public posts, but this ban is not respected in practice.

Executive power in the Federal Republic of Yugoslavia is held by the federal government, which formulates and conducts internal and foreign policies, enforces federal statutes, other laws and general enactments, adopts decrees, introduces bills, tables the budget proposal and the annual statement, issues opinions on draft laws or other legislation introduced by other authorised sponsors, creates and abolishes ministries and other federal agencies and institutions, orders general mobilisations, proclaims an imminent threat of war (Constitution, art. 99). The government is made up of the prime minister, deputy prime minister and federal ministers (Constitution, art. 100). The federal prime minister shall be responsible to the Federal Assembly (parliament) for his work and for the work of the federal government (Constitution, art. 103).

Private citizens can file with regular courts lawsuits against the federal state or its organs if any of their rights have been violated by a decision or activity of the state authorities.

If a law or decree is deemed by citizens to be in contravention of the Constitution or the law, they can file with the Federal Constitutional Court a motion for an assessment of its constitutionality or legality.

A member of the federal government may not hold any other public office or engage in professional activities (Constitution, art. 100). But some federal government ministers also hold seats in the federal par-

liament. No legal obligation exists for federal government ministers to file a list of their property when they begin their term of office, and neither are there limitations on the activities they may perform immediately after leaving their government posts.

Upon a request by the parliament, federal government ministers have an obligation to submit to the parliament reports on their work, and also to respond to deputies' questions within 30 days at most. Interpellation exists in the rules of procedure of both parliament chambers.

In the lawmaking process, it is customary for the government to form teams of experts to prepare bills. This is followed by "public debates" involving mainly experts and interest organisations (trade unions and others).

- It is necessary to adopt regulations preventing conflicts of interest.
- Personal assets must be registered before taking up office and controlled during the term.
- A ban must be imposed on employment on certain activities (within a certain period) after expiry of the term of office.



Legislature

- Federal parliamentary deputies are allowed to be deputies in the Serbian parliament, and to perform other public functions, including economic ones.
- Federal deputies are allowed to be members of the republican government, officials of local administrations, directors of public enterprises.
- There are no regulations in FRY, which would help prevent conflicts of interest.

The Federal Republic of Yugoslavia has a bicameral parliament named the Federal Assembly, which decides on the Constitution of the FRY, the admission of other states as member republics into the FRY, alterations to the frontiers and war and peace, adopts federal statutes, other laws and general enactments, approves the federal budget and final balance sheet, ratifies international treaties falling within the jurisdiction of the FRY, oversees the work of the federal government and other federal organs and the officials answerable to the Federal Assembly (FRY Constitution, art. 78). The parliament has two chambers: the Chamber of Citizens and the Chamber of Republics. The Chamber of Citizens is made up of 108 federal deputies chosen in 26 electoral districts in Serbia and 30 federal deputies chosen in the republic of Montenegro as a single electoral district (Law on Electoral Districts for the Election of Federal Deputies to the Chamber of Citizens of the Federal Assembly, arts. 2 and 3). The Chamber of Republics is made up of 20 deputies from each of the two member republics, chosen at direct elections (Constitution, Amendment III). The election of deputies takes

place in two electoral districts: Serbia and Montenegro as single electoral districts (LEFD/Chamber of Republics, art. 12).

The election and termination of the mandates of federal deputies is regulated by the Law on the Election of Federal Deputies to the Chamber of Citizens of the Federal Assembly. Federal Deputies are elected on the basis of lists proposed by political parties, party coalitions or groups of citizens (LEFD/Chamber of Citizens, art. 3; LEFD/Chamber of Republics, art. 3). Electoral lists for both chambers are considered valid if supported by the signatures of at least 1,000 voters residing in an electoral district with a total electorate of up to one million, or a minimum of 2,500 voters in bigger electoral districts (LEFD/CC, art. 43; CR, art. 47).

Elections for both chambers are held according to a proportional electoral system, where lists need to win a minimum of 5% of the overall vote to be given parliament representation (LEFD/CC, art. 87; CR, art. 92). All lists winning more than 5% of the overall vote are given a number of mandates proportional to their share in the overall vote, (LEFD/CC, art. 87; CR, art. 91) calculated by the greatest quotient system (LEFD/CC, art. 88; CR, art. 93). Federal deputies are elected for four-year terms (Constitution, art. 81). The mandate of a federal deputy can be terminated before the expiry of the four-year period under conditions regulated by federal law. The mandates of deputies in the Federal Assembly shall be terminated if within three months of the beginning of the procedure a federal government is not elected or if within this time the federal budget is not approved (Constitution, art. 82), when they are not able to exercise their constitutional powers in a lengthy period (the parliament is dissolved by the Federal Government after the speakers of both chambers present their opinions) (Constitution, art. 83), or at the request of at least 30 deputies in the Chamber of Citizens or 20 deputies in the Chamber of Republics (Constitution, Amendment I.)

Elections for the Federal Assembly are called by the President of the Republic (Constitution, art. 96; LEFD/CC, art. 20; CR, art. 21).



The organs for the implementation of elections are the federal electoral commission, electoral commissions and voting committees (LEFD/CC, arts. 5 and 24-36; CR, arts. 5 and 25-40). They are autonomous and independent in their work, and operate on the basis of the law and regulations based on the law. In their work they are answerable to the organ, which appointed them. The protection of the voting right is secured by the electoral commissions, the Federal Constitutional Court and the competent courts (LEFD/CC, art. 6; CR, art. 6).

All able-bodied Yugoslav citizens with residence on the territory of the electoral district and over the age of 18 years have the right to vote at federal elections. The following can be elected to parliament: Yugoslav citizens who are able-bodied, over the age of 18 and residing on the territory of the electoral district in which they have been nominated (Chamber of Republics) or on FRY territory (Chamber of Citizens). (LEFD/CC, art. 10; CR, art. 10)

The work of the parliament is regulated by the Rules of Procedure of the Chamber of Citizens and Rules of Procedure of the Chamber of Republics.

The Rules define the organisation and work of the chambers.

The Federal Assembly has permanent commissions formed by both chambers. They are the Commission for Constitutional Questions, the Legislative and Legal Commission, the Commission for the Exercise of the Liberties, Rights and Duties of Man and Citizen, the Administrative Commission, the Commission for Petitions and Proposals, and the Commission the Rules of Procedure of the Chambers (Rules of Procedure of the Chamber of Citizens of the Federal Assembly, art. 48; Rules of Procedure of the Chamber of Republics of the Federal Assembly, art. 49). Ad-hoc commissions and commissions of inquiry can also be formed. The two chambers form committees to look into questions within their jurisdiction. The committees can be permanent, ad-hoc and committees of inquiry. The Chamber of Citizens has eleven permanent committees, and the Chamber of Republics ten (Rules of Procedure/CC, art. 65; CR, art. 65).

Deputies have a right to move for an amendment to and/or change of the agenda (Rules of Procedure /CC, art. 82; CR, art. 82), to address the parliament on all points of the agenda (Rules of Procedure/CC, art. 86; CR, art. 86), to rebuttal (Rules of Procedure /CC, art. 90; CR, art. 90) and the right to query the Government or its ministers (Rules of Procedure/CC, arts. 185-190; CR, arts. 186-191). A minimum of ten deputies in the Chamber of Republics or 15 in the Chamber of Citizens can raise an interpellation for a debate on a certain question in connection with the work of the federal government (Rules of Procedure/CC, art. 191; CR, art. 192).

Sessions of the Federal Assembly and its committees are open to the public (Rules of Procedure/CC, art. 218; CR, art. 220). Sessions of both chambers of the Federal Assembly used to be broadcast by Channel Two of state television (RTS). But since that channel has suspended its coverage, sessions are broadcast by YUinfo television, with smaller territorial coverage. Records and minutes of committee and chamber meetings, draft laws, decisions and other enactments adopted by the parliament are made available to the information media (Rules of Procedure/CC, arts. 219-222; CR, arts. 221-223) The public can be excluded from parliament, commission and committee meetings under certain conditions. (Rules of Procedure/CC, art. 218; CR, art. 220)

The speaker of each chamber can caution deputies or rule them out of order on account of disorderly conduct. The chamber can expel a deputy from its session. These measures are also applicable to all other participants in the parliament session, as well as meetings of committees and other working bodies of the parliament (Rules of Procedure/CC, arts. 108-115; CR, arts. 109-115).

Federal deputies enjoy immunity from prosecution. Federal deputies may not be detained without the consent of the Federal Assembly chamber of which they are members, unless caught in the act of committing a criminal offence carrying a prison sentence of more than five years. Criminal or other proceedings for an offence carrying a sentence of imprisonment may not be brought against federal deputies

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claiming immunity, without the consent of the assembly chamber of which they are members (Constitution, art. 87). Committees for mandate and immunity questions of the parliamentary chambers rule on demands for stripping deputies of immunity from prosecution (Rules of Procedure/CC, art. 76; CR, art. 75).

The relationship between the legislative and executive branches is regulated by the Constitution of the Federal Republic of Yugoslavia. The Federal Assembly appoints and dismisses: the federal prime minister, deputy prime ministers and ministers in the federal government, and oversees the work of that government (Constitution, art. 78).

No federal regulations exist preventing conflicts of interest in connection with the post of federal parliamentary deputy. A federal deputy can be a member of a republican or federal government, and can also hold other public posts, including economic ones.

- The law would stipulate that parliamentary deputies may not hold any other office than that of deputy, and define other mechanisms to prevent conflicts of interest.
- A law must be adopted stipulating compulsory registration of deputies' assets and control during their terms of office.
- A law on administrative control should regulate deputies' income outside their salaries and income control mechanisms.

Political Party Funding

- Although the Law on the Financing of Political Parties defined mechanisms for controlling the inflow of funds (source of money) and expenditure, and clearly defines the sources of funds for financing political parties, the financing of parties in Yugoslavia is not transparent, and often takes place outside the law.

The federal Law on the Financing of Political Parties was adopted in December 2000. The law, proposed by the coalition (DOS-SNP) government formed after the elections in December, is made up of two parts, seven chapters and 18 articles. Chapter One (art. 1) contains a provision defining the scope of the law. Chapter Two (arts. 2-9) regulates the acquisition of funds. Funds for financing political parties can be acquired from membership dues, voluntary contributions, gifts, gratuities, legacies, income from party property and the performance of legally-permissible activities, ownership rights in enterprises and from the federal budget (art. 2). Funds cannot be acquired from governments, other organs, organisations based in foreign countries and other foreign nationals, the state authorities and local self-government, except for funds foreseen by the budget, institutions and other organisations operating with state-owned assets, public enterprises where the state holds more than 10% of the founding capital, and anonymous contributions exceeding a certain maximum (art. 3). The federal budget is a source of funds for financing the operation of political parties represented in the federal parliament, and covering the election needs of parliamentary parties and parties whose candidate was elected president of the FRY. A political party is legally bound to file with the competent accounting service branch a report on funds collected and spent on election campaigns (art. 9). Chapter Three regulates the man-



ner in which financial operations are recorded (art. 10). Parties are legally bound to keep records of all income according to the source, size and structure of income and expenditure in keeping with the federal law. Chapter Four regulates control of the acquisition and spending of funds (arts. 11-12). Political parties are legally bound to make available to the federal accounting and financial supervisory organs records of the sources of income and their expenditure. They are also legally bound to file an annual financial statement. Chapter five regulates the right of political parties to use the property of the former League of Communists, Socialist Alliance and Socialist Youth (SKJ, SSRNJ, SSOJ; arts. 13-14), which immoveable and moveable property this law defines as property of the FRY. One-half of the immoveables will be allocated to parliamentary parties for their regular activities. Contracts under which that property was transferred or leased to other legal or physical entities are declared null and void. Although the law stipulated that all the said property should be catalogued by June 30 this year, there are no signs that the job will be finished soon.

Chapter Six defines punitive sanctions (art. 15) for political parties and responsible officials. Chapter Seven contains transitional and concluding provisions (arts. 16-18). The law also applies to all groups of citizens whose candidates have been elected to parliament or to the federal presidency.

- The law on the funding of political parties should be altered to bar parties from financing their activities from the income of enterprises and institutions.
- Political parties should be barred from engaging in any activities except those for which they have been registered.
- Political parties should be barred from setting up enterprises, agencies and similar for acquiring funds.

Auditor General

- The institution of a Auditor General does not exist in FRY.
- There are currently no plans to introduce an Auditor General at federal level.

The institution of Auditor General does not exist in the Federal Republic of Yugoslavia. A UNDP mission visited Belgrade in mid-May this year to look into the situation and draft a proposal for the introduction of an Auditor General.

Continuing political uncertainty in regard to the survival of the federation means that no work has taken place on any plans for an Auditor General.

- The institution of Auditor General must have firm foundations in the Constitution, laws and other legislation.
- The Auditor General must enjoy operational, organisational and financial independence, to secure the efficient performance of the supervisory function.
- The Auditor General should be constitutionally and legally granted the necessary powers and funds to control all public expenditure and transactions, regardless of whether they are shown in the budget or not, and regardless of who benefits from or controls those funds, including funds from international sources.
- The Auditor General should review all public spending in regard to both its regularity and its efficiency.

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- The Auditor General must be permitted to make public the results of all audits. The Auditor General submits a report to the parliament, which should also be available to the media and the public.
- The Auditor General should assist the bodies it controls to develop their own efficient internal control mechanisms.

Judiciary

- The courts of the Yugoslav federation are the Federal Constitutional Court, the Federal Court and military tribunals.
- The position of federal judges differs from that of their colleagues in Serbia.
- The position of the Federal Court is difficult, owing to the Montenegrin authorities' non-recognition of the federal institutions.

The courts of the Yugoslav federation are the Federal Constitutional Court, the Federal Court, a court of general jurisdiction, and military tribunals - specialised courts.

The Federal Constitutional Court

The Federal Constitutional Court was founded on the basis of the Constitution of the Federal Republic of Yugoslavia. The Federal Constitutional Court rules on: the conformity of the constitutions of member republics with the Constitution of the FRY; conformity of statutes and other laws and general enactments with the Constitution of the FRY, with federal law and with ratified and promulgated international treaties; conformity of general enactments of political parties and associations of citizens with the present Constitution and federal law; complaints about a ruling or action violating human and civil rights and liberties enshrined in the Constitution; conflicts of jurisdiction between federal and republican authorities as well as between the authorities of the member republics; prohibition of activities of political parties and other associations of citizens; violation of rights in the course of the election of federal officials (Constitution, Article 124). Anyone, as well



as the Federal Constitutional Court itself, may sponsor an initiative for proceedings to establish constitutionality and legality (Article 127).

The Federal Constitutional Court is composed of seven justices, appointed for nine-year terms. A President of the court is elected by the justices from among their own ranks, by secret ballot, for a term of three years. A justice of the Federal Constitutional Court may not hold any other public office or engage in any other professional activity. Judges enjoy the same immunity as federal deputies; the immunity of a Federal Constitutional Court justice is decided on by the Federal Constitutional Court (Article 125). A justice of the Federal Constitutional Court shall be dismissed if found guilty of a criminal offence rendering him unfit to perform his duties or if he is permanently incapacitated for the performance of his duties of justice of the Federal Constitutional Court. The Court shall inform the Federal Assembly and the President of the Republic of the causes for the termination of office or dismissal of a justice from the Court. The Federal Constitutional Court may decide that a justice of that Court against whom there are criminal proceedings should not perform his duties for the duration of those proceedings (Article 126).

The Federal Constitutional Court decides by a majority of votes of the justices. A ruling of the Federal Constitutional Court shall be universally binding and effective. If needed, the execution of a ruling by the Court shall be carried out by the federal government (Article 129).

When the Federal Constitutional Court determines that there is a discrepancy between given provisions of the constitution of a member republic and the Constitution of the FRY, the said provisions cease to be valid at the end of six months from the day the discrepancy was found, if the discrepancy has not been rectified within that time. When the Court determines that there is a conflict between given provisions and statutes, other laws and general enactments and the Constitution of the FRY or federal law, the said legislation ceases to be in effect from the day of publication of the Court's ruling (Article 130).

In the course of proceedings until a final decision is handed down, the Federal Constitutional Court may halt the execution of a given act or measure taken on the strength of a law, other regulation or general enactment whose constitutionality or legality is under review, if irreparable harm is liable to occur if it were to be carried into effect (Article 132).

In practice, the competency of the Federal Constitutional Court is very restricted, as its decisions are not honoured in Montenegro. There have also been examples of the authorities in Serbia ignoring its rulings; Court decisions, even when made on the basis of its constitutional powers, were not implemented because of a lack of political will.

The Federal Court

Under the Constitution of the FRY, the Federal Court acts as a court of the highest instance, as stipulated by federal law; decides on appeals against rulings by courts of the member republics in cases concerning enforcement of federal statutes; decides on property suits between member republics and between the FRY and member republics; determines the legality of administrative regulations adopted by federal authorities; decides on conflicts of jurisdiction between courts of two member republics as well as between military tribunals and other courts; lays down the principles governing the uniform enforcement of federal statutes and other federal laws and general enactments by the courts.

The Federal Court was founded on the basis of the Federal Court. Its justices are appointed by the Federal Assembly, after being nominated by the President of the Republic (rather than by the parliamentary judicial commission, as is the case in Serbia). Their terms are nine years, which means that their judicial positions are not permanent. They enjoy the same immunity from prosecution enjoyed by federal parliamentary deputies (in Serbia a deputy's immunity is broader than that of a judge). In conformity with federal law, the Federal Court decides

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on judges' immunity (in Serbia the republican parliament does so). Justices of the Federal Court select one of their members to act as president of that Court for a term of three years (in Serbia the president is elected for four years by the republican parliament). Residential permanence is not relevant for justices of the Federal Court, as no other court of that type exists. The salary of the Federal Court justice is at the level of that of a member of the federal government, which corresponds with the principle of the division of power (in Serbia judges' salaries are lower than those of the holders of executive power at similar levels of hierarchy). In all other aspects, the position of a justice in the Federal Court corresponds with that of judges in the Serbian judicial system.

The authority of the Federal Court has been undermined considerably by the Montenegrin government's non-recognition of the federal authorities.

Military Tribunals

Military tribunals are empowered to adjudicate on criminal offences perpetrated by military personnel, as well as criminal offences perpetrated by other persons in connection with the defence and the security of the country; to settle disputes concerning compensation for damages sustained in the performance of military services; to settle administrative lawsuits against the administrative regulations of the military authorities; and to execute the rulings handed down by those courts.

The military has a two-instance judiciary - there are military tribunals of the first instance and a Supreme Military Tribunal.

Appeals against rulings of military tribunals founded on federal regulations are heard by the Federal Court.

In the performance of their function, military tribunals are independent. The presidents and judges of military tribunals are appointed by the President of the FRY, at the recommendation of the Minister of Defence. A judge's position is permanent. Judges of military tribunals enjoy immunity similar to that enjoyed by judges in Serbia, except that the

federal president is in charge of assessing that immunity. Military judges may not engage in any other public or professional activity. They are subject to disciplinary accountability, which is unique for the military judiciary. Military judges hold ranks in the armed forces and are paid correspondingly. Their dismissal is within the powers of the federal president.

In all other aspects, the position of the military judiciary corresponds to that of its civilian counterpart.

- As part of the changes in the organisation of the federal state, a judiciary should be organised to follow the competencies of the future federation.
- The independence of judges must be guaranteed.
- The federal judiciary should have its own budget, ensuring its unhindered operation.
- The basic criteria for the appointment of federal judges must be proficiency and integrity.
- In cooperation with the military authorities, the possibility should be investigated of part of the competencies of the military judiciary to be transferred to the civilian judiciary.



Federal Public Prosecutor

- The Federal Public Prosecutor is appointed by the Federal Assembly to a four-year term of office.
- The Federal Public Prosecutor issues compulsory instructions.
- The mechanism laid down by law does not function in practice.

The position of the Federal Public Prosecutor is defined by the 1992 Constitution of the FRY and the 1992 Law on the Federal Public Prosecutor. The Federal Public Prosecutor is appointed and dismissed by the Federal Assembly, for a four-year term of office. While in office, the Federal Public Prosecutor may not hold any other public post or engage in other professional activities.

Under the Law (Art. 2), the prosecutor is independent in the performance of duty. The prosecutor's work is public.

Finding a violation of a federal statute or international treaties, the Federal Public Prosecutor may demand that the execution of the disputed decision is postponed or suspended. Also within the Federal prosecutor's competencies is the compulsory provision of instructions to prosecutors in the member republics. These instructions can be general in character or concerning a specific case. In case a prosecutor in Serbia or Montenegro fails to act upon the instruction, the Federal Public Prosecutor will take steps to secure the legality of procedure. (Art. 7)

The Federal Public Prosecutor has four deputies answerable to him who carry out jobs with which he entrusts them (Art. 13). The deputies are elected in the same manner as the prosecutor.

Over the past few years, the office of the Federal Public Prosecutor has been generally passive, the biggest problem being the unresolved

status of the Federation. The joint platform of the Federal and Serbian Governments does not anticipate a public prosecutor among the future federal organs of authority.

- Given that the joint platform of the federal and Serbian governments on the reorganisation of the Yugoslav federation does not anticipate a federal prosecutor, the only possible recommendation is that as long as the institution exists, its decisions and compulsory instructions must be respected.
- Although the Federal Public Prosecutor does not have the power to implement his decisions, the corrective mechanism they contain is not without significance.



Police

- The unresolved status of the federal state poses problems to the Ministry.
- There exists no mechanism designed to deal with citizens' complaints.
- Assistance from abroad is uncoordinated.

Formal provisions

In The Federal Republic of Yugoslavia there are three separate police forces: the Federal Ministry of Internal Affairs (FMIA), the Ministry of Internal Affairs of the Republic of Serbia (MIARS), and the Ministry of Internal Affairs of the Republic of Montenegro (MIARM). The Ministries operate independently of one another.

The institution of the Commissioner of Police does not exist in Yugoslavia.

The Minister of Internal Affairs is the highest authority within the Ministry of Internal Affairs. To some extent, the Deputy Minister in charge of public security may be compared to the Commissioner of Police.

The Federal Minister of Internal Affairs is appointed and relieved of duty by the Prime Minister, to whom he is answerable. The Prime Minister is answerable to the Parliament.

The appropriate instruments for the investigation and prosecution of cases of corruption/bribery involving public officials in federal organs and organizations are provided by The Penal Code of FR Yugoslavia (PCY), Article 179 ("Acceptance of bribery") and The Criminal Procedure Code (CPC) of FR Yugoslavia, Article 199.

Article 179 of PCY provides for the punishment of any federal public official who solicits or receives a gift or profit, or a promise of a gift or profit in return for committing an official act that should not be committed, or for failing to commit an official act that should be committed. The offence is punishable by one to ten years in prison (Par 1).

Any public official who solicits or receives a gift or profit, or a promise of a gift or profit in return for committing an official act that should be committed, or for failing to commit an official act that should be committed, shall be punished by six months to five years in prison (Par 2).

Any public official who demands or accepts a gift or profit after having committed an offence referred to in Pars 1 and 2 of Article 179 shall be sentenced to a minimum of three months or a maximum of three years in prison (Par 3).

The CPC (Article 199) provides for the punishment (from three months to three years' imprisonment) of a federal official who fails to report a criminal offence prosecuted ex officio that he/she has been informed about while performing his/her duty and that punishable by a minimum of five years' imprisonment.

The Actual Situation

The Federal Ministry is faced with difficulties pertaining to the unresolved status of the federal state.

The assistance coming from abroad is not very well conceived or realised in an appropriate manner. Various police forces and donors from abroad compete, as it were, in offering their services, but do so in an uncoordinated fashion or without proper planning, so that their assistance has not brought the desired results yet.

In contravention of the provisions of the Constitution of FRY, members of the Federal Ministry continue to be members of political parties.



For the time being, there is not any independent mechanism designed to deal with complaints pertaining to police corruption.

However, on the federal level, the two Chambers making up the Federal Assembly - the Chamber of Citizens and the Chamber of Republics jointly establish the Commission for Complaints and Proposals. It is entrusted with the task of "dealing with complaints, petitions and proposals addressed to the Federal Assembly and proposing appropriate measures to the Chambers and to the authorised organs; the Commission shall inform the party having submitted the request if the said party requires it to do so". The Commission shall notify the Chambers of its opinion (Article 53 of the Rules of Procedure of the Chamber of Citizens; Article 54 of the Rules of Procedure of the Chamber of Republics).

The two Chambers also jointly establish the Commission for the Realisation of Freedoms, Rights and Duties of Man and Citizen, which "monitors the realisation and protection of freedoms, rights and duties of man and citizen established by the Constitution and laid down by laws and other legislative acts".

Each of the two Chambers has a Committee for Defence and Security in charge of reviewing laws and other acts pertaining to national defence and security. The Committees may also be asked to review "questions pertaining to the control of the Federal Government and other federal agencies and officials accountable to the Federal Assembly" (Article 67 of the Rules of procedure of the Chamber of citizens and Rules of procedure of the Chamber of Republics).

These Committees are not authorised to deal with public complaints against police conduct in general and against police corruption in particular.

The organs dealing with public complaints in general are composed of MP's who represent their respective political parties. Their term of office is tied to the term of office of the legislative body that has appointed them. Therefore, they cannot be established as an independent mechanism.

There are projects to establish the institution of the ombudsman, which should be empowered to deal with these complaints. Such a decision should be provided for by the Constitution.

- Control exercised by authorised parliamentary bodies should become regular and efficient.
- New independent institutions of external control and supervision (Board of Supervision, ombudsman) should be introduced without delay.
- Setting up a particular unit within the Ministry should substantially increase internal control.
- Cooperation with foreign police forces should be better coordinated, which would make international assistance more effective.



Public Service

- State administrative organs are often identified with public services.
- The application of regulations covering the state administration is expanded to public services, which has the following consequences: dependence on the budget financing of public services, reduction of their creativity and market orientation in their work, growing bureaucratisation of society, and unnecessary administration.
- The existing legislation generates arbitrary behaviour and irresponsibility.
- Since October 5, 2000, no major changes of the situation have taken place.
- Laws are filled with regulations granting high officials discretionary powers.
- The Law on the Foundations of the System of State Administration and the Federal Executive Council and Federal Administrative Organs, adopted in the SFRY in 1978, is still in force.
- Existing legislation features no division between officials and appointed officials.
- A culture and practice of officially publishing handbooks does not exist.
- No law on ministerial accountability exists, with the result that that accountability is most often non-existent.
- Ministers interfere in the operational affairs of departments.
- There exists no mechanism to protect civil servants.
- No legislation or other regulations exist which make obligatory the keeping of registers on the acceptance and presentation of gifts and services.
- No mechanisms exist which prevent pressures on civil servants.
- No legislation exists preventing nepotism.
- There exist no major restrictions on employment possibilities after termination of employment in the civil service.
- There exists no legislation regulating decision-making mechanisms covering public complaints about the work of public officials.
- Professional personnel of the armed forces and federal police force are barred from engagement in political activities.

Positive Law Regulations

The law in force in the federal authorities is the Law on the Foundations of the System of State Administration and on the Federal Executive Council and Federal Administration, adopted in the Socialist Federal Republic of Yugoslavia in 1978, " *Official Gazette of the SFRY* ", No. 23/78. The law regulates the operation and rights, duties and responsibilities of the public services, i.e., the state administrative organs and other federal organs and organisations. This law is applied in cases not covered by subsequent statutes and federal government regulations. The law was altered and amended a total of 13 times. (" *Official Gazette of the SFRY* ", Nos. 58/79, 21/82, 18/85, 37/88, 18/89, 40/89, 72/89, 42/90, 44/90, 74/90 and 35/91, and " *Official Gazette of the FRY* ", Nos. 31/93 and 50/93).

Federal Government decrees on the formation of federal ministries, other federal organs and organisations and services of the Federal Government (the latest of which was published in the " *Official Gazette of the FRY* ", No. 24/2001 dated 27 July 2001) regulate questions, which



under the Constitution can only be regulated by law. These are questions dealing with the types of senior officials, their status and their relationship with their staff. These regulations mirror those from 1978 in being based on a staff-type organisation and powers of senior officials over their employees which are basically executive in character. No distinction is made between so-called "civil servants performing service jobs" and other staff employed on administrative and technical, catering, professional and other services for the needs of the administrative organs and their office workers. This lack of distinction means that all staff are regarded as civil servants, including cooks, drivers, heating maintenance staff, waiters, electricians, painters, joiners, mechanics, telephone switchboard operators, marketing officers and others.

Civil servants prepare analyses, reports, policy conduction platforms, statutes and other regulations, work plans and programmes, they make rulings in administrative matters, and conduct administrative supervision in the performance of these jobs. Civil servants take no direct decisions; they prepare these documents for senior officials who head the administrative organs and public services, and for the Government in the parliament. In administrative matters which they handle autonomously on the basis of specific authority granted by senior officials, civil servants have an obligation under the Law on the General Administrative Procedure, *Official Gazette of the FRY, No. 33/97*, to explain all their decisions in more complex matters, and in simpler ones only when the client so demands.

The political independence of the civil service is defined by the Constitution and by law ("...professional members of the armed forces and police force of the FRY may not belong to political parties" - Constitution, Art. 42, para 4). "Professional members of the armed forces and the police forces of the FRY may not organise in trade unions" (Constitution, Art. 42, para 3). "Civil servants and professional members of the armed forces shall not have the right to strike" (Constitution, Art. 57, para 3).

Laws regulating various administrative sectors define disciplinary accountability for taking bribes (Law on the Customs Service and others). Disciplinary accountability for taking bribes does not exclude criminal responsibility.

The practice and actual situation in the application of regulations

The Law on the Foundations of the System of State Administration and on the Federal Executive Council and Federal Administration, adopted in the Socialist Federal Republic of Yugoslavia in 1978, is still in force, although the 1992 Constitutional Law for the Implementation of the FRY Constitution determined an obligation that that law should be altered to comply with the new Constitution.

There are no campaigns aimed at informing the public about various procedures for issuing permits etc. - the general view is that the citizens have a duty to comprehend the law in line with the principle embodied in the maxim *Ignorantio iuris nocet* - Ignorance of the Law is Harmful.

The state administration is often equated with public services - application of regulations covering the position, rights, duties and responsibilities of employees of the state administration is expanded to the public services. The following are consequences of this interpretation:

- dependence on budgetary financing of the public services,
- a deterioration of their creativity and operational market orientation,
- the spread of bureaucracy in society, and
- unnecessary administration.

Such a position of the public services has as its effect wastefulness and low efficiency, both in the state administration and the public services.

Article 44 of the Constitution of the FRY stipulates that citizens have the right to publicly criticise the work of government and other agen-

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cies, organisations and officials, to submit representations, petitions and proposals, and to receive an answer if so requested. Furthermore, citizens may not be called to account or bear any other consequences for opinions expressed in the course of public criticism or in a submitted representation, petition or proposal, unless they have thereby committed a criminal offence. But no actual mechanisms for processing public complaints have been defined, which means that these Constitutional rights are not protected.

Complaints by citizens are processed internally - in the organ, organisation or service where the civil servant is employed, so that an appropriate procedure against the civil servant can be initiated. The complainant is informed about the result of the procedure. No single organ exists which handles public complaints against administrative organs, public services and their staff. No court or other organ exists which would process such complaints and implement appropriate measures. No legislation exists regulating the existence and operation of such an organ.

There has been little change in the situation after October 5, 2000. No new laws covering the state administration and public services have been adopted. Existing legislation and general enactments are burdened with excessively monocratic and hierarchical relations, leaving very little room for independent and creative work of those employed in the state administration and public services. The said legislation is full of discretionary rights of senior officials heading state administration and public services, together with insufficient control of the holders of authority. There seems to be insufficient will to apply laws according to the practices of the developed European and E.U. countries.

Employment and promotion in service are not fully dependent on competence. There is a widespread practice of employment without advertisement (following internship, using transfer mechanism, etc.). Senior officials are appointed without public competition, although the 1978 law (article 321) and subsequent alterations and amendments to

that law in 1989 stipulate that employment of personnel and senior officials in the state administration takes place on the basis of an open competition, in accordance with the general enactment on job systematisation. These provisions of the law were never enforced in practice in the matter of employing senior officials in the administrative organs and public services. They were always appointed without a competition, by a working body, or a commission of the federal government. Proficiency criteria are not respected, although they are a feature of some organisational general enactments.

There are no mechanisms to protect civil servants from pressures by ministers and other politicians. In that context, the 1978 law states that a civil servant has a duty to refuse to obey an instruction by a senior official which would represent a criminal offence, but has an obligation to abide by the instruction if it is repeated in written form.

The areas not mentioned here, the situation in the public services is similar to that existing in Serbia.

- Positive law regulations must be altered to contain a division between *civil servants*, or *officials*, who are engaged on the principal activity of their organ or service, and *salaried personnel*, who perform ancillary jobs, in line with the division existing in the corresponding legislation in Germany and other developed countries.
- There must take place a consolidation of material, organisational and procedural legislation in the sphere of state administration and public services, in which process subjective elements must be replaced by objective ones.
- The independence and responsibility of employees of the state administration and public services must be ensured.
- State administrative organs must exist as a separate category in charge of enforcing the authority of the state and controlling the



work of public services in all social areas; these organs should not be confused with the public services.

- Appropriate federal laws need to be adopted: a law on the federal government, a law on the federal administrative organs and federal organisations, and a law on the position of the employees of the federal organs, as foreseen by Article 77, para. 10 of the Yugoslav Constitution, in order to establish a group of federal regulations making possible a systematic fight against bureaucracy, opening up the administration to the public, and boosting its efficiency.
- Special attention should be paid to the Law on the Property of the FRY and subordinate legislation thereof enacted by the Federal Government, administrative organs and public services, as these regulations are an important source of corruption.

Public Procurement

- In the FRY there exists no specific law on public procurement - this area is regulated by many different laws and by-laws.
- There exist no regulations preventing nepotism and conflicts of interest.
- In practice, public procurement procedures are very non-transparent and packed with opportunities for malfeasance and corruption.

Positive law regulations

The area of public procurement in the FR Yugoslavia encompasses the procurement of goods and services, construction and other activities intended for the needs of the state authorities and public services. Payment is effected from the budget, public funds or other public monies (voluntary taxes, solidarity funds etc.).

Decisions on public procurement and contracts are taken by the government, within the scope of its competencies, as well as state administration organs, parliamentary services, the National Bank of Yugoslavia, and other organs who procure goods and services or carry out works (refurbishment, construction, reconstruction etc.).

No specific law exists in the FRY, which covers public procurement. Under diverse federal legislation and by-laws, public procurement and commissioning of works and sales is effected through tenders and competitive bidding. Only when bidding is unsuccessful is the invitation for bids repeated. In the event of a repeated failure, a procedure is implemented where written bids are opened publicly; the most favourable bid is taken as the final and must be accepted. These ques-



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tions are covered by the Law on the Property of the FRY (*Official Gazette of the FRY*, Nos. 41/93, 24/94, 28/96, 30/96), the Law on Foreign Trade Operations, Law on the Customs Service, the Law on the Federal Commodity Reserves, etc., while the subordinate legislation covering the issue is the Decree of the FRY Government on the Types of Objects which can be Procured or Sold by Direct Agreement (*Official Gazette of the FRY*, Nos. 12/94, 11/97).

Access to public procurement by way of tenders is generally not limited in any way. Restrictions can be imposed in the case of specific procurement and deliveries, the commissioning of works and sales of equipment etc., but only according to specific legislation such as national defence regulations and similar. However, even in defence matters, regular procurement, commissioning and sales take way by public bidding (food products, construction of facilities, sales of various assets and equipment, etc.).

International tenders for the procurement of technical equipment and technology are regulated by the Law on Foreign Trade Operations and subordinate legislation thereto; they define the conditions and manner of foreign trade operations and the documents and permits on the basis of which international bidding operations are effected. They also cover the performance of works in other countries.

Public procurement of food products, diverse stock and small inventory can take place by way of sealed bids, and in various cases defined by regulations (urgent needs etc.) also on the basis of direct agreement with a supplier who is found or who appears without a public call for bids. Certain cases call for more strict control by senior officials or supervisory organs of the authorised personnel carrying out the procurement (office supplies etc.). Regulations do allow for such deviations, but internal general enactments must ensure impartiality and prevent malfeasance.

If no special legal protection of auction participants is specified, the Law on General Administrative Procedure or another law shall apply,

depending on the exact nature of the matter (administrative affairs, civil economic affair, etc.).

There are no specific regulations about "blacklisting" enterprises or individuals who during the bidding process offered bribes or committed other illegal actions.

Control of property owned by and the standard of living of senior and other officials in charge of public procurement take place only after a complaint is made or suspicion is raised that a criminal offence has been committed. Such control is carried out by the police.

Practice and the actual situation in the applications of regulations

Information about public procurement is distributed via the Chamber of Commerce of Yugoslavia and the chambers of commerce of the republics and regions.

As a rule public procurement takes place on the basis of public auction or submission of written bids, as well as direct agreement in certain cases (after other mechanisms fail to achieve success).

Legislation defining public procurement is fragmented among various laws and other regulations. In this fragmented system of public procurement, no single tender commission for public procurement has been established - instead there are many such commissions attached to various organs and procurement agents.

The commissioning of construction work and sale of equipment is made by way of public bidding, written tenders or direct agreement, as and when so regulated. In practice the procedure is often abused so as to facilitate access by some parties while making that of others more difficult, ranging from the publication of advertisements in low-circulation media and similar, to acceptance of unfavourable bids under the pretext of alleged higher quality or better reputation of the supplier, buyer or contractor, all of which creates a fertile environment for corruption. Discretionary powers are used to place those with whom there



is a joint interest in more favourable positions. In the widely dispersed system of public procurement, this represents a considerable source of abuse of office which escapes social control and accountability.

There is even wider scope for malfeasance in the performance of works in foreign countries, where there is less control. On top of this, as a rule such works are of much greater value, as they concern major deals with equipment and technology suppliers and contractors. At the same time, foreign regulations allow for certain appropriations (commissions and similar) to those selecting commercial partners based in their countries. Disputes are settled by international joint commissions and arbitrations. Outdated and poor-quality equipment is often purchased in preference to better products.

Control of property owned by and the standard of living of senior and other officials in charge of public procurement takes place only after a complaint is made or suspicion appears that a criminal offence has been committed. Such control is carried out by the police.

The prevention of nepotism is one of the biggest problems in Yugoslavia, and no regulations in this sphere exist. There clearly exists resistance within the state authorities, where there are numerous interwoven interests of relatives of senior officials and other public servants who own private firms, agencies and enterprises.

- There needs to be adopted a public procurement law which will insist on ensuring transparency, accountability and integrity.
- Public procurement must stimulate open competition.
- In order to minimise linkages of interest between procurement officials, consultants and contractors, the responsibilities of those responsible for planning, negotiation, realisation etc. must be separated.
- Procurement decisions must be made by at least two individuals.

- Officials in charge of procurement must be rotated regularly.
- Should realisation costs exceed the initially contracted sum by 15% or more, the main tender board must convene and decide on the further course of events.
- A central state public procurement body, independent from ministries and other procurement organs, must be established. This body (agency) would be in charge of complaints over violations of procedure, whether or not motivated by corruption.
- The body would be empowered to decide on corrective measures. In keeping with its responsibility, the bureau would have to be adequately financed, staffed with highly-trained personnel and equipped technically.
- Other bodies which should also be set up include an anti-corruption commission, an Auditor General and an Ombudsman, all answerable directly to the parliament, which would also be in charge of complaints about administrative errors linked with the area of public procurement.
- Those who report malfeasance should be adequately rewarded and protected from possible retaliation.
- Internal and external auditors must besides regular controls also audit the books of contractors and their sub-contractors.
- Sanctions must be introduced for individuals or companies who offered bribes or carried out other illegal actions in the bidding procedure; these might include blacklisting - depending on the gravity of the transgression, bans of three, five or more years on participation in tender procedures.
- The assets, incomes and lifestyles of senior and other officials in charge of public procurement must be monitored; any signifi-

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cant increase in assets must constitute grounds for starting an inquiry.

- Procedures for preventing nepotism must be introduced. Following customary legal practice in cases of inheritance, testimony etc., relatives all the way to four degrees of descent removed should be barred from participating in public tenders.

Ombudsman

- No Ombudsman exists.
- The plans for the introduction of an Ombudsman at federal level are awaiting the outcome of negotiations on the fate of the Federation.

No institution of Ombudsman or any similar has ever existed in the Federal Republic of Yugoslavia, although there have been proposals for it.

In reality, notwithstanding the federal government's constitutional powers, executive power rests with the two republics.

The fact that the very survival of the federal state is in doubt, as are the powers it might have in the future, prevents clear insight into the role an Ombudsman might have in such a future state.

The joint platform for reorganising the federation drafted by the federal and Serbian governments calls for the institution of Ombudsman to protect the elementary rights of citizens and the rights of national and ethnic communities. Under that platform, the federal authorities would be in charge of a part of that protection.

The Centre for Anti-War Action has forwarded to the federal institutions a proposal for a Law on the Protection of Civil Rights.

- If the federal state survives, its constitution must be amended to include provisions on an Ombudsman.
- An Ombudsman at federal level must not only be a competent person, but also one enjoying the full confidence of the public in both federal units.



- The Ombudsman's funding must be established in advance in the federal budget, in order to prevent interference in his work by the executive branch.
- Full public accessibility to the Ombudsman would be secured by the opening of Ombudsman offices in both republics.
- The federal Ombudsman would not be superior to the Serbian or Montenegrin Ombudsman - his responsibilities would be limited by the competencies of the federal executive authorities.

Media

- Freedom of public information has been proclaimed.
- New laws are expected to regulate the position of the electronic media.
- The media are not safeguarded against political control and there are various forms of political influence on the media.
- Private ownership is dominant in the printed media.
- There are few media at the federal level.
- There exist differences in the position of journalists in Serbia and Montenegro.

Freedom of media

In FR Yugoslavia, freedom of the media is regulated by the Constitution and the Public Information Law. Freedom of information is dealt with in more detail by the Public Information Law. However, the situations in Serbia and Montenegro are quite different in this respect at the moment.

In Montenegro, a new Public Information Law was adopted in 1998. It guarantees freedom of information at the level of standards set by international documents on human rights and freedom such as UN, OSCE, Council of Europe and EU documents. The Law includes the basic provisions on freedom of thought and freedom to seek, obtain, produce and disseminate information, to have free access to information sources and to found media outlets, own, use and manage them. Compared to the previous law, the present Law includes the right and obligation on the part of journalists to publish information about illegal

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acts, as well as information pointing out shortcomings in the performance of public duties and the right of journalists to protect their sources. The main official body protecting these freedoms is the Council for the Protection of Freedom of Information.

After the democratic change in the country in October 2000, the Serbian Public Information Law was virtually suspended. In December 2000, the Federal Constitutional Court proclaimed most of its repressive provisions unconstitutional. In February 2001, the Serbian Parliament suspended the Law, retaining only the provisions referring to freedom of public information and setting up, registering and closing down a media outlet. The draft media laws (on public information and on broadcasting) stipulate the establishment of two independent bodies, the Press Council and the Broadcasting Council, which would protect the freedoms guaranteed by the Constitution and the Public Information Law.

Access to informations

No legal regulations currently in effect guarantee the right of citizens to request and receive information/documents in the possession of state organs. The only thing that the citizens are guaranteed is the right of access to personal data on the basis of the federal Law on the Protection of Personal Data (1998), whereas the federal and republican laws on public information stipulate that it is the duty of state organs to make information accessible to the media.

The federal and the republican Criminal Codes stipulate that one is to be prosecuted for giving away a state, professional, military and business secret. However, the criteria for determining a secret are usually regulated by law in a very general way, which enables the executive organs to interpret these criteria themselves. For example, according to the provisions of a decree passed by the federal Government on data important for national defence, "the head of the state organ, that is, the authorised official of a company or some other legal entity", de-

termines what constitutes a secret and its degree of secrecy. The fact that executive organs are authorised to determine what constitutes a secret means that they may use this to deny the media access to information. In practice, this is most often the case with military secrets, because the Law on National Defence gives a very broad definition of military secret; as a consequence of this, one can come across military data that do not endanger the security of the country in the foreign media while their publication in the domestic media has been forbidden.

Censorship

In FRY, there is no open censorship of the media. Censorship is forbidden by the federal constitutions and the federal and republican laws on public information. However, freedom of expression is limited by the existing Criminal Code provisions on slander and libel, by political pressure on the media, by non-transparency of the work of the government and state officials and by unequal treatment of the media on the part of officialdom.

Public and private-owned media

In FRY there is a spread of media ownership, including state (national and local public media), private and mixed property. Different kinds of property are present in all types of the media - the press, radio and television. In all three, private ownership predominates. According to official data, in June 2001 there were 253 TV stations, 504 radio stations and 641 newspapers or magazines in Yugoslavia. However, the number of radio and TV stations is greater, due to the fact that some of those operating in Serbia are unregistered and operate without any legal permits. The estimated total number is between eight hundred and one thousand; less than 200 of these are public radio and TV stations.



No TV or radio station in the UHF range covers the entire territory of FRY. The YU INFO television station, founded by the federal government, covers small parts of Serbia and Montenegro. Distribution of the print media, both private and state-owned, is completely free throughout the country. The *Borba* daily, controlled by the Federal Government, had earlier been privatised, but the former regime revised the privatisation procedure and brought the newspaper back under state control.

Independence of media

In FRY there exist numerous and very diverse independent media that have developed as an alternative to the state media and their being reduced to a mere propaganda tool of the previous regime. The independent sector includes the printed media (first of all, the *Danas* and *Vijesti* dailies, the *Vreme*, *Nin* and *Monitor* weekly magazines), radio stations (the ANEM network of local stations in Serbia and Montenegro), independent TV programs (VIN, TV mreža [network], Urbans), newspapers and bulletins of non-governmental organisations (*Odgovor* [Answer] - a publication for refugees and displaced persons) and the Internet media (Free Serbia, Inet and others). The number of the independent media is increasing. According to official data, in FRY there are 640 printed media outlets in 200 places throughout the country. About 76% of these have been established over the last ten years; 120 new ones were introduced last year alone.

The independent media, however, are faced with a difficult situation. They have very limited financial, technological and professional resources - these are barely sufficient for survival and not at all for further development. The new powers-that-be in Serbia are rather more interested in the recovery of the leading media with the longest tradition (the state TV and radio, the Politika media company) than in providing support for the independent media. In view of the greatly decreased purchasing power of the impoverished population and a very

limited advertising market, the independent media are finding it increasingly difficult to operate under market conditions; as a result, they are still dependent on the support of donors, whose assistance enabled them to survive during the period of the most intense repression on the part of the previous regime, directed against the independent media sector.

The new political framework in FRY and in its republics (in Montenegro since 1997, in Serbia since December 2000) has brought about a big change on the media scene. The media stopped being the main propaganda tool of the government for mobilising support for its policies and creating a negative image of any opposing view. However, the legislative and regulatory frameworks have not yet safeguarded freedom of the media against political control and the interference of political power centres with the media. The new managing boards of the federal public media (the Tanjug news agency, the *Borba* daily, the YU info television) as well as those of the national and local public media are composed mainly of representatives of the ruling political parties, thus allowing political influence when it comes to appointing editors. The legislation which prevents this form of political control is being prepared but has not come into effect yet. The public media in FRY are still prone to praising the government and its policies rather more often than to covering critical views of its work on a regular basis. In Montenegro, political parties are guaranteed equal political coverage in the state radio and TV program segments dealing with the activities of political parties. These programs are not very interesting and do not attract a very large audience. In the news and current affairs programs, however, this is seldom the case. Due to a very strong political conflict in Montenegro, the opposition is not ignored but given predominantly negative publicity. In Serbia, the publicly-owned media are openly in favour of the government. The government is given a lot of publicity and presented in either a positive or a neutral context, very seldom negatively. Critical views - whether coming from the opposition, non-governmental organisations or individuals are not presented

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negatively, as the case used to be, but are mainly ignored. The activities and views of the opposition rarely make the news.

Texts on corruption

Immediately after the change of government in October 2000, the media published a flood of texts on corruption involving officials of the previous regime. After this first wave of texts on corruption, the topic was not at the top of the media agenda again until very recently. Journalists are more prone to follow court cases involving corruption than to do their own research on this topic. Corruption (and organised crime, which usually goes together with it) is written about in quite a general way, stressing the need to fight it.

Registration

Over the last three years, there have existed great differences concerning the legal regulations on and the practice of establishing and registering media. The Montenegrin Law on Public Information has introduced the procedure of entry into the register of printed media (in place of the old procedure of issuing licences), thereby facilitating the process of establishing printed media as much as possible. The procedure laid down by the law is quite simple: it presupposes the fulfilment of minimum technical requirements for broadcasting (prescribed by the authorised republican administrative organ) and the allotment of frequencies, which is done by the government of Montenegro under equal conditions for all. For the time being, only the state media are in possession of the national frequencies. In Serbia, the procedure of issuing licences was applied both in the case of the printed and the electronic media.

New legal regulations in this area are being prepared. At the federal level, a new Law on Telecommunications has been drafted, defining the frequency range of the country and the conditions for frequency

allocation. It is expected that the new laws will be passed during the autumn and that a large number of currently operative radio and TV stations will have to cease broadcasting once the new laws on telecommunications and broadcasting have been adopted.

Libel/slander

The Criminal Codes of Yugoslavia, Serbia and Montenegro all contain provisions pertaining to prosecution on account of libel/slander and public insults. Under the Milošević regime, these provisions were used in order to suppress the publication of information on influential politicians. In September 2001, Vladislav Ašanin, the editor-in-chief of the Montenegrin daily Dan, was sentenced to five months in prison, to be suspended over a period of two years, having been sued for libel by the Serbian businessman Stanko Subotić because his paper had reprinted a series of articles published in the Croatian Nacional paper, wherein Subotić was described as a leading Mafia boss involved in smuggling cigarettes in Montenegro and Serbia. Milo Đukanović, the Montenegrin President, also sued the Dan paper for libel because he, too, was mentioned in the articles reprinted from Nacional - as an accomplice in smuggling cigarettes.

There have been several proposals urging that the libel/slander provisions in the Criminal Code be replaced by civil law provisions, in keeping with the international practice in this area. In Montenegro, this has been proposed by the Montenegrin Helsinki Committee; in Serbia, the proponents have been the International Press Institute (IPI) and its branch for South East Europe, the South East European Media Organisation).

Salaries

In FRY, journalists do not have to have a licence in order to pursue their professional activities, nor is membership in professional journal-



ists' associations a prerequisite for practising their profession. In FRY, journalism is not among the prestigious professions, either in terms of its public reputation or in terms of journalists' earnings. Most journalists' salaries do not differ much from the very low average salaries in FRY. In Serbia, journalists employed with the public media earn on average between DEM 100 and 300. The average figure is somewhat higher in Montenegro, where the average earnings are slightly higher.

Investigative journalism

Specialising in investigative journalism is almost non-existent among our journalists. The media often lack the funds necessary for serious investigative undertakings. Despite this, Vreme, Nin, Monitor and the weekend edition of Danas regularly publish analytical and investigative pieces focused on the main topic of the issue. Among the electronic media, the investigative approach is most in evidence in the programs of Radio B92 and the independent media productions such as TV mreža, VIN and URBANS.

In FRY there are just a few regular training courses for journalists with a tradition of many years: the studies of journalism at the state-owned University of Belgrade lasting four years (the University of Podgorica is in the process of establishing a university-degree course of studies), the course for journalists at the Novi Sad School of Journalism lasting one year, and the specialisation course for TV reporters at the privately-owned Karić Brothers University (Belgrade). Specialisation courses for journalists are also organised, subject to demand, by the Belgrade School of Journalism, the Media Centre, ANEM, BBC, IREX and the European Centre for Broadcasting Journalism. These are specialised courses, lasting from several days to several weeks, or several months in some rare cases (the Belgrade School of Journalism organises 3-month courses). BBC organises specialised courses for radio and TV reporters in Podgorica and Kotor. IREX has organised seminars for journalists working for local TV stations. ANEM organises

general-type and specialised courses for journalists working for the media that are members of the ANEM network. The Media Centre, in collaboration with the Danish School of Journalism, is currently preparing a school for journalists working in the printed media. As of this year, the Journalists' Association of Serbia will organise a Journalists' Academy lasting two years.

- A law should be passed to guarantee access to information in the possession of state organs as a common right of all citizens.
- All the exceptions to freedom of information should be defining in one place.
- Criminal prosecution for libel should be replaced by civil lawsuit.
- When providing information about their work, government bodies should treat all the media in the same manner and provide information under equal terms for all.
- By re-allocating the national frequencies, the governments should allow full national coverage to private radio and TV stations and break the monopoly now held by the state broadcasting media.
- Public revenues should be used to help the survival and further development of the private - especially local - media as well, when they are faced with insolvency due to a poor advertising market.
- The authorities should allow full democratisation of the media sphere. In particular, they should insist on equal access of all the protagonists on the political scene to the public media, on a diversity of views and on a balanced presentation of conflicting political views.
- The media should write about corruption more often and keep this topic as one of the priorities on the media agenda.

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- The media should educate the public about the long-term consequences of large-scale and especially small-scale corruption in social life.
- The media should trace, through their own research, any indications of the new government officials' involvement in corruption.
- It is recommended that the media publish as many analytical and investigative pieces as possible.
- It is recommended that a certain number of journalists should specialise in analytical and investigative reporting.
- In view of the fact that the professional level of our journalism is relatively low, professional education of journalists on a regular basis is a necessity.
- It is recommended that there should be several types of investigative journalism courses.

Bar Association of the FRY

- The assembly of the Federal Bar Association has an equal number of representatives from the republican bar associations.
- The Federal Bar Association keeps an integrated register and conducts international cooperation.

Conditions for engagement in the lawyer's profession are regulated primarily by the Law on the Legal Profession dating from 1998. Under that Law, some of the activities in connection with the solicitor's profession are handled by the Bar Associations, or Law Societies.

The Bar Associations operate at the level of the member republics, which are in charge of their own internal structure questions. There is also a Bar Association of the Federation, which is active, in contrast to numerous other federal institutions. This Bar Association has its statute and its code.

The federal Bar Association's assembly is organised according to a parity principle, with 30 delegates from each of the member republics.

This Association is in charge of keeping a register of all lawyers in the Federal Republic of Yugoslavia and international cooperation, in particular with the International Lawyers' Union. This cooperation was never broken off, including the period during which Yugoslavia was under international sanctions.