



**SIGMA**

**Support for Improvement in Governance and Management**

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**FORMER YUGOSLAV REPUBLIC OF MACEDONIA  
ELEMENTS OF THE PUBLIC INTEGRITY SYSTEM  
ASSESSMENT JUNE 2006**

## Introduction

This report is an analysis of some key elements of the public integrity system in the former Yugoslav Republic of Macedonia<sup>1</sup>. This is the first report on this country that has been prepared in accordance with the standard baselines that have been applied by Sigma for the assessment of public integrity systems in EU candidate countries.

All observers agree that Macedonia has a relatively high level of corruption, and the public sector has specific vulnerabilities. The problems are at both petty and grand corruption (state capture) levels, although this conventional distinction is often difficult, or even counterproductive, to maintain in practice. This report addresses the vulnerabilities of some key elements of the public integrity system.

To delineate the “integrity framework”, we have drawn on concepts provided by OECD<sup>2</sup>, the Council of Europe<sup>3</sup> and the European Commission<sup>4</sup>. The public sector elements of the framework comprise constitutional arrangements, the judiciary (including prosecution), parliament, political parties and party financing, political accountability and responsibility, as well as administrative elements – particularly the public service and general administrative legal frameworks, but also external audit (including mechanisms to combat fraud), public procurement, public expenditure management, public internal financial control, policy-making and regulatory processes. These elements apply to all levels of the state, including municipalities and state-owned enterprises.

In this report, we assess how far institutional arrangements underpin, or undermine, integrity in parliament, the government (in its continental European meaning, i.e. with the council of ministers as a constitutional body) and the judiciary. We also look at how political arrangements, especially financing of political parties and electoral campaigns, affect the integrity system. We then turn to national policies and institutions aimed at fighting corruption. Finally, we list Macedonia’s incorporation of international instruments for harmonising anti-corruption policies and legislation.

In other reports, we have assessed elements of the integrity framework in public administration. The separation is not clear-cut because of overlaps in certain aspects – for example, rules concerning asset declaration may address civil servants, judges and/or politicians in the same legal instrument. The public administration elements that we have assessed were selected by the European Commission. For Macedonia Sigma has produced assessments on:

- Public Service and the Administrative Framework
- Public Expenditure Management System
- Public Internal Financial Control
- External Audit
- Public Procurement
- Policy-making and Co-ordination

This report should be read together with these other assessment reports.

The objective of the Sigma assessments is to identify strengths and weaknesses and to thereby help orient reforms and assistance.

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<sup>1</sup> In this report the former Yugoslav Republic of Macedonia will hereafter be referred to as “Macedonia”.

<sup>2</sup> e.g. from OECD: Public Sector Integrity: A Framework for Assessment (2005); Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences (2003); Trust in Government: Ethics Measures in OECD Countries (2000); Ethics in the Public Service: Current Issues and Practice (1996).

<sup>3</sup> “Twenty Guiding Principles for the Fight against Corruption”, Resolution (97)24 of the Committee of Ministers of the Council of Europe of 6/11/97

<sup>4</sup> “The Ten Principles for Improving the Fight against Corruption in Acceding, Candidate and Other Third Countries”, contained in the Annex to the Communication of 28 May 2003 of the European Commission to the Council of the European Union and European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy against Corruption.

## Summary of Main Findings

### *Preserving Integrity in Parliament*

Various laws cover integrity matters regarding parliamentarians: the Constitution (1991, last amended in 2005), Law on Members of Parliament (2005), new Electoral Code (2006), Law on the Prevention of Corruption (consolidated text in 2004), Criminal Code (amended in 2004) and Law on Criminal Procedures (amended in 2004). A proposed Law on the Prevention of Conflict of Interest includes some rules that, if adopted, will also apply to MPs. The current legal framework deals with immunities, incompatibilities, conflicts of interest, asset declarations and examination of the property of parliamentarians. It defines the obligations of parliamentarians, as well as control mechanisms and sanctions.

Immunity regulations for parliamentarians follow European standards. However, applicable rules have not been interpreted in such a way as to truly respect parliament's integrity. Since independence, there has not been a single case of lifting of immunity.

Regarding incompatibilities of MPs, it is not clear which regulations directly apply to parliamentarians. Control and enforcement mechanisms are weak. In fact, as there are several laws dealing with incompatibilities, with differing terminologies and a range of incompatible situations, some doubts in interpretation and in implementation remain on this issue. No specific mechanism is in place to control the way in which the prescribed restrictions are applied.

Conflict of interest, as well as applicable sanctions, is defined in detail in a special chapter of the Law on the Prevention of Corruption. In practice, the State Commission on the Prevention of Corruption does not have the resources to credibly monitor potential and actual conflicts of interest of MPs. A new draft law dealing exclusively with conflict of interest has recently been submitted to parliament, but it mainly repeats the provisions of the Law on the Prevention of Corruption. Its impact cannot be assessed at the time of writing.

According to article 34 of the Law on the Prevention of Corruption, each elected and appointed official is obliged to submit a property declaration (upon taking and leaving office, or when a specific change in property occurs) to the State Commission for the Prevention of Corruption. However, these asset declarations are secret. Given the secrecy of asset declarations and the large number of officials covered by this regulation – as well as the lack of resources in the State Commission, which is aggravated by non-full co-operation of the Public Revenue Office (PRO) and a hesitant judiciary – control of the assets of parliamentarians is de facto very limited.

**Although the legislative framework, generally speaking, tends to be aligned with European standards, there are important weaknesses in the implementation of these regulations. These weaknesses relate to the quality of legislation and the capacity of the system of control. To strengthen these areas sufficient and persistent political will is required.**

### *Parliament as an Institution against Corruption*

Parliament has an important role in promoting transparency, integrity and accountability in the political sphere and in fighting corruption. First of all, parliament must use its legislative function to provide a clear and efficient legal framework that the government is able to implement and the judiciary is able to scrutinise. Secondly, through its controlling power over the government, parliament must push for the formulation and implementation of proper public policies in this area. Finally, parliament must serve as a role model, by its own ethical attitude, transparent activity, full accomplishment of duties, accountability to citizens and full co-operation with related institutions.

Beyond its legislative function and own example of integrity, parliament has the tasks of formulating questions, developing inquiries and responding to interpellations, in accordance with the Constitution and the Rules of Procedure, so as to guide and control the action of the government. On the other hand, parliament can support and be supported by some important institutions that are accountable to it (State Commission for the Prevention of Corruption, Ombudsman and State Audit Office).

However, parliament is partially failing in the fulfilment of its responsibilities in this area. In fact, parliament is not actively encouraging the government to elaborate clear and effective policy proposals in the area of anti-corruption. This could be due to weak political commitment or to a lack of necessary resources to provide accurate expertise. Questions, inquiries and interpellations are not taken up vigorously and in a non-partisan fashion so as to control the action of the government.

Parliament has not officially ratified the Anti-Corruption Programme of the State Commission for the Prevention of Corruption, drafted in 2003. In 2005 parliament reviewed for the first time in plenary session the annual report on the work of the Commission, which could be seen as a step in the right direction. More

parliamentary commitment is necessary in order to provide reasonable conditions for the operations of the Commission.

The potential of the Ombudsman's Office has not been fully utilised. The Office's annual reports have been poorly publicised and parliament does not pay enough attention to the follow-up of how recommendations are implemented. However, the situation is improving. The Office's annual reports are now available on its website, and the public has a better understanding of the role of the Ombudsman. On the other hand, the lack of co-operation of many public institutions and civil servants regarding the demands and recommendations of the Ombudsman needs to be dealt with, even though the latest annual report of the Ombudsman indicates that the situation had improved in 2005.

The State Audit Office is currently the only functioning financial review body of the state administration. Unfortunately, its work is hampered by insufficient resources, in terms of both personnel and unsatisfactory follow-up on behalf of parliament. As emphasized in Sigma's 2006 assessment of External Audit in Macedonia, "*the SAO has a broad audit remit and the authority to audit all public and statutory funds and resources, bodies and entities, including EU resources. The resources of the SAO, however, do not enable this institution to carry out its extensive mandate*".

Finally, the way in which parliament has dealt with some issues – which have been extensively covered by the media – does not provide a good example of transparency and the capacity to properly resolve problems.

**Parliament needs to improve its understanding of the important role it should play as an institution in promoting integrity in the political sphere, increase its awareness of the institutional supports that can help it to perform this function well, and support those institutions in reinforcing their capacity to act effectively.**

#### ***Political Party and Election Campaign Financing***

Legal sources related to political party and election campaign financing are the Law on Financing of Political Parties (2004), Electoral Code (2006), and Law on the Prevention of Corruption (2002).

According to the law, the financing of political parties and election campaigns must be public, transparent and accountable.

Political parties are financed by public funds (from state and municipal budgets) and private sources (donations, membership fees, endowments, etc.). The law defines the criteria for public financing and the limitations for public and private financing and also regulates illegal sources of financing. Political parties that do not properly follow the rules lose the right to the receipt of a state subsidy for the following year. Other sanctions (fines) are also prescribed by law. The supervision of the financing of political parties and election campaigns is carried out by the Ministry of Finance, the State Electoral Commission and mainly the State Audit Office.

According to the Electoral Code of 2006, each party (or organiser of an election campaign) has to account for its campaign expenses in order for it to be compensated from the state budget by sending a financial report to the State Audit Office, State Electoral Commission and parliament. The State Election Committee, a body responsible for preparing and conducting elections, then compiles this information and submits a report to parliament (or to municipal councils regarding local elections) on election campaign financing. Compensation for campaign costs depends on the regularity of financing and expenditures (they will not be paid if there are irregularities). There are indications that parties prefer to forsake state subsidies rather than submit detailed reports on their campaign expenditures.

The State Commission for the Prevention of Corruption is also taking some action to improve integrity in politics, mainly by overseeing the financing of political parties and election campaigns, in particular for the next parliamentary elections. However, this is more a pedagogical action rather than effective control.

Despite the law, party financing is not controlled in an efficient manner, as the State Audit Office only controls the budget transfer element due to lack of information regarding other sources. Election campaign financing remains poorly regulated, with political parties spending considerable amounts that have been received from non-transparent sources.

**Once again, the problem of financing of political parties and election campaigns is not mainly in the law (even if the control system and the sanctions prescribed should be reviewed in order to increase effectiveness). The point is that there is a large consensus concerning the lack of transparency of political parties' finances and election campaigns, but there is also consensus regarding the incapacity to perform effective, independent and impartial control. In the report of Transparency International – Macedonia, "National Integrity System – Republic of Macedonia - Country Study Report" (September 2002) the situation is described as follows: "In the Republic of Macedonia there is no independent**

**institution which will be capable to perform an independent, skilled and impartial control of the financial management, especially that of powers in power.” It is expected that the new rules regarding these issues will contribute to increasing transparency, accountability and to improving the capacity to control political parties and election campaigns in the near future.**

### ***Integrity in Government***

The legal framework related to integrity in government is basically the same as the one defined for members of parliament. Only the immunity rules are stricter for government, as according to constitutional amendment XXIII (December 2005), only the Prime Minister enjoys immunity. According to the same amendment, the decision to lift immunity is no longer within the competence of the government but has been vested in parliament.

The opinions stated above regarding the integrity system in parliament are thus valid for the government as well. Although the existing legislation is generally acceptable, there is still room for improvement, namely in terms of the overall clarification of the system of incompatibility, conflict of interest and anti-corruption mechanisms. The terminology used in the various pieces of legislation is not uniform and consequently some doubts about the scope and content of limitations remain. However, it is the implementation that is more problematic due to the weak enforcement and control capacity. As the State Commission for the Prevention of Corruption has stated in its 2005 annual report, “...*there is an apparent gap between the legal framework established to address corruption on the one hand, and the results achieved in its practical implementation on the other. This suggests that in the next period the activities of all competent and responsible institutions will have to focus on consistent implementation of the legislation*”.

It is worth pointing out that, according to a research report on the perception of the level of corruption in various institutions<sup>5</sup>, ministers and deputy ministers were considered as the third most corrupt group.

**The legislation related to integrity in government needs to be clarified, and control mechanisms made more effective. In addition, the action of government should be more transparent and better communicated to the media and to citizens.**

### ***Integrity in the Judiciary***

Integrity in the judiciary (courts, Judicial Council, prosecutors) is a recurrent issue in Macedonia, and this has been emphasized in several reports, both in the media and internally. For instance, according to the above-mentioned survey on “Public Opinion on Corruption in the Republic of Macedonia”, the judiciary/courts have been designated by citizens as having the second highest level of corruption in the country (immediately after customs). The number of judges that have been dismissed, mainly due to unprofessional and negligent exercise of their functions, is more evidence of the problems affecting the judiciary in Macedonia.

Several reasons can be given to explain this situation: political interference in the appointment, promotion and dismissal of judges, lack of training, low salaries, poor working conditions, weak mechanisms to control incompatibilities and conflicts of interest, slow procedures, huge backlog of cases, inadequate support, etc.

However, it seems that there is now a growing awareness of the importance of having a professional and independent judiciary. A Judicial Reform Strategy, together with an Action Plan, was adopted in November 2004 and is currently being implemented. The Constitution has been amended and the laws needed to implement the constitutional amendments are being adopted within the deadlines defined by the Constitution or are in parliamentary procedure (Law on Courts, Law on the Judicial Council, Law on Administrative Disputes, and Law on Misdemeanours). The immunity of judges and of the State Public Prosecutor have been reviewed. A training academy for judges and prosecutors has been created and is involved in the recruitment process as well as in initial and continuous training. All of these steps provide evidence of the commitment of parliament and of the government to change the state of disrepair of the judiciary.

**The proper implementation of legislation and the efficient performance of institutions responsible for ensuring the independence and professionalism of the judiciary are the next decisive steps that need to be taken. For the time being, it cannot be guaranteed that the judiciary will be able to ensure the correct functioning of rule-of-law mechanisms to protect integrity in Macedonia and play a more relevant role in the fight against corruption in the country and abroad. However, at the current stage it is not possible to evaluate the results that the new legal framework aims to produce.**

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<sup>5</sup> Report on “Public Opinion on Corruption in the Republic of Macedonia”, produced by the Institute for Sociological, Political and Legal Research of the Saints Cyril and Methodius University of Skopje, April 2006

## *General Anti-Corruption Strategies*

It is clear that the fight against corruption at all levels is a sensitive issue in Macedonia and one of the strategic priorities of the government. This is in line with the perception of the problem among the general public.<sup>6</sup> Consequently, a huge effort is being made to adopt a wide set of legislation, including amendments to the Constitution, dealing with this issue. Macedonia is in the process of building a comprehensive legal framework to cover all relevant areas related to the fight against corruption and to structure a solid integrity system that in general will be aligned with European standards. However, some inconsistencies still need to be resolved.

Macedonia has elaborated a general anti-corruption strategy as part of its National Strategy for European Integration, which indicates recognition of the importance of this area within the context of the accession process. At the origin of this strategy was the adoption of the Law on the Prevention of Corruption (2002) which created the State Commission for the Prevention of Corruption (STPC). The Commission, which is accountable to parliament, drafted a National Programme for the Prevention of Corruption (2003). However, this programme has never been formally adopted, either by parliament or the government. Furthermore, the Commission is understaffed and under-budgeted, and the premises are inadequate for the functions to be performed.

As part of the Anti-Corruption Strategy, it is worth mentioning the Law on the Financing of Political Parties (2004), the Electoral Code (2006), judicial reform, the Law on Free Access to Public Information (2006), a draft Law on Conflict of Interest, the creation of an inter-ministerial body for the co-ordination of activities in the fight against corruption, amendments to the Constitution (2005) to reduce immunities in government, the adoption of GRECO recommendations, and the ratification of some relevant international conventions.

Regarding legislative activity, we could perhaps say that Macedonia is going too quickly in the adoption of new legislation, and as a result its quality could be affected, namely in terms of full adherence to national realities, overlapping of regulations or creation of regulatory loopholes, contradictions among various regulations, and insufficient capacity to implement the legislation. Regulatory impact assessments and wide consultations, which could reduce these risks, are not common or are not developed properly.

Another tendency is to create new bodies – in addition to the entities already set up to deal with these matters – with similar and conflicting/overlapping competences. This is a quite common reactive approach to problems: new problem, therefore new legislation and/or new body. As a result, there is a growing confusion within the administration and among citizens, scarce resources are divided, and in general both old and new institutions are understaffed.

Efforts should be made to rationalise the institutions and competences and to improve co-operation among the bodies that finally do remain responsible for these matters. In fact, in spite of the efforts to improve co-operation mechanisms – such as the creation of an inter-ministerial body for the co-ordination of activities in the fight against corruption – the results are not yet visible, and in some areas it seems that concurrence is stronger than co-operation.

At international level, Macedonia has adopted or is adopting the main conventions and has signed regional and bilateral agreements allowing enhanced international co-operation in fighting corruption, organised crime and other related issues. There is a political commitment to support the efforts of the international community in this area. It will be important later on to assess the extent to which this political will is coherent with practice.

**Although there are some weaknesses, Macedonia has made a considerable number of improvements in its legal basis in this area. However, the capacity for implementation – and implementation itself – of the legal framework is still very limited. Of course implementation requires structural arrangements, time and resources (staff, budget, training, information campaigns, etc.), but slowing down the law adoption process and concentrating more energy on implementing priority legislation may produce better results and improve the effectiveness of the policy strategy. The adoption of new laws without any consistent assessment of the capacity to implement them tends to undermine trust in the state and in public institutions as well as in the rule of the law. Another required condition for success is strong, enlarged, visible and persistent political and administrative commitment.**

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<sup>6</sup> According to a research report on “Public Opinion on Corruption in the Republic of Macedonia” produced by the Institute for Sociological, Political and Legal Research of the Saints Cyril and Methodius University of Skopje of April 2006, corruption is the third major problem faced in Macedonia (14% of the responses). The first reported problems are unemployment (50%) and the poor economic situation (30%). Corruption is regularly discussed in private by 61% of the population. According to this opinion poll, corruption is perceived to be stable at a high level.

## ***Conclusions***

- It is clear that Macedonia is deeply engaged in the accession process and has adopted a broad strategy to achieve this goal. The elaboration of this strategy indicates that Macedonia has realised the importance of having a comprehensive integrity system, and it is making considerable efforts to adopt a legal framework that is in general aligned with European standards. European integration is thus a driving force for reforms in this area.
- Even if legislation is more or less acceptable, improvements are needed to fill some loopholes and overlaps, increase its clarity and coherence, and reinforce its applicability. Dispersion of regulations among several laws should also be avoided.
- Weaknesses in the implementation of policies and laws are apparent. To reduce the huge gap between law adoption and implementation, three main points need to be addressed: full political commitment to reforms, high quality of law-drafting (including a wide use of appropriate consultation and participation mechanisms), and proper implementation (including close follow-up). Regular and consistent regulatory impact assessment is needed.
- The control system has to be improved as an important part of the implementation of legislation. The entities responsible for controlling and assessing the integrity system should be properly staffed and budgeted to allow them to fulfil all of their functions. In addition, the rationalisation of existing structures and effective co-ordination are needed.
- Legislation regarding political party and election campaign financing has proved to be completely inefficient in controlling illegal financing. The reasons for such a situation are the lack of political will, an inadequate set of sanctions and a weak control system. It will be crucial to assess whether the recent legislation is duly implemented and is able to solve the problem.
- Reforms in the judiciary seek to establish an independent and professional judicial power that is capable of scrutinising integrity in public life. The main pieces of legislation have been adopted and their implementation now requires full attention from parliament, the government, and governing bodies within the judiciary.

## ***Background on Integrity***

Reports by international organisations, as well as NGOs, have pointed out that corruption and organised crime represent a serious problem in Macedonia, harming to a considerable degree the public and private sectors, as well as having a negative impact on citizens' daily lives.

The reasons for this situation are found in the most recent history of Macedonia. The security situation in the region throughout the 1990s, in particular the embargo imposed on the warring parts of former Yugoslavia, fostered organised crime, which engaged in large-scale cross-border smuggling. While the country became a turnstile for trafficking goods and people, some state structures developed ties with organised crime. It can be supposed that these vested interests played a role in hindering for a decade the establishment of an appropriate and effective legal and institutional framework for fighting organised crime and corruption. Although the Constitution was adopted in 1991, a new criminal law only came into being in 1996. The first law on corruption was drafted in 1991 but was adopted only in 2002. It was still impossible in 2001 to speak publicly about corruption and organised crime in Macedonia. Today, the topic is very much a part of public discourse, with citizens demanding results in the fight against corruption. This change can be attributed to the work of civil society, which became more active and vocal by the mid-1990s, and to pressures from the international community, as well as increased media coverage.

The government has acknowledged the fact that corruption represents a problem of considerable magnitude. Its measures linked to the State Programme for the Prevention and Repression of Corruption (detailing strategic priorities for the period 2003-2006) target prevention, as well as repression, of corruption. Examples include the amendment of the Criminal Code and the Criminal Procedure Law and the establishment of the Financial Police, as well as a unit for organised crime in the Ministry of Interior. However, problems remain: While legislative and institutional anti-corruption tools now exist and some well-trained professionals occupy key posts, there is a lack of political willingness to effectively use these instruments, as explained by the politicisation of the public administration and the deficient separation of powers. A major problem certainly is the judiciary, where the average time for processing cases (not only corruption cases) is currently three years, raising the question of judicial independence.

Several aggravating circumstances exist. Unemployment currently stands at almost 40%, with the state sector still being the biggest employer. This leaves individuals open to blackmail, especially as the principle of recruitment/ promotion based on merit and individual protection measures in case of complaints are not

perceived as credible. Thus, a key aspect in the fight against corruption is administrative reform aimed at increasing transparency, curtailing discretionary powers and fostering a culture of merit and service, including at local level.

## **Integrity in Parliament**

### ***Immunity of MPs***

MPs enjoy immunity based on article 64 of the Constitution, which stipulates that: (1) MPs enjoy immunity; (2) an MP may not be called to criminal account or detained for opinions expressed or votes passed in parliament; (3) an MP cannot be detained without the approval of parliament unless caught in the act of committing a criminal offence that is punishable with imprisonment of at least five years; and (4) parliament can decide to invoke the immunity of an MP without his/her request, should it be necessary for parliamentary performance. Similar provisions are provided in the Law on MPs, adopted in September 2005<sup>7</sup>.

Immunity is further regulated by the Rules of Procedure of the Macedonian Parliament<sup>8</sup> on “Rights and Duties of Parliamentary Representatives”. Immunity of MPs is limited to immunity from detention. If an MP is convicted to serve more than five years in prison, he/she automatically loses immunity and is released of his/her functions. Next to being caught committing a serious crime, there are three additional grounds for losing parliamentary immunity: personal resignation of an MP, unexcused absence for more than six months (the President of Parliament keeps records), and committing a crime that is deemed damaging to the reputation of parliament. MPs also have the duty to answer questions during court proceedings.

The Committee on the Rules of Procedure and Mandatory and Immunity Issues – one of the permanent working bodies of parliament – oversees parliamentary immunity and monitors the enforcement of rules of procedures in parliament. It also reviews reports of the State Election Committee concerning the termination of an MP’s term of office.

According to the Rules of Procedure, the request for the approval of detention or the notification that an MP has been detained must be submitted to the President of Parliament for referral to the Committee on Procedural and Mandate-Immunity Issues. The President of Parliament must be notified of the detention of an MP by the competent body even if the MP did not invoke his/her immunity (article 50). Parliament decides whether it will approve detention of the MP based on the report of the committee. Upon notification that an MP has been detained, parliament can decide to invoke the immunity of an MP without his/her request, should it be necessary for the performance of the MP’s office. If parliament does not approve detention, the MP is to be released immediately (article 51).

According to interpretation of the parliamentary rules of procedure, when parliament passes a motion to approve detention, this does not constitute an actual lifting of immunity. In fact, detention measures that are approved are seen as referring to a specific case whereas overall immunity prevails. To date no immunity has been lifted. Instead, a motion to approve detention measures by the public prosecutor has been passed.<sup>9</sup>

Immunity provisions follow European norms; however, the political will to use them in order to truly protect parliamentary integrity seems to be lacking. Instead, members of parliament seem to be more interested in defending party interests, as well as their own privileges.

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<sup>7</sup> *Official Gazette of the Republic of Macedonia*, no. 84/2005, 3 October 2005.

<sup>8</sup> *Official Gazette*, no. 60/2002.

<sup>9</sup> The only case of approving the detention of an MP took place in 2004, linking a former Minister of Interior and MP to an incident where alleged Pakistani immigrants were killed in 2001 by police forces. This case revealed a lack of capacity and political will of parliament to deal with immunity cases. At the request of the First Instance Prosecution Office of Skopje, the Parliament adopted a decision to approve a detention measure against the former minister on May 2004. When in May 2005 the court in Skopje ruled a liberating judgement for other persons accused in the case, the Parliament has been requested to restore the immunity of the former minister, who by then was already in The Hague under indictment for another case (killing of Albanians in a village in 2001). The former minister has not yet been convicted in either case, is still an MP and receives his salary from parliament, since he cannot resign “in person”, as specified in article 65, paragraph 2 of the Constitution and his mandate cannot be revoked under the conditions of article 65 of the Constitution since his absence (far more than the six months envisaged in the Constitution) is justified. Moreover, formally he is still president of the Parliamentary Committee on Control over the Work of the Directorate on Security and Counter-Intelligence and the Intelligence Agency, which has not been working for three years.

### ***Incompatibilities of MPs***

In paragraph 5 of article 63 of the Constitution, it is specified that cases where a citizen cannot be elected as a representative, as well as incompatibilities of this office with other public functions or professions, are to be defined by law. It also states in article 67, paragraph 3, that the office of the President of the Assembly is incompatible with the performance of the functions of any other public office or profession and with an appointment in a political party.

Article 4 of the Law on MPs defines the office of an MP as a profession. It further states in article 5 that an MP's performance of the functions of other public offices or professions are incompatible with the office of an MP. Incompatible public offices are those of the President of the Republic, President of the Government, minister, Constitutional Court judge, judge, ombudsman, public prosecutor, as well as other offices for which the incumbents are elected or appointed by parliament or the government; member of a municipal council; mayor of a municipality; and employees performing expert and administrative matters in state administrative bodies. Paragraph 2 of the same article specifies that other offices defined by law are also incompatible with the office of MP, while paragraph 3 stipulates incompatibility with profit-making activities.

The new Electoral Code of March 2006<sup>10</sup>, in article 8, contains somewhat broader provisions on the incompatibilities of MPs: performance of expert and administrative matters in state administrative bodies; performance of economic or other profit-making activity; membership in governing boards of public enterprises, public institutions, funds, agencies, bureaus and other legal entities; representative of the state or social capital in trade companies. From the day of verification of an MP's mandate, his/her engagement in economic or other profit-making activities is in abeyance, while membership in governing bodies of the public organisations listed above and appointment as representative of the state or social capital in trade companies terminates on the day of verification of his/her mandate (paragraph 7 of this article).

In addition, the Law on Prevention of Corruption<sup>11</sup> regulates in article 22 that during the term of office an elected or appointed functionary may not perform any other function, duty or activity that is incompatible with the function he/she holds (paragraph 1). In addition, an elected or appointed functionary may not perform the function of a responsible person (director) or member of a governing body of a public enterprise, public institution or other legal entity with state capital. In the case of election or appointment as a functionary, these other functions have to cease (paragraph 4). An elected or appointed functionary may not be a member of a governing body or any other body of a trade company or other legal entity that undertakes a profit-making activity (paragraph 5).

As indicated above, three legal sources – the Law on MPs, the Electoral Code and the Law on the Prevention of Corruption – all pertain to incompatibilities of MPs. As the last two sources use different terminology (“officials” in the Electoral Code versus “elected and appointed functionaries” in the Law on the Prevention of Corruption) and the institutional scope is also imprecise (executive branch of power, parliament, municipal administration, courts, etc.), it is not clear to what extent MPs are obliged to respect all provisions. More importantly, enforcement mechanisms to control incompatibilities are very weak.

### ***Conflict of Interest***

The Law on the Prevention of Corruption contains a special chapter on “Prevention of Conflicts of Interest” (articles 40-49), which applies to MPs and to other “elected or appointed functionaries, officials and responsible persons in a public enterprise, public institution and other legal entity with state capital”.

MPs are obliged to respect the “principles of legality, efficiency, trustworthiness, independence, autonomy, honesty and professionalism” and to act conscientiously, professionally, impartially, without discriminating or favouring any person, as well as to fully respect human rights and freedoms and human dignity, acting without any personal interest (article 40), and in the case of conflict between private and public interests, MPs are obliged to act in accordance with the public interest (article 41). Conflict between private and public interests is defined as when the execution of certain official or other public activities affects the financial and other interests of the MP or the interests of the members of his/her family. MPs are obliged to request to be exempted from duty if he/she becomes aware of circumstances involving a conflict of interest. Parliament will relieve MPs from duty in a particular matter if it affects their personal interests, even without their consent. Concealing the existence of personal interests is a major violation of duty and could lead to the initiation of a procedure for political accountability (article 42).

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<sup>10</sup> *Official Gazette*, no. 40/2006

<sup>11</sup> *Official Gazette*, nos. 28/2002 and 46/2004. The consolidated text of the Law on the Prevention of Corruption is published in the *Official Gazette*, no. 83/2004. The numbers of articles referred to in this report correspond to the numbering in the consolidated text of the law.

Article 44 stipulates that MPs are obliged to report any corruption-related, punishable offence, as well as any breach of the Law on the Prevention of Corruption that has occurred in the exercise of their office. In case of a breach of this obligation, MPs can be fined for misdemeanour for an amount ranging from MKD 20 000-50 000 (320 to 800 EUR), unless the failure to report the breach is considered a criminal offence (article 70). Article 45 stipulates that MPs must not use their position to exert influence over other persons in a state body, public enterprise, public institution or other legal entity with the aim of gaining benefit, privilege or advantage for themselves or other persons. MPs may not act as intermediaries or representatives in commercial or other transactions between legal entities or citizens.

According to Article 46, in exercising discretionary powers, MPs are obliged to render decisions in a conscientious manner, taking into account all facts and circumstances of a particular case and observing the principles of legality and equity. MPs are also obliged, under article 47, to report to the competent body any persons who have offered them a bribe.

In addition, article 31 of the Law on the Prevention of Corruption prohibits the receipt of any gift or promise of a gift, with the exception of appropriate gifts, such as books, souvenirs and similar goods, the value of which is determined by law. Article 30 prohibits an MP from exerting influence on the employment or promotion of a member of his/her family in a state body or public enterprise, public institution or legal entity with state capital and under the supervision of parliament. In addition, MPs have to inform the State Commission on the Prevention of Corruption about any election, appointment, employment or promotion of a member of their family in a state body, body of local self-government, public enterprise or other legal entity with state capital within 10 days of such an election, appointment, employment or promotion.

Article 33 contains provisions on the prohibition of influence and conflict of interest situations related to public procurement. In accordance with article 23, an MP may not establish business relations with a legal entity founded by him/her or by a member of his/her family, or in which a member of his/her family is the responsible person. In addition, if the business relations were established prior to his/her election as MP, he/she has an obligation to refrain from any decision-making and to duly inform the State Commission on the Prevention of Corruption.

Article 24 specifies the obligation of an MP to report to the State Commission on the Prevention of Corruption, within a delay of less than 10 days, any loan or credit provided or guaranteed by the state that is extended to a legal entity founded by the MP or by a member of his/her family or in which a member of his/her family is the responsible person. There is also an obligation for any elected or appointed functionary under article 25 to report to the State Commission on the Prevention of Corruption – no later than 15 days from the date of his/her election or appointment – any transaction involving state property that establishes a legal relationship with a legal entity that has been founded by him/her or by a member of his/her family or in which a member of his/her family is the responsible person.

Article 29 prohibits elected officials, during the term of their office and within three years after its termination, to acquire stocks in a legal entity supervised by them or by the body in which they work or have worked, except when such rights have been acquired by inheritance. They are obliged to report the acquisition of rights on stocks to the State Commission on the Prevention of Corruption within 30 days of the date of their acquisition. Under article 28, MPs have an obligation to inform the State Commission on the Prevention of Corruption – for a period of three years following the date of termination of their office – in the event that they establish a commercial company or engage in a profitable activity in the same area in which they worked as an MP. Elected or appointed officials can be fined for misdemeanour for an amount ranging from MKD 20 000-50 000 (320 to 800 EUR) for breaching the provisions of articles 23, 24, 25, 29, 30 and 33.

In May 2006, the government submitted a proposal for a Law on the Prevention of Conflict of Interest to parliament, which is almost identical to the articles pertaining to conflict of interest in the Law on the Prevention of Corruption. There are two measures to sanction the “official”, namely a reprimand and a public announcement of the proposal of dismissal. The latter can only be implemented on a proposal by the State Commission on the Prevention of Corruption if the official continues to breach the provisions of the law after being reprimanded.

Conflict of interest – as well as provisions for its prevention and sanctioning – is outlined in the Law on the Prevention of Corruption. However, enforcement mechanisms are very weak, given the many additional tasks that the State Commission on the Prevention of Corruptions has to fulfil.

### ***Asset Declaration***

According to article 34 of the Law on the Prevention of Corruption, every elected and appointed functionary and responsible person in public enterprises, public institutions and other legal entities disposing of state

capital is obliged to submit a property declaration (upon taking and leaving office, or when a specific change in property occurs, including among family members) to the State Commission for the Prevention of Corruption and to the Public Revenue Office (PRO). A statement, which has been certified by a notary, revoking the protection of banking secrecy with regard to all domestic and foreign bank accounts presents a part of the assets declaration.

The property declaration and supporting documentation are considered official documents and are kept as a state secret, unless the State Commission on the Prevention of Corruption decides otherwise (article 36). The State Commission on the Prevention of Corruption is obliged to maintain records and oversee the property situation and changes in property situation of elected or appointed functionaries (article 55). It is authorised to request information on the property situation from MPs and other competent bodies or legal entities, which are obliged to provide such information without delay and may not invoke a state, official or other secrecy (article 59). In 2005 the State Commission submitted to the Public Revenue Office (PRO) two requests concerning members of parliament for examination of their property situation, but it did not receive a reply.

An MP who fails to submit the obligatory declaration, i.e. information about property, business activity, employment or any other data prescribed in articles 34 and 35 of the Law on the Prevention of Corruption is to be fined for misdemeanour for an amount ranging from MKD 20 000 to 50 000 (article 69 of the law). In case of non-compliance, the State Commission has the possibility of filing a motion to institute misdemeanour procedures with the competent courts. In 2005 the State Commission on the Prevention of Corruption filed 44 motions for instituting misdemeanour procedures before the competent courts due to non-submission or late submission of property declarations. Although it does not specify the cases in its annual report, it is likely that most of them (40) refer to the new mayors who took office after the March 2005 local elections, as published in the media. In July 2005, the media reported that more than 50 of a total of 84 mayors had not declared their property – an obligation that they were supposed to fulfil by the end of May 2005. According to the Commission's annual report, *"there has been no final judicial outcome upon these motions; however, 28 court decisions were rendered upon such motions submitted over the course of 2003 and 2004, out of which in the majority of cases (16) the proceedings were terminated due to occurrence of statutory limitations."* Only in six cases did the courts fine the defendant and in six cases a misdemeanour reprimand was issued. The Commission therefore concludes: *"This, once again, confirmed the concern raised by the State Commission that such penal policy diminishes the penal provision contained in the Law on the Prevention of Corruption; it further undermines the obligation for submission of property declarations and evades the intention and purpose for which the statutory obligation was introduced in the first place for holders of public function."*

In October 2005, parliament adopted a Resolution on the Support of the Fight against Corruption, which envisages the public disclosure by all elected and appointed functionaries of the property that has been reported to the State Commission on the Prevention of Corruption. This resolution was heeded by politicians of all parties, as well as by the President, the Prime Minister and some ministers, but not by all MPs. The State Commission on the Prevention of Corruption stated, however, that it cannot make much use of such public disclosures, since a serious comparison to what had been declared in the asset declaration is impossible due to secrecy requirements.

### **Verification and Sanction**

According to article 37 of the Law on the Prevention of Corruption, a procedure for examination of property may be initiated if MPs fail to provide complete and correct data in their property declarations or fail to report changes. The examination procedure against an MP is also initiated if it is determined that his/her property or the property of a member of his/her family has disproportionately increased in the course of his/her mandate compared to regular revenues generated in form of salaries, dividends, and other income derived from business activity or property.

The examination procedure is initiated by the Public Revenue Office (PRO), but the State Commission on the Prevention of Corruption, which is obliged to maintain records and oversee the property situation and changes in property situation of elected or appointed functionaries (article 55 of the Law on the Prevention of Corruption) may also file a request for initiating such a procedure. When initiating the procedure, the PRO submits a motion to the first instance court to issue an injunction measure.

If it has been determined that property has been illegally acquired, the PRO is to submit a criminal report to the competent Public Prosecutor's Office (article 38, paragraph 2). This article was applied for the very first time in 2005.

In order to implement the Law on the Prevention of Corruption, the Criminal Code<sup>12</sup> and the Law on Criminal Procedure<sup>13</sup> were amended in 2004. Thus article 359-a of the Criminal Code prescribes that an official (as broadly defined in this law) or responsible person in a public enterprise or public institution who, contrary to the legal obligation to report his/her property situation, presents false data on his/her income, or where it has been found that the property of this person is significantly beyond his/her legally acquired income or that the person has concealed the true sources of the income, is to be punished with an imprisonment of six months to five years and a fine. In addition, the disproportionately acquired property is to be confiscated.

In its 2005 report the State Commission on the Prevention of Corruption indicated that the “*State Commission submitted to the Public Revenue Office 13 requests for examination of the property situation of elected or appointed functionaries, including against two members of parliament, three judges, one mayor, one director of a public enterprise, and six members of a board of directors of a public enterprise. Similarly to the six requests filed in 2004, only one reply was received. Consequently, the State Commission is entirely dissatisfied with the effects of such implementation of this provision. Moreover, the State Commission is of the opinion that the procedure concerning property declarations will not accomplish its anticipated results if it is considered that its purpose is to only keep records about the property situation of elected and appointed functionaries, without conducting efficient control over the contents of property declarations. Therefore, it is a matter of urgency to create necessary conditions within the Public Revenue Office, by means of developing a central database about citizens’ property and ensuring adequate staffing of this office, which is responsible for checking and controlling the accuracy of property declarations.*”

Given the large number of property declarations to be reviewed and the limited capacity in the State Commission, these declarations have a limited effect on the monitoring of parliamentarians’ assets in practice. This is compounded by the unwillingness of the Public Revenue Office to co-operate. Plans to publish property declarations have not been implemented.

#### ***State Commission on the Prevention of Corruption***

The State Commission on the Prevention of Corruption was established as an autonomous and independent body based on the Law on the Prevention of Corruption (of April 2002) in November 2002, when parliament elected its seven members. With the June 2004 amendments to the Law on the Prevention of Corruption, the term of office of Commission members was extended from four to five years (according to the transitional provision of article 77 of the law, the five-year term of office will apply to the members of the Commission elected after termination of the mandate of the current members).

The seven members of the Commission are appointed and dismissed by parliament, without the right to re-appointment, from among the ranks of eminent experts in legal and economic fields who enjoy a reputation for exercising the function (article 51). In the future, it is foreseen that Commission members will work full-time, which is seen as negative by the current Commission (the reported risk is that by becoming professionals the members of the Commission may lose their required independence). The State Commission elects a president from among its members for a term of one year, without a right to re-election. The members of the Commission are accountable to parliament (article 56), and they have an obligation to submit an annual report to parliament concerning the work of the Commission and the measures and activities, which is then forwarded to the President of the Republic, the government and the media. In order to reinforce the transparency of its activity and to increase the impact of these reports, the Commission usually delivers them first to the media.

The Commission’s competencies are listed in article 55 of the Law on the Prevention of Corruption. They include, *inter alia*: adoption of a State Programme for the Prevention and Repression of Corruption; adoption of annual programmes and work plans for implementation of the State Programme; preparation of opinions on draft laws of importance for the prevention of corruption; launching initiatives with competent bodies for conducting control over the material and financial operations of political parties, trade unions, associations of citizens and foundations; launching initiatives for instituting and conducting procedures before competent bodies for the dismissal, assignment, removal, criminal prosecution or implementation of other measures of accountability concerning elected or appointed functionaries, officials, and responsible persons in public enterprises and other legal entities disposing of state capital; consideration of conflict of interest cases defined by law; and co-operation with other national state bodies, corresponding bodies of other states and international organisations active in the prevention of corruption. The Commission is also obliged to inform the public of measures and activities undertaken and the results thereof.

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<sup>12</sup> *Official Gazette*, nos. 37/96, 80/99, 4/2002, 43/2003, 19/2004 and 81/2005

<sup>13</sup> *Official Gazette*, nos. 15/97, 44/2002 and 74/2004

The Commission works in sessions (at least once a week) at which more than half of its members are present and makes decisions with a majority of votes of the total number of members (article 57). It may invite prominent experts to participate in its sessions if needed for the consideration of specific cases. The Commission may summon the person against whom the procedure is being conducted or other persons in order to clarify issues of relevance for decision-making (article 58). It may request information regarding property, economic activities, revenues generated and other data from elected or appointed functionaries, officials, responsible persons in public enterprises or other legal entities that dispose of state capital (article 59). It may request direct insight in the documentation of bodies and legal entities disposing of state capital (article 60).

The Commission may review cases based on complaints filed by citizens and legal entities or initiated by the Commission itself based on information presented in the media. The number of complaints submitted by citizens or legal entities in 2003 was 603; in 2004 a total of 627 complaints were received and in 2005 a total of 563. The Commission managed to process 427 cases in 2003, of which it resolved 129 (30%); 351 cases were processed in 2004 and 325 of them were resolved (almost 52%). In order to resolve the backlog of received cases, the Commission processed 798 cases in 2005 and resolved 593 of them. The structure of the decisions regarding the resolved cases in 2005 shows that, as in previous years, in most cases (65%) the Commission declared non-competence; 5% were actually initiatives for instituting criminal prosecution, dismissal or establishing other types of accountability, as well as recommendations and suggestions. The Commission forwarded 15% of the cases for further processing to other state bodies, such as the Ministry of Interior, the Republic Judicial Council, and the Public Prosecution; in 15% of the cases it found no grounds for further action. In addition, on its own initiative, the Commission reviewed 15 cases in 2003, 23 in 2004 and 18 in 2005.

The Commission has its own secretariat, which carries out administrative, professional and technical tasks on its behalf (article 54 of the law). Headed by a secretary, the secretariat is appointed and dismissed by the Commission in accordance with the Law on Civil Servants. According to the Rulebook on systematisation of positions in the secretariat, adopted by the Commission, there should be 26 civil servants; despite requests by the Commission for new posts, the current number of staff is six. According to the Commission, the problem of understaffing in the secretariat has affected not only the overall efficiency of the Commission and the full execution of its competencies, but has also caused a shift in its operation in such a way that the main focus has been on monitoring and processing of cases of corruptive behaviour and conflict of interest, to the detriment of preventive measures and actions that had been identified as one of the main priorities in the State Programme on the Prevention of Corruption.

Although the problem of the secretariat's premises has been pointed out in all of the Commission's annual reports and communicated to the government, the Commission still has at its disposal only one large room, where all Commission members and civil servants of its secretariat carry out their work, allowing "no discretion", which it considers as "necessary in the communication with individuals who address and visit the State Commission in different capacities."<sup>14</sup>

The budget of the Commission in 2005 was approximately 198 000 euros and in 2006 it is 215 000 euros.

The Commission and its seven members have since its inception gained a reputation for doing their work in a bold, enthusiastic, politically neutral and transparent way, pushing anti-corruption efforts forward in Macedonia. Unfortunately, complementary institutions in the fight against corruption, such as the Public Revenue Office and the courts, have not taken up this issue with a similar enthusiasm. Relations with the Public Prosecutor have been very strained, causing great concern nationally and internationally<sup>15</sup>. This is the main reason for the creation – on the personal initiative of the Prime Minister – of the inter-ministerial body for the co-ordination of activities in the fight against corruption.

### ***Remuneration of Parliamentarians***

Article 64 of the Constitution stipulates that an MP has the right to a remuneration established by law. The remuneration of MPs is established by the Law on MPs, supplemented by decisions of the relevant parliamentary committee (Committee on Elections and Appointments). In accordance with article 4 of the law, which specifies that the office of an MP is performed professionally, article 25 stipulates that the MP has the right to a salary. The subsequent articles 26-28 stipulate that MPs' salaries (and allowances) are

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<sup>14</sup> Annual Report of the State Commission on the Prevention of Corruption, p. 6

<sup>15</sup> The "Council Decision of 30 January 2006 on the Principles, Priorities and Conditions contained in the European Partnership with the Former Yugoslav Republic of Macedonia" emphasizes, as a short-term priority, the need to ensure "adequate co-ordination between the State Commission for the Prevention of Corruption and the State Prosecutor".

calculated and paid monthly out of the funds allocated to parliament in the state budget. The MP does not have the right to a salary if his/her mandate terminates, unless otherwise stipulated in this or another law (article 28). Articles 36-39, however, stipulate that an MP, based on a personal request to the relevant parliamentary committee submitted within 30 days of termination of office, may receive a salary for a period of one year after termination of his/her office, or for a year and a half if the MP acquires the right to retirement within that period. During this period, the MP does not have the right to any other allowances, except for funeral expenses and retirement severance pay. This right terminates if the ex-MP retires, if he/she is appointed to another position, or is elected to another function for which he/she receives a salary, or if he/she requests its termination.

Article 29 of the Law on MPs stipulates that MPs' salaries are defined according to coefficients established by a decision of the parliamentary Committee on Elections and Appointments. Salary coefficients for MPs are in the range of 3.5 to 4.0. The salary is increased by 0.5% for each commenced year of work experience, up to a maximum of 20%. According to article 11 of the Law on Salaries and other Allowances of MPs in the Parliament of the Republic of Macedonia and other Elected or Appointed Persons in the Republic<sup>16</sup>, the basis for calculation of the salary is the average net monthly salary paid per employee in the previous year, based on data from the State Statistics Office. The average monthly salary for 2005 was MKD 12 597 (200 euros), which – multiplied by the coefficients established in the Law on MPs – means that the monthly salaries of MPs should be in the range of 720-820 euros. The Decision on Salary Coefficients<sup>17</sup> envisages a salary coefficient of 4.5 for the President of Parliament, 4.0 for parliamentary vice-presidents, 3.5 for an MP and 3.7 for the president of a parliamentary committee. No new decision has been adopted yet based on the Law on MPs.

Article 31 of the Law on MPs lists other remuneration and allowances to which MPs are entitled: transport to and from work; food allowance; removal costs from the place of residence to the place where the MP performs his/her function; professional training and education; funeral costs for an amount equivalent to the average of the MP's last two paid salaries; per diem for official domestic trips, excluding hotel costs, for an amount up to 8% of the average salary per employee paid in the economic sector of the country in the preceding three months; hotel costs upon presentation of hotel bills, excluding deluxe category hotels; per diem for official trips abroad; compensation for the use of a private car for official purposes, for an amount equivalent to 30% of the market price of a litre of fuel, based on the number of kilometres; allowance for a separate family life for an amount equivalent to 40% of the average monthly net salary paid in the Republic in the preceding three months; and retirement severance pay for an amount equivalent to three average monthly salaries paid in the preceding three months. By its decision published on 20 April 2006, the Constitutional Court annulled item 7 of article 31, which stipulated that MPs were entitled to remuneration of the costs of their attendance of sessions of parliament and its working bodies for an amount equivalent to per diem defined for official domestic trips. Since MPs receive a salary and their office is actually professional employment in parliament according to the Law on MPs, the Electoral Code and the parliamentary Rules of Procedure, the Court saw no reason why should they be compensated for the work that they should be doing in any case, as they are not allowed to engage in any other function or activity. The same decision of the Constitutional Court annulled an additional eight articles of the Law on MPs – articles 40-45 and 47-48 – which defined privileged conditions for the early retirement of MPs, much higher early retirement benefits, disability retirement, and a family retirement pension (compared to the one established in the systemic Law on Pension and Disability Insurance) for all MPs who have served at least half of their term of office in parliament and for all ex-MPs who had received a salary from parliament since the first multi-party parliamentary elections in Macedonia.

According to article 29 of the parliamentary Rules of Procedure, the salary of an MP who was absent at least three times from a session of parliament and did not duly inform the President of Parliament is reduced by 5% for each day of absence, based on a decision by the Committee on Elections and Appointments. According to the annual reports of parliament, 42 decisions for a 20% reduction in the salary of 19 MPs were adopted in the period between November 2002 and December 2005.

In view of the economic conditions and budgetary constraints in Macedonia, the level of remuneration of MPs is reasonable, and the salary components for MPs are the same as those of EU parliamentarians. An exception is the possibility to receive a salary after termination of office, which is not common.

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<sup>16</sup> *Official Gazette*, no. 36/90, and *Official Gazette*, nos. 38/91, 23/97, 37/2005 and 84/2005

<sup>17</sup> *Official Gazette*, nos. 44/90 and 19/91, and *Official Gazette*, nos. 57/92, 1/98, 11/2002 and 32/2006

## **Role of Parliament in Ensuring Integrity in Government**

### ***Political Accountability of the Government***

Article 92 of the Constitution regulates the vote of confidence. It states that parliament may pass a vote of no confidence in the government in its entirety proposed by at least 20 MPs (one-sixth of all MPs) and passed by a majority of all MPs.

Although proposed on a number of occasions since independence, a vote of no confidence in the government has never been passed.

### ***Parliamentary Questions and Interpellations***

Article 72 of the Constitution regulates the right of parliamentarians to put questions (oral or written) and interpellations to members of the government. This article is supplemented by the parliamentary Rules of Procedure regarding questions (articles 35 to 41) and interpellations (articles 42 to 48).

The questioning right of parliamentarians allows MPs to pose questions to the Prime Minister and individual ministers on their work or on issues within their competencies.. Special sessions of parliament, which take place on the last Thursday of each month, are dedicated only to questions of MPs. The Prime Minister and ministers are obliged to attend these sessions.

The interpellation right allows parliamentarians to impose a discussion and debate on the work of the government or individual ministers. . The conclusion of the discussions on interpellations bears no legal consequences in terms of dismissal of the members of government, but can represent the beginning of a procedure for political accountability of the government. The debate on an interpellation may be interrupted if a vote of confidence in the government has been raised, if the government resigns, if the Prime Minister submits a proposal for dismissal of the member of government whose work was the subject of the interpellation, or if the member of government resigns.

In the last four years following the parliamentary elections of 2002, five interpellations were raised for members of the government. To date the majority in parliament has never voted against members of the government and no minister has resigned as a consequence of an interpellation.

### ***Parliamentary Inquiries***

The basic principles for inquiry commissions are set out in article 76 of the Constitution. Inquiry commissions can be set up regarding any domain and any issue of public interest. A proposal for setting up an inquiry commission should be submitted by at least 20 MPs. Parliament sets up a permanent inquiry commission for the protection of the freedoms and rights of citizens. The findings of inquiry commissions provide the basis for initiation of a procedure for ensuring the accountability of public office-holders.

Article 18 of the Law on the Prevention of Corruption provides for the establishment of special inquiry commissions on cases of corruption. It stipulates that 20 MPs may raise a question for establishing liability for corruption involving elected or appointed functionaries, officials, responsible persons in public enterprises and other legal entities disposing of state capital. The President of Parliament is obliged to put the question on the agenda of the first following session of parliament, during which – after preliminary debate – the MPs who raised the question elaborate the violations of the Law on the Prevention of Corruption or the provisions of the Criminal Code, and an inquiry commission is set up. The commission is authorised to request all documents and materials relevant for the case from any body, public enterprise, public institution or other legal entity disposing of state capital or from a political party which has MPs in parliament, and to call for a hearing any elected or appointed functionary, responsible person in a public enterprise, public institution or other legal entity or responsible person of a political party. Sessions of the inquiry commission are public, and it is obliged to submit a report to parliament no later than 60 days after its establishment. If the opinions of the commission members are not harmonised, the report contains all individual opinions of its members. The President of Parliament is obliged to submit the commission's report for review and discussion at the first (public) session of parliament. A question for the establishment of liability for the same case of the same person, body, public enterprise or other legal entity or of a political party may not be put on the agenda of parliament until six months have elapsed since the date of the closing of the debate on the question previously raised. MPs who have raised the question and failed to substantiate their allegations with true facts or sufficient reasons may not raise a question of liability before six months have elapsed from the date of the previously raised question.

An inquiry commission is also set up at the request of 20 MPs on issues of the abuse of budget resources or means emanating from public funds or state capital, in accordance with article 12 of the Law on the Prevention of Corruption

Formally, parliament disposes of sufficient and adequate powers to assure the political accountability of the government.

### **Ombudsman**

Amendment XI to article 77 of the Constitution, adopted in 2001, provided for an enlarged scope of the mandate of the People's Attorney (Ombudsman). The Ombudsman is elected by parliament for a term of eight years (with the right to one re-election) with a majority vote of the total number of representatives (which must also be a majority vote of all MPs belonging to minority communities). According to article 13 of the Law on the Ombudsman, the Ombudsman is empowered to examine individual violations of constitutional and legal rights of citizens as well as other irregularities committed in the exercise of state administrative power, either on his/her own initiative or on the request of a citizen. The Ombudsman is also obliged to give particular attention to safeguarding the principles of non-discrimination<sup>18</sup> and equitable representation of minority communities in public bodies at all levels and in other areas of public life. The Ombudsman can also take actions and measures for protection against unjustified delay of court procedures or against the irresponsible performance of court services, notwithstanding the principles of autonomy and independence of the judicial branch of power (article 12). The Ombudsman may also initiate a procedure for an assessment of the constitutionality of laws and the constitutionality and legality of other regulations before the Constitutional Court, and he/she may submit to the government and to parliament proposals for amendments to laws and regulations and their alignment with international treaties ratified by Macedonia (article 30).

The new Law on the Ombudsman of 2003<sup>19</sup> strengthened the role and importance of this institution, expanded its competences and brought it closer to citizens by establishing offices in six other cities besides Skopje (Tetovo, Kicevo, Stip, Strumica, Kumanovo and Bitola).

The Ombudsman is legally bound to submit an annual report to parliament, which is to be published in the media (article 36 of the Law on the Ombudsman). Despite the introduction in the 2003 law of the obligation to publish the report, this provision has not been complied with. The posting of the annual report on the Ombudsman website could be regarded as a means to facilitate access to this information<sup>20</sup>. The 2005 report of the Ombudsman was adopted by parliament in March of this year.

The opinion poll carried out by the NGO «Kaldrma» revealed that 80% of citizens at local level were informed of the ombudsman institution, in contrast to the unsatisfactory level of information in this regard demonstrated by state administration employees. Bearing this situation in mind, public information campaigns would increase awareness of this institution. In overall terms, citizens' opinions of the institution are increasingly positive. Indicators showing the number of complaints<sup>21</sup> reflect this fact. If the increase in the number of complaints from 2004 to 2005 (55.8%) is taken into consideration, the reason mentioned in the Annual Report of the Ombudsman in 2005 is related to *“the new way of working and new working method of the institution and utilization of the instrument of exposure to public criticism and by a closer cooperation with the media, media campaign in order to enable citizens to better know the competences, the role and the importance of the institution in protecting their constitutional and legal rights”*. The approach to public criticism is considered an additional means of pressure on the fight against corruption and other unlawful practices.<sup>22</sup> According to a survey carried out by Mak-Fax and Transparency International – Macedonia, in which 19 managers/editors of national media were interviewed, the Ombudsman initiative was considered as *“the brightest event”* in the fight against corruption in 2005.

Citizens are able to communicate with the Ombudsman in their own language. The Ombudsman's responses are in Macedonian and in the Cyrillic alphabet or in another official language used by the complainant.

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<sup>18</sup> There is no law to safeguard the principle of non-discrimination.

<sup>19</sup> Official Gazette, no. 60/2003

<sup>20</sup> The 2004 and 2005 annual reports are now available on the Ombudsman website ([www.ombudsman.mk](http://www.ombudsman.mk)).

<sup>21</sup> Complaints received per year:

1997	1998	1999	2000	2001	2002	2003	2004	2005
117	1066	1202	1166	1107	1878	2605	1959	3053

Source: Ombudsman Annual Report 2005

<sup>22</sup> As an example, a case regarding the magistrature can be mentioned. The Ombudsman publicly indicated the names of three judges and requested from the Judicial Council the initiation of proceedings for the determination of responsibility due to unprofessional and unscrupulous performance and absence of an ethical attitude. As an outcome, one of the judges was suspended.

The scope of complaints covers nearly all sectors. The most relevant are the judiciary (31.97%); property rights (13.20%); protection of rights during police proceedings and other internal issues (12.81%); labour relations (10.32%); urban planning and construction (6.03%) and pension and invalidity insurance (5.59%).

Of the above-mentioned sectors, the judiciary may be underlined, as it is the sector with a large number of complaints, and it constitutes a good indicator of the malfunctions already mentioned (complaints concerning the judiciary increased from 385 in 2004 to 976 in 2005. Most complaints were related to the court's inefficiency – delay of court proceedings and non-equitable representation of citizens.

The Ombudsman carries out its work by, on the one hand, safeguarding the constitutional and legal rights of citizens and, on the other, exposing the irregularities and breaches of integrity of the public administration and other state organs in the performance of their functions. The Ombudsman's pressure on these bodies is necessary, taking into account that “*the legal provisions in the Republic of Macedonia are still not applied adequately, and not fully respected, therefore human rights and liberties are violated by state administration bodies and by organizations that practice public mandates*”<sup>23</sup>. The violation of human rights and liberties by the unlawful deprivation of liberty, torture and other brutal inhuman treatment and maltreatment by officials of the Ministry of Internal Affairs constitutes an example of what has just been stated.

As for the Ombudsman's recommendations regarding individual cases, ministries and other bodies have acted in accordance with these recommendations in approximately 60% of the cases during the period 2001-2004. In 2005 an improvement in the implementation of recommendations was observed, but problems remain. Despite the recognition of the need for functional and efficient co-operation between state administration bodies and other bodies and agencies, according to the Ombudsman the co-operation of these bodies with the Office of the Ombudsman is insufficient. The Ombudsman is faced with unco-operative behaviour on the part of some civil servants, senior officials, and even high-ranking officials in charge of major bodies of state administration. For instance, the Sector for Internal Control and Professional Standards does not submit the information requested by the Ombudsman to enable a complete investigation, which represents an obstruction to the Ombudsman's work, mainly on human rights issues. In the case of the courts, due to heavy workloads, co-operation with the Ombudsman is insufficient and responses received are incomplete.

The new Law on the Ombudsman established compulsory conditions for the preparation of responses by competent bodies to requests of the Ombudsman, but in practice these bodies very often do not proceed in accordance with these conditions. According to the Ombudsman's annual report, “*the attitude of competent persons in regard to the Ombudsman's request is not satisfactory*”.

### **State Audit Office**

The State Audit Office (SAO) is an independent body accountable to parliament. The SAO submits annual reports to parliament, as well as reports containing findings on major irregularities. The annual reports must be published on the website of the SAO<sup>24</sup>. The SAO is obliged to audit at least once a year state budgets, state budget-users, budgets of municipalities and public enterprises established by the state, and political parties financed by state budget funds (this obligation was established by amendments to the Law on State Audit<sup>25</sup> of March 2004).

The SAO has the reputation of being a professional and transparent institution and is for the time being the only institution functioning as a real accountability mechanism for the government and the administration in financial matters, despite the insufficient attention given to its reports by parliament. Although the SAO has identified in its reports a large number of cases of misconduct, only limited action has been taken so far. SAO reports are regularly submitted to the State Prosecution Office, the Ministry of Internal Affairs and the State Commission on the Prevention of Corruption, but there has been no official settlement of any of the cases of abuse of funds or fraud. Compared to the situation of 1999, when the SAO actually started to function with only nine employees, the staffing numbers in the SAO are much more satisfactory (75 staff as at 1 March 2006), but nevertheless they represent only 50% of what is required to perform the audit function efficiently according to their rulebook on the systematisation of jobs and to the Strategy on the Development of the State Audit and the State Audit Office for the period 2005-2009, adopted by the SAO at the end of December 2004.

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<sup>23</sup> Ombudsman Annual Report 2005, page 9

<sup>24</sup> [www.dzr.gov.mk](http://www.dzr.gov.mk)

<sup>25</sup> The Law on State Audit and its amendments are published in the *Official Gazette*, nos. 65/97, 70/2001, 31/2003 and 19/2004.

## Political Party and Electoral Campaign Financing

The legal framework for political party and electoral campaign financing is composed of the Law on the Financing of Political Parties<sup>26</sup> of 2004, the Electoral Code<sup>27</sup> of 2006 and the Law on the Prevention of Corruption.

### Sources

The Law on the Financing of Political Parties, which came into force on 1 January 2005, requires that the financing of political parties be public and transparent and that the sources of their financing and their expenditures be public and transparent and subject to control by competent state bodies (article 4). In addition, any citizen or member of a political party has the right to equal access and information on the financing of a political party and the right to prevent or report an act constituting a violation or abuse of the Law on the Financing of Political Parties (article 5).

The law specifies that political parties are funded from public and private sources (article 7). Public sources of financing include state and municipal budgets. The total funds allocated for the annual financing of political parties represent an amount equivalent to 0.06% of the total original revenues of the state budget (article 9). These funds from the central budget are apportioned quarterly in such a way that 30% are allocated evenly to parliamentary and non-parliamentary political parties that have won at least 1% of the vote in the last parliamentary elections or in the last local elections. Of these funds, 70% are allocated to political parties whose candidates have been elected as MPs in the Assembly, in proportion to the number of the seats obtained, and to political parties whose candidates have been elected as mayors or councillors in municipalities, in proportion to the number of councillors (article 10).

Private sources of financing of political parties, according to article 13, include: membership fees, donations (including gifts, contributions and sponsorships), endowments, sale of promotional and propaganda materials, and own revenues in accordance with the law (according to article 19, own revenues include bank deposit interests; rent from the lease of party premises; sale of printed, audiovisual and digital publications and propaganda materials featuring the party name or symbols; revenues derived from copyrights; and revenues from the sale of tickets for party events). Political parties may not conduct business activities.

The Law on the Financing of Political Parties restricts the maximum amount of the annual membership fee per member of a political party to the equivalent of one average monthly salary paid in the preceding year in Macedonia, on the basis of data from the State Statistics Office.

Donations can be in the form of cash, in-kind donations or services (free-of-charge or paid by a third party). Non-monetary donations can be received if, in accordance with party statutes, they can be used for party activities. Sale of goods and provision of services at market prices are also considered as donations (the amount of the donation is the difference between the actual price and the market price of the goods or services). If donations are received from illegal sources – as listed in article 20 of the law – political parties are obliged within 10 days to inform the donor that these sums will be rejected and they must return the donations within 30 days (article 15). The amount of any single donation may not exceed the equivalent of 200 average salaries when given by a legal entity and 100 average salaries when given by an individual, where the average salary is calculated as the one paid in the month prior to the donation and announced by the State Statistics Office. This amount may not be accumulated more than once a year. The amounts are equivalent to approximately 42,000 euros for a legal entity and 21,000 euros for a natural person. Political parties are obliged to keep and publicise a register of donations (article 17), including data on each donor's name, type, value of the donation, and date of its receipt.

The same limits on the amount of donations apply to endowments to political parties (article 18). In addition, parties may use endowments to acquire only the property defined in article 6 of the law (political parties can own only their business premises, equipment, office materials, vehicles and other movables required for the accomplishment of their goals and the undertaking of activities as defined in their statutes and by law). If property other than those defined in article 6 of the law is endowed to a political party, the party is obliged to sell the property through a court auction and to transfer the funds so received to its giro account.

The illegal sources of financing are listed in article 20; political parties may not receive funds from: foreign governments, international institutions; bodies and organisations of foreign states and other foreign persons; state and local bodies other than budgetary funds defined in this law and in the Electoral Code; public enterprises, public institutions, public funds, and other legal entities disposing of state capital; public enterprises, public institutions and public funds established by municipalities; enterprises financed at least

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<sup>26</sup> *Official Gazette*, no. 76/2004

<sup>27</sup> *Official Gazette*, no. 40/2006

20% by state capital and public institutions, including those engaged in a privatisation process; private companies that at the time of giving a contribution to a political party are engaged in providing public services on behalf of state bodies, institutions, funds and enterprises based on a contract; citizen associations (NGOs), religious communities or groups; companies with mixed capital, where the majority shareholder is a foreign investor; and anonymous or unidentified sources. If not returned within 30 days of receipt in accordance with article 15 of the law, the funds received from illegal sources are to be transferred from the giro account of the political party to the state budget and are to be used for funding humanitarian activities (article 20, paragraph 2). In addition, political parties that have acquired and illegally used funds from the sources listed above, or have used funds that were not recorded in their register of donations, lose the right to the receipt of a state subsidy for the following year (article 20, paragraph 3).

Political parties may not keep funds in foreign banks or other financial institutions outside Macedonia (article 21).

Article 22 prohibits the exertion of any kind of pressure over legal entities or individuals with the aim of collecting funds for a political party. It also prohibits extending promises to a donor for any privileges and personal benefit or any benefit to a legal entity. Any person who becomes aware of actions breaching the prohibitions mentioned above is obliged to inform the State Commission on the Prevention of Corruption, which reports such actions to the competent bodies if it assesses that criminal or misdemeanour liability is involved.

Chapter 2 of the Law on the Prevention of Corruption is dedicated to the prevention of corruption in politics (articles 9-21). Several of the provisions in this chapter actually deal with the financing of political parties and election campaigns. Articles 9 and 10 stipulate that the financing of political parties (as well as trade unions, citizens' associations and foundations) is public and that no payments from state or local budgets or from public funds, public enterprises, public institutions and other legal entities disposing of state capital are to be made, except when these payments are based on law.

The Electoral Code contains a special chapter on election campaigns and their financing (articles 70-87). Article 83 specifies the illegal sources of financing of election campaigns: funds from the state budget and municipal budgets; funds from public enterprises and public institutions; funds from citizens' associations, religious communities or groups, and foundations; funds from foreign governments, international institutions, bodies and organisations of foreign states and other foreign persons; and funds from companies with mixed capital where the share of foreign capital is dominant. It also stipulates the limits of donations for election campaigns of natural and legal persons: individuals may finance a political campaign for an amount equivalent to 5000 euros, while legal entities may finance up to an amount equivalent to 20,000 euros.

Article 86 of the Electoral Code regulates the amounts of compensation for election campaign costs. The right to such compensation is given to organisers of election campaigns of candidates for president of the republic, members of parliament, members of councils and mayors. They receive MKD 15 (0.2 euros) per vote obtained in the election. The compensation is determined by a decision of parliament or of the municipal council and is paid from the state or municipal budgets within three months of submission of the financial report on the election campaign, based on the election report of the State Electoral Commission.

### ***Expenditures***

According to article 84 of the Electoral Code, the organiser of the election campaign (i.e. the authorised person from a political party, coalition or group of voters for an independent candidate, in accordance with article 2, item 14, of the Law on the Prevention of Corruption) may spend a maximum of MKD 60 (somewhat less than 1 euro) per voter registered in the electoral unit, which is the municipality where their candidate/ list of candidates is proposed (article 84).

The organiser of the election campaign must open a special giro account labelled "election campaign" within 48 hours of confirmation of the candidate/ candidate list and submit evidence thereof to the competent electoral commission (article 71 of the Electoral Code). If no giro account is opened within the prescribed period, the confirmed candidate list is annulled by a decision of the competent electoral commission. All funds received for financing the election campaign from individuals and legal entities are deposited in this giro account, and all campaign expenditures are to be covered exclusively by the funds deposited in this account. The account is closed only after the funds are transferred from the state or municipal budget for each vote obtained in the election.

According to paragraph 6 of article 85 of the Code, the group of voters organising an election campaign (for an independent candidate) are to donate any surplus of collected funds for charitable purposes.

Article 11 of the Law on the Prevention of Corruption stipulates that funds from state and municipal budgets or from public funds, public enterprises, public institutions or other legal entities disposing of state capital

may not be used for an election campaign, unless otherwise determined by the Law on the Financing of Political Parties. It further prohibits the start of construction of new infrastructure (roads, water supply/sewerage systems, or other facilities) or facilities in the social sector (schools, kindergartens, etc.) during presidential, parliamentary or local election campaigns, by using budget resources or public funds or by using funds from public enterprises or legal entities with state capital, except when these budget resources have been previously allocated for that specific purpose or when such construction represents the implementation of a programme adopted on the basis of a law passed in the current year. In addition, it specifies that no extraordinary payments of salaries, pensions, social benefits or other payments from budget resources or public funds, and no sale of state capital, may be made during election campaigns.

Article 13 of the Law on the Prevention of Corruption stipulates that a political party or candidate during an election may not collect or use funds from illegal sources. If there is a suspicion that a political party or a candidate during an election campaign has used funds from illegal sources, the State Commission on the Prevention of Corruption can request the competent bodies to verify the inflow and use of these funds.

### ***Reporting and Control***

According to article 23 of the Law on the Financing of Political Parties, parties are obliged to keep an account of their financial and material operations, in accordance with the provisions of the Law on Accounting of Non-Profit Organisations.

The supervision of the financial and material operations of political parties is carried out by the Ministry of Finance and the State Audit Office (article 26 of the Law on the Financing of Political Parties). The party's annual financial accounts are to be submitted to the Ministry of Finance, Public Revenue Office, Central Register and State Audit Office. The person responsible for the financial operations of a political party and the political party itself may be fined for a misdemeanour for an amount of MKD 20,000-50,000 and MKD 100,000-300,000 respectively if the annual financial account is not submitted (article 30).

Political parties must submit to the State Audit Office by 31 March an annual financial report for the preceding year (article 27). The person responsible for the financial operations of a political party and the political party itself may be fined for a misdemeanour for an amount of MKD 20,000-50,000 and MKD 100,000-300,000 respectively if the annual financial report is not submitted (article 31).

Political parties must submit quarterly reports on donations received to the Ministry of Finance and the State Audit Office (article 25). The person responsible for the financial operations of a political party and the political party itself may be fined for a misdemeanour for an amount of MKD 20,000-50,000 and MKD 100,000-300,000 respectively if the report on donations is not submitted.

In late March 2006, the Constitutional Court annulled the provision of article 32 of the law that stipulated that political parties could be denied the budget subsidies for a period of a year if they committed a misdemeanour prescribed by the law more than twice during the year.

According to article 85 of the Electoral Code, the organiser of an election campaign is obliged to submit a financial report on the campaign, containing data on the total amount of funds, the sources of financing and the expenditures incurred. The financial report is submitted to the State Audit Office, State Electoral Commission and parliament no later than 30 days from the day of verification of the mandates. The report is published on the website of the State Electoral Commission. Financial reports on local elections are submitted to municipal councils within 30 days of the election. If the State Audit Office establishes irregularities in the financial report related to exceeding election campaign limits or to financing of the election campaign contrary to the provisions of the Code, it notifies the competent bodies in order to initiate the appropriate procedure. In that event, the competent body adopts a decision whereby the compensation for election costs are not to be paid to the organisers of the election campaign (article 87, paragraph 1).

The political party can be fined for a misdemeanour for an amount ranging from MKD 200,000-300,000 (approximately 3200-4900 euros) if it does not submit a financial report on the election campaign, if it uses illegal funds for financing of the election campaign, or if it spends more funds than the limit established in the Code. The responsible person in a political party can be fined for such actions for an amount of MKD 20,000 to 50,000 (article 189 of the Electoral Code).

The competent electoral commission may adopt a decision on the annulment of the list of candidates up to the day of election, if it is established by a final court judgement that the organisers of an election campaign used funds acquired by committing punishable offences during the election campaign (article 87, paragraph 2).

According to article 12 of the Law on the Prevention of Corruption, whenever there are reasonable grounds for suspicion that budget resources, means from public funds, public enterprises, public institutions or other

legal entities disposing of state capital, have been used, directly or indirectly, through investments or by some other manner, for an election campaign or in general for financing an election or another political activity, the State Commission on the Prevention of Corruption is to take measures to clarify and determine such suspicions. If the Commission determines that such suspicions are well founded, it is to inform the competent bodies and request that they take action within their competence. The Commission is also obliged to submit a special report to parliament on the possible misuse of budget resources, resources from public funds, public enterprises and legal entities disposing of state capital within three months of the date of the election. The report is to be published in the media.

The annual reports of the Commission, however, indicate the weak results and inability of the Commission to control the financing of political parties and election campaigns. In general, the information requested from political parties by the Commission (in 2003, following the parliamentary elections of November 2002, in 2004 after the presidential elections, and in 2005 after the local elections) is either not sent by all political parties or is incomplete. This information nevertheless indicates full compliance with the legal provisions regarding the sources of financing and the financing limits. The Commission was not assured, however, that such information mirrored reality, but it concluded that there were only limited possibilities of determining the real situation, with regard to both the amounts spent on election campaigns and their sources. A question concerning the misuse of budget or other public resources or state capital may be raised by a minimum group of 20 MPs. In that event, parliament is to establish an inquiry commission.

According to article 66 of the Law on the Prevention of Corruption, a political party can be fined MKD 200,000-300,000 for a misdemeanour if it uses financing that is contrary to the provisions of articles 10, 11, 12 and 13 of the law. The responsible person in the legal entity can be fined MKD 30,000-50,000 for a misdemeanour if he/she acts contrary to these provisions of the law. If these actions were carried out for the purposes of gaining benefit or if they caused substantial material damage, the responsible person in the legal entity and the political party itself can be fined for a misdemeanour for an amount that is twice the fine specified above. Funds received from unidentified sources are to be confiscated.

Article 67 of the law stipulates that a candidate for election who uses funds from abroad or from an unidentified source or means which are prohibited from use in an election campaign is to be fined for a misdemeanour for an amount of MKD 20,000-30,000. The funds thus obtained are to be confiscated.

The State Commission on the Prevention of Corruption has pointed out that there is practically no mechanism for checking the accuracy of reports of political parties on the financing of election campaigns, since they only indicate the amounts spent and not their sources. However, their work should be more efficient once the State Audit Office starts performing the audits that are required under the new laws.

In June 2005, the State Audit Office announced that in August 2005 it will start auditing the accounts of only the four largest political parties in Macedonia – SDSM, VMRO-DPMNE, DUI and DPA – and that the focus of the audit will be on financial reports, including all income, donations, membership fees and funds for the election campaigns of these parties. The main emphasis, according to the SAO, was to be placed on auditing the financing of campaigns for the referendum and presidential elections that took place in 2004, where all four parties submitted candidates. The SAO also announced that it had decided to audit in 2006 the financing of the 2005 local elections. The final audit reports were published in January 2006, with the SAO concluding that it would not express its opinion on the financial reports of the political parties concerned due to its inability to prove that all of the activities of the parties had been reflected in their accounting records.

The State Commission on the Prevention of Corruption, Transparency Macedonia and other NGOs, and the media have constantly pointed out that much more than the legally limited – and officially reported – funds are spent by political parties on election campaigns. The political parties themselves, for example, were accusing each other during the local elections of 2005 of spending millions of euros in the campaign. It remains to be seen whether the new legislation will be implemented efficiently and completely, as required under the European Partnership.

To increase its capacity in monitoring and controlling electoral campaigns and in preventing corruption in politics, the State Commission on the Prevention of Corruption has adopted a set of “operative measures” specially designed for the next parliamentary elections, such as: (1) organisation of a meeting and subsequent communication with the Council for Radio Broadcasting concerning approval of the way of monitoring coverage of an election campaign by the media; (2) monitoring of all information provided by the media concerning an election (designation of a specialised agency for public relations); (3) communication to local authorities of the dispositions of the Law on the Prevention of Corruption regarding prohibition of new investments and extraordinary payments; (4) reinforcement of co-operation with the Ministry of Interior, Public Prosecutor’s Office, State Audit Office and Public Revenue Office during the election process. A member of the State Commission will be put in charge of the implementation of these “operative measures”.

To date the regulation of the financing of political parties and election campaigns in Macedonia has been almost a virtual exercise. In fact, there are rules that correspond to EU standards – even though these rules are dispersed among three main pieces of legislation rather than provided in a single law, a situation that must be reviewed – and there are institutions legally capable of controlling their application. However, the reality is far from being acceptable: political parties and other groups responsible for election campaigns easily understand that they can ignore the law without any constraints or fears of sanctions due to the lack of capacity of the institutions responsible for controlling these activities. Consequently, democracy is in danger in view of the increased possibility of political corruption and state capture. This situation is cause for deep concern for many Macedonian public institutions, citizens and “think tanks”, as well as for the international community, and urgent remedies are required. The upcoming elections will be a test regarding this issue as well.

## **Integrity in Government**

Macedonia is a parliamentary republic. According to the Constitution (art. 88), the executive power of the government must be exercised on the basis and within the framework of the Constitution and laws.

The government<sup>28</sup> comprises the Prime Minister and ministers, and it is appointed by parliament<sup>29</sup>, in accordance with the results of an election, by a majority vote of the total number of its members. The President of the Republic designates a person, a mandator, to propose a government to parliament. The proposed government must put forward a programme to parliament, and if it is rejected a new government must be proposed. In normal conditions, the government’s term of office ceases when parliament is dissolved.

### ***Responsibility of Members of the Government***

The government as a whole and each minister individually are accountable to parliament (article 92 of the Constitution). Parliament controls the government by parliamentary questions, inquiry committees, interpellation motions and a confidence vote. Parliament also controls the work of the government and the state administration through its committees, as well as by the mechanism of reporting of certain public bodies, as established in specific laws.

In spite of these direct and indirect controls, there is some consensus that administrative control of the decisions of members of the executive members is hardly performed or has not been efficiently implemented. If ministers do not have formal rights to make final decisions with regard to the awarding of contracts and licenses, the situation is different in the case of public procurement through the direct negotiating procedure, which is allowed up until the limit of 3,000 euros.

The Prime Minister, recognising the problem of “*the broad discretionary powers of public officials, whereby they dispose of enormously large public (budget) funds or state property, implying misuse in the disposition of the funds, non-diligence and illegal profit acquisition by means of corruption*”<sup>30</sup>, at the end of 2004 initiated an activity to assess the discretionary powers of ministers and other functionaries in the state administration. This activity, in compliance with the recommendation provided in the Action Plan of the State Commission for the Prevention of Corruption, aimed to reduce such discretionary rights in the legislation to the maximum possible extent in order to reduce opportunities for corruption. It was not foreseen to draft a specific law on this matter, but to prepare punctual amendments to the legislation of the various sectors, imposing restrictions on the minister’s powers. Nevertheless, in accordance with the findings of the State Commission’s 2005 Annual Report, “*no tangible progress has been made with respect to overcoming the situation of discretionary powers, and this issue remains a serious obstacle for the prevention of corruption*”<sup>31</sup>.

The amendment to the Constitution regarding the issue of the immunity of ministers is recognised as a positive step, but it is not enough. Additional measures should be undertaken to reduce the discretionary powers<sup>32</sup> of the holders of political posts, together with more effective control by the State Audit Office.

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<sup>28</sup> The Constitutional dispositions regarding the government comprise articles 88 to 97 as well as Amendments XXIII, XXIV and XXV.

<sup>29</sup> Article 105 of the Rules of Procedures of the Assembly of the Republic of Macedonia

<sup>30</sup> State Programme for Prevention and Repression of Corruption, State Commission for the Prevention of Corruption, Skopje, June 2003, page 11

<sup>31</sup> Annual Report 2005, State Commission for the Prevention of Corruption, page 10

<sup>32</sup> This is a recurring recommendation (see GRECO recommendations regarding the Republic of Macedonia).

### ***Penal and Legal Accountability***

There have been significant changes in this area in Macedonia, following GRECO's recommendation to reduce the number of officials who are granted immunity, the opinion of the Venice Commission (October 2005), and the recommendation of the Council of Europe to transfer from the government to parliament the power to remove the immunity conferred on ministers.

Within this guideline framework, Amendment XXIII to the Constitution, adopted in December 2005, replaced paragraph 3 of article 89, which stipulated that the Prime Minister and ministers in the government are granted immunity and that the government is to decide on their immunity. The amendment now specifies that only the "*Prime Minister enjoys immunity. The Parliament decides on his/her immunity.*" The former provision of article 14 of the Law on Government<sup>33</sup> was changed accordingly. In fact, during the period in which this legal provision was in force, there had never been any request for lifting the immunity of members of the government for cases of suspicion of corruption. As their immunity was not lifted, it had acted as a legal limitation to the respective investigations.

### ***Incompatibilities and Conflict of Interest***

The prevention and management of conflict of interest in the public service has been a key issue in recent years as it is considered as vital for ensuring good public governance and maintaining trust in public decision-making.

An elected or appointed civil servant, official or responsible person in a public body, as well as any other legal person managing state capital, is obliged to subordinate the exercise of his/her functions to the principles of legality, impartiality, transparency, honesty and professionalism.

According to the Law on the Prevention of Corruption, there is no difference in the rules related to incompatibility and conflict of interest for ministers and other senior officials, including MPs.

The Prime Minister and ministers cannot be members of parliament and cannot be called up for duty in the armed forces (article 89 of the Constitution). In addition, the office of Prime Minister or minister is incompatible with any other public office or profession. Holders of these offices are subject to the principle of exclusiveness.

Any breach of the law relating to incompatibility can lead to the dismissal of a member of the government.

It is recommended that any investigations related to incompatibilities and conflicts of interest be conducted proactively by parliament and the government and not be driven by scandals.

#### ***A) Post-public employment of government members***

The vast majority<sup>34</sup> of OECD and EU countries set out prohibitions and restrictions in laws to avoid conflict of interest in post-public employment. Leaving public office raises legitimate questions about the potential use of the special knowledge and insights of former public officials. Commercially sensitive information, for example, could provide unfair advantage over competitors. Preventing the misuse of "inside information" by former senior decision-makers and officials – to the disadvantage of both former employers in the public sector and potential competitors in the private sector, minimising the use of public office for unfair advantage in obtaining subsequent employment, discouraging influence-peddling and avoiding suspicion of decisions benefitting a prospective employer are all considered as critical measures for maintaining trust in government and public decision-making.

Specific rules have been established for specific categories of public officials, namely ministers, senior political appointees and their advisors, and members of parliament. In OECD countries and EU Member States it is common to come across rules that keep for a certain length of time holders of political posts from fulfilling duties in private companies operating in sectors that they have directly supervised and in companies that during their term of office were subject to privatisation or benefited from financial incentive schemes and tax benefits of a contractual nature. However, in view of the fact that excessive prohibitions and restrictions for post-public employment could create severe impediments to bringing knowledgeable and

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<sup>33</sup> *Official Gazette*, nos. 59/2000, 12/2003, 55/2005 and 37/2006.

<sup>34</sup> See: OECD (2006), *Avoiding Conflict of Interest in Post-public Employment: Comparative Overview of Prohibitions, Restrictions and Implementing Measures in OECD Countries*, OECD, Paris [GOV/PGC/ETH(2006)3].

experienced people into the public service, these restrictions should be considered as temporary solutions, by defining a specific “cooling-off”<sup>35</sup> period within the time frame determined by the law.

Efforts have also been made to identify the risk areas, such as supervisory and regulatory agencies involved in the energy sector, procurement and contract management, customs and tax administration, and inspection.

On this particular issue Macedonia does not meet European standards. There is no policy for post-public employment of members of the government or even other officials. The exception is Ministry of Interior staff, who cannot perform duties in security firms for a period of two years following the end of appointment. The Law on the Prevention of Corruption only establishes a duty of information: “*an elected or appointed functionary or an official or responsible person in a public enterprise, public administration or other legal entity disposing of state capital is obligated to inform the State Commission within 30 days if within a period of three years after the end of the respective function [he/she founds] a trade company or [engages] in a profitable activity in the area where [he/she] used to work*” (article 28).

Without any kind of legal restrictions on post-public employment, a minister can terminate his/her functions one day and the following day fulfil duties in a private company operating in the sector he/she had directly supervised. This is a typical situation of conflict of interest. This kind of behaviour is far from contributing to the prevention of corruption, and on the contrary encourages it. This weak point of the integrity system should be reviewed as soon as possible.

The restrictions in the above-mentioned law stipulate that holders of political and public posts cannot, for a period of five years following the cessation of functions, acquire by any means any kind of shareholder rights in a legal entity over which they – or the body they worked for – carried out supervision. The only exception is if they have acquired those rights by inheritance or by buying shares in the stock exchange. Any shareholders rights acquired by the official during his/her term of office should be reported to the State Commission within 30 days.

Failure to comply with the prohibitions of these provisions entails a punishment: a fine of 20,000 to 50,000 MKD (*ibid.*, article 68). It remains to be seen whether the existing sanctions will be sufficient. Dissuasive sanctions, together with timely application, provide key pillars for enforcing post-public employment prohibitions and restrictions.

Within the integrity area, it should be underlined that the disposition regarding the prohibition of influence in the employment of close relatives (article 30 of the Law on the Prevention of Corruption) seems a good example of transparency and of the prevention of corruption. An elected or appointed civil servant may not exert any influence with regard to the employment or promotion of a relative over the body in which he/she was elected or appointed or over any other public body. To control whether this implementation is really effective, these persons are obliged to inform the State Commission on the Prevention of Corruption about “*every election, appointment, employment or promotion of a member of his/her family in a state body, body of local self-government, public enterprise or other legal entity handling state capital within ten days*”.

#### B) *Asset declaration*

Macedonia has introduced obligatory disclosure reports for holders of political posts - including parliamentarians - and public servants (article 34 of the Law on the Prevention of Corruption) A detailed inventory must be made of the respective real estate, movable property of a certain value, securities, claims and debts, or other assets owned by these officials – or the property of his/her family<sup>36</sup> – and declared within 30 days of taking up duty and the cessation of functions; any change in assets must likewise be declared.

Information related to new appointments is provided in the *Official Gazette* exclusively by the State Commission for the Prevention of Corruption. Taking into consideration the reduced number of Commission staff (currently six persons), difficulties in hiring new qualified staff members due to the restriction policy regarding new appointments in the public administration, and budget constraints, the task of ensuring follow-up of all persons who have taken up duty and ceased their functions in the public sector is a priori a difficult one; the scope to be covered is too extensive.

A statement, certified by a notary, revoking the protection of bank secrecy with regard to all domestic and foreign bank accounts, constitutes one part of the assets declaration. The State Commission on the Prevention of Corruption is the only body to obtain this kind of information besides the court.

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<sup>35</sup> Among OECD countries, the maximum fixed time limits range from six months in Norway to a five-year period in France and Germany.

<sup>36</sup> Property to include building a house or another building, buying real estate, securities, a car or other movable objects worth more than the amount of 20 average salaries in the country in the previous three-month period

The assets declaration is submitted jointly to the State Commission and to the Public Revenue Office – which is responsible for checking and controlling the accuracy of property declarations – along with the agreement or other document for handling the property as well as the document related to the way in which the payment is made.

The asset declaration, statement and report are considered as official documents and are to be kept as state secrets, unless the State Commission decides otherwise (*ibid.*, article 36). To promote political transparency and confidence in public institutions, asset declarations are to be made available to the public. The public disclosure of personal interests and assets could have an additional advantage: the control that is already carried out by the State Commission and the Public Revenue Office could be strengthened through such public scrutiny.

Recognising the importance and political impact that this public disclosure might have for Macedonian citizens, in October 2005 parliament adopted a Resolution on Support of the Fight against Corruption<sup>37</sup>, requiring all elected and appointed civil servants to make available to the public their asset declarations. Members of parliament went even further by also divulging the origin of their assets. One of the ways envisaged by the State Commission to put in practice this disclosure requirement was to publish the contents of the property declaration on its website.

However, to date – end of June 2006 – no known initiative in this direction has been taken. The State Commission envisages an amendment to the Law on the Prevention of Corruption to introduce the compulsory public disclosure of asset declarations and, consequently, the abrogation of the secrecy of such documents.

The legal framework on this issue also establishes that an elected or appointed official who within three years of the cessation of functions founds a trade company or conducts a profitable business activity related to the previous post must notify the State Commission (*ibid.*, art. 28).

In 2005, the State Commission received 3070 asset declarations and 269 declarations of changes in assets. Taking into account the high number of property declarations that are filed every year by officials and the reduced storage space available in the State Commission, state bodies have been charged with collecting these documents, maintaining accurate and up-to-date records, and storing the declarations within their respective institutions on a temporary basis, until receiving further instructions from the State Commission. The inadequate working conditions, in terms of accommodations, should be reviewed as soon as possible, as for the moment the State Commission cannot perform its duties effectively and efficiently. It is really very difficult to check the above-mentioned declarations when they have been recorded in other public bodies. This problem has been reported many times to the government by the State Commission, but to date there has not been a positive outcome.

An official who has not submitted an obligatory declaration/information will be fined for a misdemeanour, for an amount ranging from 20 000 MKD (about 325 euros) to 50 000 MKD (about 812 euros) (*ibid.*, art. 69). Bearing in mind that the average salary of a public administration official is 373 euros, the amount of the fine seems to be dissuasive. If a disproportionably high property increase has been registered in the course of the mandate, duty or employment of an official in proportion to regular revenues from salaries, dividends and other income, a procedure will be initiated against the official.

The sentences delivered for failing to fulfil the obligation of submitting property declarations are insufficient, and as a result they do not contribute to the prevention of corruption. Fines are for only small amounts, while misdemeanour reprimands are not treated as sanctions. If the sanctions established in the law are not applied, they became useless and also put in question the credibility of the courts and citizens' trust in them. The prevention and fight against corruption is not a task of a unique state body, but implies co-operation among all state bodies and public institutions, each one performing its duty in accordance with its respective legal capacity.

As the State Commission has also emphasized, there is not an efficient control over the contents of property declarations. To this end, it is essential, on the one hand, to develop a central database on citizens' property within the Public Revenue Office, and on the other, to increase the number of specialised human resources assigned to this task. Once again, the Commission is confronted with the problem of lack of resources, which minimizes its capacity to act.

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<sup>37</sup> *Official Gazette*, n° 88/2005.

### C) *Prohibition to receive gifts*

The issue regarding gifts is being discussed in EU Member States as part of a larger debate on ethics and integrity in public administration. Codes of conduct/ethics in the public sector often draw attention to the issue of gifts to officials – what gifts can be received, what is prohibited and under what conditions.

In Macedonia an elected or appointed functionary, official or responsible person in a public body or other legal entity with public capital may not receive gifts unless they are of insignificant value, as determined by law.

### ***Remuneration of Members of Government***

Members of government have the right to a monthly salary from the day of appointment to the end of the month in which their office terminates, in accordance with the Law on Salaries and other Allowances of MPs in Parliament and other Elected or Appointed Persons<sup>38</sup>. According to article 11 of the law, the basis for calculation of the salary is the average net monthly salary per employee in the republic paid in the previous year, according to data from the State Statistics Office, which is then multiplied by the established coefficient and increased by 0.5% for each commenced year of work experience, up to a maximum of 20%. The salary coefficient of the Prime Minister, according to article 13 of the law, is 4.5; vice prime ministers have a salary coefficient of 4.0 based on article 14 of the law; ministers' salary coefficient is 3.7 based on article 15, while deputy ministers' coefficient is 3.4 in accordance with article 16. The Decision on Salary Coefficients<sup>39</sup> of the parliamentary Committee on Elections and Appointments, adopted based on the above law, envisages a salary coefficient of 4.5 for the Prime Minister, 4.0 for vice prime ministers, 3.7 for a minister and 3.3 for a deputy minister. The average salary in 2005 was MKD 12 597 (200 euros), which when multiplied by the coefficients established in the law means that the Prime Minister's salary should be approximately 900 euros, a minister's salary 750 euros and a deputy minister's salary around 690 euros.

Articles 19-25 of the law regulate that a member of government – based on a personal request to the relevant parliamentary committee submitted within 30 days of termination of appointment – may receive a salary for a period of one year after termination of his/her appointment or for a maximum period of 1 1/2 years if he/she acquires the right to retirement within that period. Members of government who resigned or were dismissed before the expiry of the term of office have the same right. This right terminates if the ex-member of government retires, obtains another position or is elected to another function for which he/she receives salary, or upon his/her own request. As has been indicated above regarding MPs, this privilege is questionable and should be reviewed.

The salary payment for such a long time after termination of office does not seem acceptable in comparison with European practices regarding the remuneration of members of the government. This is even more difficult to understand in view of the economic situation of the country, which is not sufficiently stabilised/consolidated. It is true that since 2001, the Macedonian economy has returned to positive growth rates, but it is not less true that the speed of recovery is rather slow, with the aggravating circumstance of a high unemployment rate of 37.3%<sup>40</sup>.

Articles 26-29 of the law regulate other remuneration and allowances to which the members of government are entitled: transport to and from work; food allowance; removal costs from the place of residence to the place of work; funeral costs for an amount equivalent to the average of the member's two last paid salaries; per diem for official domestic trips, excluding hotel costs, for a maximum amount equivalent to 8% of the average salary per employee in the economic sector of the country paid in the last three months; hotel costs justified by hotel bills, excluding deluxe category hotels; per diem for official trips abroad; compensation for the use of a private car for official purposes, for an amount equivalent to 30% of the market price of a litre of fuel according to the number of kilometres passed; allowance for a separate family life for an amount equivalent to 70% of the average monthly net salary paid in the country in the last three months; and retirement severance pay for an amount equivalent to three average monthly salaries paid in the last three months.

Members of government do not have any special tax status. All of the remuneration they receive, made up of basic salary and allowances, is taxable (income tax at this salary level is 18%).

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<sup>38</sup> *Official Gazette*, no. 36/90, and *Official Gazette*, nos. 38/91, 23/97, 37/2005 and 84/2005.

<sup>39</sup> *Official Gazette*, nos. 44/90 and 19/91, and *Official Gazette*, nos. 57/92, 1/98, 11/2002 and 32/2006.

<sup>40</sup> State Statistical Office 2001-2006.

## **Integrity in the Judicial System**

### ***Integrity within the Judiciary***

Amendments to some of the constitutional provisions regulating the judiciary and the public prosecution were adopted in December 2005<sup>41</sup>.

Amendment XXV, like the previous text of article 98 of the Constitution, guarantees the autonomy and independence of the judiciary. Amendment XXVII, replacing two paragraphs of article 100 of the Constitution, now explicitly protects the exercise of judicial office by guaranteeing to judges judicial indemnity and judicial immunity. Judges cannot be called to criminal account for opinions expressed or votes given in the process of judicial decision-making. This amendment further elaborates that judges are granted immunity and may not be detained without the approval of the Judicial Council, unless caught in the act of committing a criminal offence that is liable to imprisonment for at least five years. Prior to this amendment, parliament was the body that elected and dismissed judges and decided on their immunity. It also states that the office of a judge is incompatible with membership in a political party or performance of another public office or profession defined by law. Article 99 reinforces the independence of judges by stating that a judicial office is permanent. This article also states that a judge cannot be transferred against his/her will.

Article 106 of the Constitution guarantees autonomy to the Public Prosecutor's Office as a single and autonomous state body responsible for applying legal measures against perpetrators of criminal and other offences, and carrying out other duties determined by law. Amendment XXX, replacing paragraphs 2 and 3 of article 106, specifies that the Public Prosecutor is appointed and dismissed by parliament for a renewable term of six years, while the offices of public prosecutors elected by the Council of Public Prosecutors are permanent. It further stipulates that the offices of the Public Prosecutor and public prosecutors are incompatible with membership in a political party or performance of any other public office or profession defined by law. This amendment also abolished the immunity of the Public Prosecutor.

Amendments XXVIII, XXIX and XXX to the Constitution now provide for a Judicial Council, replacing the Republican Judicial Council, and a new body, the Council of Public Prosecutors (new articles 104, 105 and 106). These councils should guarantee the independence of the judiciary by ensuring that recruitment and dismissal are based solely on professional and merit-based reasons. Procedures and jurisdiction for both councils are to be further regulated by law.

The judiciary has always been criticised as being highly politicised and susceptible to political influence. One of the main reasons for this criticism has been the manner of election of judges – by parliament, following a proposal of the Republican Judicial Council, which was itself regarded as a politicised institution that could not guarantee the independence of the judiciary.

### ***Personnel Rules underpinning Integrity***

Key areas determining judicial independence are: selection, training and dismissal of judges; and financing of the judiciary.

### ***Judicial Council***

The Judicial Council is an autonomous and independent new judicial body introduced by the latest amendments to the Constitution, replacing the Republican Judicial Council. Its aim is to ensure and guarantee the independence of the judicial branch in the exercise of its functions in line with the Constitution and laws<sup>42</sup>. Its funding is provided from the state budget's allotment to the judicial branch.

The establishment of this body constituted the final stage in the process of ensuring the independent position of judicial authorities, as it ensured that assessment in the most sensitive area – the selection and dismissal of judges – would be carried out by a professional rather than a political body. The regulation of its composition, decision-making (the manner of exercising its functions), and selection of its members is provided in the Law on the Judicial Council.

The Judicial Council is composed of 15 members: the President of the Supreme Court and the Minister of Justice are *ex officio* members; eight members are elected by judges from among their ranks, three of whom should belong to minority communities in order to observe the principle of equitable representation of citizens belonging all communities; three members are elected by parliament by a majority vote of the total number of representatives, along with a majority vote of the representatives of minority communities; and

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<sup>41</sup> Amendments XX-XXX, published in the *Official Gazette*, no. 107/2005

<sup>42</sup> Article 2 (Purpose of incorporation) of the proposal for adopting a Law on the Judicial Council.

two members are nominated by the President of the Republic and elected by parliament, one of whom should belong to a minority community. It should be emphasized that the majority of the Judicial Council is composed of judges and directly elected by judges. The members elected by parliament and nominated by the President are from among attorneys, university law professors and other outstanding members of the legal profession. All of the Council members have equal rights and responsibilities while performing their functions in the Council, enjoying immunity in relation to their stated opinions and for their votes in Council sessions.

The term of office of Council members is six years, with the right to one re-election. Article 30 of the law establishes in detail the conditions for the term of a Council member. In the event of the termination of the terms of office of the President of the Supreme Court and/or Minister of Justice, their terms of office in the Judicial Council will also be terminated, as they had been appointed *ex officio*, i.e. as a function of their institutional positions.

The President of the Judicial Council is elected from among the ranks of Council members with a majority of the total number of votes by secret ballot. Unlike other Council members, the President's term of office is two years, without any right to re-election. In his/her absence, he/she is replaced by a deputy president elected by the Council, upon the proposal of the President, in the same session as the election of the President. These two positions cannot be performed by either the President of the Supreme Court or the Minister of Justice<sup>43</sup>.

The law also provides a complete regulation of the procedures for replacing members of the Council who reach the end of their term of office. The procedure is publicised and entails a competition among those fulfilling the required conditions, as stated in the law.

In the election of Judicial Council members from the ranks of judges, the representation of members of regional appellate courts is safeguarded, as four members are elected from the appellate regions of Skopje, Bitola, Gostivar and Stip. From the ranks of judges, one member of the Council is elected from among the judges of the Supreme Court and three members representing minority communities are chosen from among all of the judges registered in the Judicial Electoral Directory maintained by the Ministry of Justice (implementation of the Ohrid Framework Agreement on equitable representation<sup>44</sup>).

Created to ensure the independence of the judiciary, the scope of competencies of the Judicial Council are diverse. Some competencies were introduced by the proposal for a law on the Judicial Council, in accordance with Amendment XXIX to the Constitution and in compliance with European standards. Among the most important are the following<sup>45</sup>: election and dismissal of judges, lay judges and chief justice of courts; termination of the judicial office; monitoring and evaluation of the work of judges; decision-making on the disciplinary accountability of judges, on the suspension of judicial office due to permanent inability to work as a judge and on revocation of immunity of judges and elected members of the Council; decision-making upon request regarding approval of a judge's detention and on the temporary suspension of a judge from judicial office; to review and assessment of quarterly and annual reports on the work of the courts; safeguarding the reputation of judges and the trust of the citizens in the judiciary; and responding to complaints by citizens and legal entities on the work of judges and the courts.

To promote the transparency of the functioning of the Council, the law foresees that its sessions are to be made public. The Council can nevertheless exclude the public when the reputation and integrity of a judge or candidate for a judicial position is at stake and has to be protected. Good indicators of the level of transparency of the Council would be the rate of public participation in Council sessions and the annual percentage of sessions that are public in comparison with sessions that are reserved to Council members. The legal possibility for citizens to attend Council sessions does not necessarily correspond to its effective functioning.

Members of the Council are forbidden to carry out political activities while exercising functions in the Council so as to avoid political influence on the judiciary.

### ***Recruitment and promotion of judges and prosecutors***

There have been a number of shortcomings in the judge selection system. Political party influence and pressure, non-compliance with established criteria when making proposals and in some cases rejections of proposals of the Republican Judicial Council by parliament have proved to be the most serious problems in

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<sup>43</sup> Article 8 of the proposal for adopting a Law on the Judicial Council.

<sup>44</sup> The Ohrid Agreement strengthens the multi-ethnic character of the state by expanding the right of ethnic minorities and proclaiming its territorial integrity and unitary character.

<sup>45</sup> According to article 31 of the law.

this process. In addition, the absence of a selection process and of an initial training system for judges before they start performing their functions have led to performance problems.

To reduce the risk of interference in the process of electing judges and prosecutors and to strengthen the independence of the judiciary, amendments have been introduced to the Constitution. In this connection, an improvement of the system of appointment of judges has been envisaged and is clearly defined in the Judicial Reform Strategy. In particular, it has been stipulated that the election of judges is to be removed from the competence of parliament, as it is a political body, and transferred to the new Judicial Council, which will consist primarily of judges. Its members shall be appointed from the judiciary itself, which is to be the essential guarantee for the judiciary's independence. The selection of candidate judges is to be made on the basis of an entry examination for the School for Judges, followed by a period of initial training (which is also part of the Judicial Reform Strategy) lasting between 12 and 15 months, in the Academy for Training of Judges, which was recently established by law<sup>46</sup>, and a final examination. This selection will also bear in mind the requirement of equal representation of members of minority communities. Successful completion of initial training and the final examination will be followed by the appointment as a judge by the Judicial Council.

The access requirements to the magistracy have become more demanding. Now candidates applying for judicial positions in first-instance courts must have an increased number of years' work experience, either in the courts or in legal matters elsewhere for candidates for positions as judges in higher courts.

It was important to create clearly defined conditions and examination procedures for the appointment of all new candidates to the courts (and also to the Public Prosecution Office) so as to ensure the professional and non-political appointment of judges. One of the criticisms that has been made of the judiciary, including the Council, is that it seems to be "politicised, especially in cases involving minorities"<sup>47</sup>.

To date there is no direct merit-based career promotion system whereby a candidate can be appointed to a higher court only through a separate selection process in accordance with an indicated procedure and under specific conditions. However, in practice judges promoted to higher courts are most often selected from among those in lower courts, whereas judges to basic courts are mainly selected from among expert associates (law clerks) within the courts. To enhance judicial independence a merit career system will be introduced. The Judicial Council is to appoint judges in higher courts as well as court presidents. Provisions have also been made for the establishment of a supervisory body composed exclusively of judges as well as for the elaboration of mechanisms to supervise the performance of judges without causing prejudice to any decision made by the court.

According to new item 2 of article 19 of the Law on Courts, the monitoring, follow-up and inspection of the work performed by a lower degree court is carried out by a higher degree court within the region. In addition, the new Law on the Judicial Council specifies precise criteria for the assessment of the professional and expert qualities and reputation of the candidate for a position as judge.

The new Law on Courts and the new Law on the Judicial Council aim to create the legal conditions allowing the creation of an independent and professional judicial power. The principles enshrined in these laws follow European standards but as the laws have just been published it is too early to assess their implementation and the attainment of intended results.

The Law on the State Prosecutors Office of 2004<sup>48</sup> specifies that public prosecutors are appointed for a term of office of six years (the Constitution stipulates that the Public Prosecutor is to be appointed by parliament for a term of office of six years). The law regulates the procedure for their appointment by parliament upon a proposal of the government and a positive opinion of the Council of Public Prosecutors. These provisions are to be adjusted to the constitutional amendments.

### *Training Academy*

There is no formal system for the specialisation of judges in a specific legal area. In practice judges are specialised by their assignment to specific departments. Every basic court includes criminal and civil departments. The Supreme Court includes three departments: criminal, civil and administrative. It is therefore necessary to provide training in several fields, such as commercial law, IT crime, financial crime, corruption and human rights.

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<sup>46</sup> *Official Gazette*, no. 13/2006 of February 2006.

<sup>47</sup> Commission of the European Communities, First Assessment Mission in the fields of Justice and Home Affairs in the Former Yugoslav Republic of Macedonia, 17-21 June 2002, p.17.

<sup>48</sup> *Official Gazette*, no. 38/2004.

To promote the conditions for the expert, conscientious and independent performance of judges a school has been created for the training of judges and public prosecutors. The school is to provide initial training for candidates for positions as judges and public prosecutors as well as continuous training for judges, public prosecutors and other staff employed in the courts and the public prosecution. The Law on Courts<sup>49</sup> provides for 2% of the funds allocated to the judiciary to be spent on the training of judges.

It should also be mentioned that, in the framework of activities under the Paco Impact project, the State Commission for the Prevention of Corruption has organised workshops and training seminars (in 2004 and 2005) for the implementation of the newly adopted criminal legislation, especially concerning criminal offences associated with corruption. Participants attending these seminars were from the courts, Public Procurement Office, the newly established Department for Organised Crime and Corruption within the Ministry of Interior, State Commission, Customs, Public Revenue Office, Agency for Prevention of Money-Laundering, and other institutions.

#### *Accountability of judges and prosecutors*

The Constitution (Amendment XXVI) defines the cases when the office of a judge terminates, among which is the case of a judge who has been sentenced for a criminal offence that bears unconditional imprisonment of at least six months.

Notwithstanding the unrestricted term of office and immunity, a judge may be dismissed. However, the dismissal of a judge can only be under the conditions set by the Constitution, in accordance with the legally prescribed procedure, and recently under the competence of the Judicial Council<sup>50</sup>. The law establishes two conditions for the dismissal of a judge from office: “*for committing serious disciplinary infringement prescribed by law, rendering them undignified to exercise the judicial office and for unprofessional and unconscionable exercising of the judicial office, regulated by law*”. These infringements include breach of procedural laws, prolongation of court procedures beyond a reasonable time, disregard of legally prescribed time limits for handling cases, and conflict of interest.

The disciplinary procedure may be initiated by a member of the Judicial Council, the chief justice of the court, the chief justice of the higher court, or the general session of the Supreme Court within three months of the day when the infringement was discovered (but no longer than one year from the day on which the act was committed).

During the period 1996 to 2005, 24 judges were dismissed for abuse of duty and eight for incompetence and negligence. Several court cases have been filed against judges who were dismissed for abuse of duty, seven of whom were convicted.

Judicial magistrates have the right to appeal a decision of the Council to the Council for Decisions on Appeals of the Judicial Council against dismissal orders or of the Supreme Court on instituted disciplinary measures.

The Law on Courts includes provisions on incompatibilities. It also contains a general clause stating that a judge cannot exercise any other public office or professions except functions defined by law. It allows teaching at universities and participation in science projects without a right to remuneration. It also has a provision prohibiting the receipt of gifts from parties or persons directly or indirectly interested in a specific case.

The Law on the the Public Prosecution Office includes regulations on the disciplinary responsibilities of public prosecutors. Disciplinary cases concerning public prosecutors are decided by a commission established by the Public Prosecutor and the Public Prosecutors’ Council in second instance.

#### *Code of Judicial Ethics*

To determine the content and extent of rights and responsibilities of the judicial office and to facilitate the preparation of a judge for taking office, the Judges’ Association has adopted the Code of Judicial Ethics. The principles of judicial ethics are based on moral rules of conduct (judge’s personality, attitude toward parties) as well as on fundamental values of a constitutional order (independence). An ethical liability has been established for any violation of the Code’s principles.

Item 3 of the above-mentioned code reaffirms the independence of judges, which “should render impartial decisions based on their evaluation of the facts and interpretation of the law. They shall be unbiased, not

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<sup>49</sup> The prevailing opinion, however, is that such provisions are too general and hence the difficulties in their implementation.

<sup>50</sup> Constitutional amendments (December 2005).

falling under any party's direct or indirect influence, inducement, pressure, threat and interference, for any reason".

The Code of Judicial Ethics emphasizes the preservation of the judge's dignity both inside and outside the courts. Judges should preserve a high degree of personal, professional and moral authority and refrain from any deeds and contacts that might have a negative impact on this authority.

It is worth emphasizing the fact that this ethical code is an initiative of judges themselves, which indicates their commitment to improve their professionalism and to change the image of the judiciary.

### *Remuneration of Judges*

The Law on Salaries and other Allowances of MPs in Parliament and other Elected or Appointed Persons in the Republic apply equally to judges and members of the government. The current Law on Courts also specifies allowances, some of which overlap with those defined in the Law on Salaries of MPs and other Elected or Appointed Persons. According to the established coefficient, the salary of the President of the Supreme Court is equal to the salary of a minister (approximately 750 euros). The new Law on Courts specifies criteria for the establishment of the salaries of judges and requires that their salaries and allowances be regulated by another law. To underline the independence of the judiciary, the salaries of judges should not be defined in the same law as those of politicians.

### **Institutional Capacities of the Justice System to Promote Integrity and Fight Corruption**

In November 2004, the government adopted a Strategy on Judicial Reform in order to deal in a comprehensive and co-ordinated manner with the key problems associated with the functioning of the judiciary – inefficiency, lack of independence and political influence. In addition, the judiciary is perceived as one of the most corrupt sectors by citizens, which may be due more to its inefficient operation than to real corruption. According to data included in the Strategy, in 2003 there was a backlog of 508,772 cases, which is similar to the situation for the whole period from 1997 to 2003. Other reports by foreign organisations indicate a backlog of 1.2 million cases. Nevertheless, the enormous backlog may also be a result of the huge number of misdemeanours and other trivial cases and the absence of an alternative system for dispute resolution. The proposed laws on mediation and on misdemeanour cases and the new Law on Administrative Disputes are supposed to alleviate the burden of the courts with such cases. However, according to public statements of the President of the Supreme Court, there is corruption in the judiciary and it is a problem that needs to be dealt with on a case-by-case basis, rather than giving the impression that the judiciary as a whole is totally corrupt. The President of the Republic urged the courts to deal with the cases of corruption in the judiciary, after a "blacklist" of judges was drawn up by the American Embassy in 2004. The weaknesses identified in the Strategy include slow procedures and inefficient access to justice; inadequate capacities of human resources in professional and ethical terms; insufficient co-ordination between the Supreme Court, the former Republican Judicial Council and the Ministry of Justice; election and dismissal procedures susceptible to political influences; presence of corruption and incompetent exercise of functions.

A general problem of the judiciary and also of the public prosecution is the insufficient training with regard to new legislation and in particular with regard to economic crime; this situation has a rather negative impact on investigation and conviction in cases of alleged economic crime, corruption, fraud, etc., as sufficient proof cannot be established.

### ***Anti-Corruption Policies and Strategies***

According to article 55 of the Law on the Prevention of Corruption, the State Commission on the Prevention of Corruption adopted in June 2003 the State Programme for the Prevention and Repression of Corruption and the Action Plan for its implementation. The programme includes recommendations for measures and actions (legislative, institutional and educational) that are required for the establishment of an efficient system of prevention and repression of corruption. These measures and actions refer to reforms in the constitutional and legal system, the party political system, judicial, economic and financial systems, and the system of public administration. Although developed in co-operation with representatives of the government, parliament, the Public Prosecution and other state bodies, NGOs and academia, the programme was in fact never officially endorsed, either by the government or parliament. It is nevertheless considered to be a national project and many of the initiatives, recommendations and measures have been incorporated in other national documents, such as the National Strategy on European Integration, the Strategy on Reform of the Judiciary, and other documents adopted by the government.

The State Commission on the Prevention of Corruption monitors the implementation of the State Programme for the Prevention and Repression of Corruption and since its adoption has held two conferences on the assessment of implementation progress (in June 2004 and June 2005). In general, there is at least significant

legislative progress in implementation of the programme. A significant number of constitutional amendments were adopted – regarding the introduction of special investigative measures, immunity of members of government and the judicial system – as well as a number of significant laws, such as the Law on Financing of Political Parties, Electoral Code, Law on Free Access to Public Information, amendments to the Criminal Code and Criminal Procedure Law, amendments to the Law on Prevention of Corruption and the Law on State Audit, the Law on Witness Protection, and the Law on General Administrative Procedure (see below). According to the last Annual Report on the Work of the State Commission for the Prevention of Corruption (2005), for 21 laws – of the 42 listed in the State Programme – requiring adoption or amendment, the procedure had been completed, and the majority of the remaining laws were in the pipeline for amendment or adoption.

Following the process of decentralisation and taking into consideration the enlarged opportunities for corruption at local level, in June 2005 the State Commission adopted an annex to the State Programme – Measures for Prevention and Repression of Corruption within Local Self-government, together with an Action Plan for their implementation. The measures and activities, developed again in a participatory manner with representatives of municipalities and ZELS, are grouped into four principal areas: municipal administration and local government; municipal public sector; transparency, responsibility and accountability; and financing of local self-government units.

In October 2005, the Parliament adopted a Resolution on Support of the Fight against Corruption<sup>51</sup> in order to develop a more favourable political climate for fighting corruption in the country. Its preamble recognises that “... *the period of transition of our country is characterised by an alarmingly high level of corruption which seriously threatens the development of the society as a whole and that the corruption in the Macedonian society represents one of the main problems for its European integration...*”. MPs have confirmed by this resolution their commitment to support the fight against corruption and to support all legislative amendments contributing to the prevention of corruption. They agreed to publicly announce, i.e. make available to the public, their asset declarations and the origin of their assets and have invited all other elected and appointed functionaries, senior civil servants, judges, mayors and municipal councillors to do the same.

Guidelines for co-operation between state administrative bodies, public enterprises, public institutions and other legal entities with state capital and the State Commission on the Prevention of Corruption<sup>52</sup> were adopted by the government in November 2004. These guidelines are aimed at strengthening the implementation of measures and activities for the prevention of corruption, as defined in the Law on the Prevention of Corruption. They also are intended to remove or limit the possibilities of abuse of position by the heads of these bodies that are responsible for keeping state, official and other secrets and protecting collaborators of justice.

In April 2006 the government adopted a Decision on the Establishment of an Inter-sector Body for the Coordination of Activities against Corruption<sup>53</sup>. This body, headed by the State Secretary of the Ministry of Justice, is composed of representatives of the Ministries of Justice, Internal Affairs, Local Self-government, the Public Procurement Bureau, the Public Revenue Office and the Financial Police, all three bodies of the Ministry of Finance, the Civil Servants’ Agency, the Secretariat for European Affairs, the High Public Prosecution Office in Stip and the Supreme Court. It has been set up with the aims of co-ordinating the activities of all bodies involved in fighting corruption, strengthening their co-operation and sharing of information and data, and implementing the recommendations of the reports of GRECO, the Council of Europe and other international organisations. It is obliged to inform the government of its work at least once a year.<sup>54</sup>

Another important issue is to reduce the wide discretionary powers in the administrative and political decision-making process, which provide wide opportunities for corruption. At the end of 2004 the Prime Minister initiated an activity to assess the discretionary powers of ministers and other functionaries in the state administration and set up an expert group to assist the administration in this exercise. The aim was to reduce such rights in the legislation to the maximum extent possible in order to prevent opportunities for corruption. In October 2005, almost a year since the initiative started, the government adopted the report of the expert group, which suggests phased intervention in the legislation in order to standardise procedures for

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<sup>51</sup> *Official Gazette*, no. 88/2005.

<sup>52</sup> *Official Gazette*, no. 81/2004.

<sup>53</sup> *Official Gazette*, no. 44/2006.

<sup>54</sup> It is important to stress that improving co-ordination among the various bodies dealing with corruption cases is one of the measures underlined by the Council Decision of 30 January 2006 “on the Principles, Priorities and Conditions contained in the European Partnership with the former Yugoslav Republic of Macedonia”.

the exercise of discretionary rights. The government concluded that ministries should provide their comments and opinions on the recommendations included in the report. Later on, the expert group was asked to produce additional work to deepen some areas of the report. This work has been done but to date no decision or visible action has been taken to implement the recommendations of the expert group, which is seen as an evidence of the lack of political will to solve this problem.

### ***Legislative Activity against Corruption***

Amendments to several articles in the Constitution that were adopted in 2003 and 2005 should have a significant effect on preventing and fighting corruption in the country. Article 17 of the Constitution, which guarantees the freedom and confidentiality of correspondence and all other forms of communication, was amended in 2003<sup>55</sup> to allow the introduction of special investigative measures, which in addition have to be regulated by a law adopted by a two-thirds majority of the total number of MPs. The amendment specifies in paragraph 2 that only a court decision, in accordance with conditions and a procedure defined by law, may authorise the non-application of the principle of inviolability of confidentiality of correspondence and all other forms of communication in cases where this correspondence is indispensable for the prevention or disclosure of criminal offences, for criminal investigations, or for interests of security and defence of the Republic. However, the Law on Interception of Communication has not yet been adopted. Amendments XX-XXX of 2005 were adopted in order to strengthen the independence and efficiency of the judicial system, including public prosecution. Amendment XXIII reduced the immunity of the members of government, stipulating that only the Prime Minister has this right.

The most important anti-corruption law is the Law on the Prevention of Corruption (April 2002). Other relevant pieces of legislation are the Law on the Financing of Political Parties (October 2004), Electoral Code (March 2006) and Law on Free Access to Public Information (February 2006).

The Criminal Code and the Law on Criminal Procedure have also been amended to include new or improved provisions on the prevention and penal repression of corruption. These amendments are largely a consequence of the adoption of the Council of Europe Criminal Law Convention on Corruption. After its 2004 amendments, the Criminal Code incriminates corruption in the following offences: receiving and giving a bribe; unlawful intermediation; abuse of official position and public authority; negligent performance of duties; concealment of sources of disproportionately acquired property; abuse of a state, official or military secret; and money-laundering and other proceeds from crime. Amendments to the Law on Criminal Procedure introduced the implementation of special investigative measures and investigative actions as well. In addition, the Criminal Code now foresees and the Law on Criminal Procedure regulates procedures for the criminal liability of legal entities, which should contribute to a more efficient fight against corruption and organised crime; they also regulate the confiscation of property or proceeds from criminal offences.

The Law on the Prevention of Money-Laundering and Other Proceeds from Crime (July 2004) defines the measures and actions for disclosing and preventing money-laundering and other proceeds from crime and the organisation and control of their application. (see below)

The Law on the Protection of Witnesses (May 2005) regulates the procedure and conditions for the protection of witnesses, collaborators of justice, and victims having served as witnesses, for example of organised crime or criminal offences liable for imprisonment for at least four years.

### ***Public Prosecution Office – Unit on the Fight against Organised Crime and Corruption***

In accordance with article 29 of the Law on Public Prosecution, a special Unit on the Fight against Organised Crime and Corruption was set up in September 2004. The unit acts *ex officio* in the case of a criminal offence (or offences, with a liability of imprisonment of at least four years) committed by an organised group comprised of at least three persons and operating within a given period, with the aim of achieving direct or indirect financial gain or any other kind of material gain. The unit takes action before the competent courts throughout the country. According to the Rulebook on Internal Organisation and Operation of the Public Prosecution Office, the unit consists of at least 10 public prosecutors and deputy public prosecutors, who are appointed by the Public Prosecutor for a period of four years.

### ***Directorate for the Prevention of Money-Laundering***

The Directorate for the Prevention of Money-Laundering has been established, in accordance with the Law on the Prevention of Money-Laundering and other Proceeds from Crime<sup>56</sup>, as a state administrative body

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<sup>55</sup> Amendment XIX to the Constitution of the Republic of Macedonia, *Official Gazette*, no. 84/2003.

<sup>56</sup> *Official Gazette*, no. 46/2004.

within the Ministry of Finance. The main task of this office is to disclose money-laundering activities by gathering data and processing reports submitted either by the subject obliged to take measures and activities to detect and prevent money-laundering or by the Ministry of Internal Affairs, Financial Police, Public Prosecution, National Bank, State Commission on the Prevention of Corruption and other state bodies in cases where there are suspicious transactions connected with crimes of a money-laundering nature.

### ***Financial Police***

The Financial Police were established, pursuant to the Law on the Financial Police of 2002<sup>57</sup>, as a state administrative body within the Ministry of Finance. It is responsible for controlling the implementation of tax and customs regulations, and it conducts investigations either *ex officio* or at the request of the Public Prosecutor, Ministry of Finance, Ministry of Internal Affairs, Public Revenue Office, Customs Administration or Directorate for the Prevention of Money-Laundering. It aims to discover violations of laws in cases of tax evasion, money-laundering, smuggling, trafficking of goods and products, and other types of criminal offences involving large or significant amounts of taxes, customs or other revenues.

The Ministry of Internal Affairs restructured its Unit on Organised Crime into a Department for Organised Crime at the beginning of 2004. Activities to combat corruption and serious economic crimes are carried out by one of its sectors – the Sector on Financial Crime, which comprises a Section for Economic Crime and a Section for Money-Laundering and Corruption.

### ***Hotlines***

Hotlines have been set up in the Ministry of Internal Affairs (199 posts) on bribery and corruption in the police and all other state bodies and in the Customs Administration (197) on corruption in customs. The Public Revenue Office (PRO) also has hotlines (198) on the abuse of an official position in the PRO and on tax evasion. No data was available on the usefulness of these hotlines.

## **International Co-operation against Corruption**

Macedonia has signed and ratified a number of international conventions, including the following:

- Council of Europe Criminal Law Convention on Corruption (ratified on 28 July 1999)<sup>58</sup>: As result of the ratification of this Convention, several provisions have been incorporated in the Criminal Code<sup>59</sup> (related to accepting or giving a bribe, unlawful acceptance of gifts, money-laundering and other proceeds from crime, bribery in an election and in voting, etc.), in the Law on Criminal Procedure<sup>60</sup> (namely regarding to the procedure for temporary confiscation of property or assets obtained from criminal acts, procedure against legal entities, protection of witnesses, collaborators of justice and victims, extradition and transfer of convicted persons), and in the Law on the Prevention of Corruption<sup>61</sup> (related to a bribe of voters, privileging or discriminating against voters, influence during an election, appointment and dismissal from a management position and prohibition of influence over employing close relatives).
- Additional Protocol to the Criminal Law Convention on Corruption (ratified in September 2005), which has influenced amendments in the Criminal Code.
- Council of Europe Civil Law Convention on Corruption (ratified in November 2002), imposing new provisions in the Law on Obligations and in the Law on the Prevention of Corruption.
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratified in May 2000 and entry into force on 1 September 2000), which has influenced new provisions in the Criminal Code and in the Law on Criminal Procedure.
- UN Convention against Trans-national Organized Crime and its Protocols (ratified in September 2004).
- European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol (ratified in July 1999), as well as its Second Protocol (ratified in June 2003).
- UN Convention against Corruption (signed on 18 August 2005, not yet ratified).

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<sup>57</sup> *Official Gazette*, no. 55/2002.

<sup>58</sup> *Official Gazette*, no. 32/99.

<sup>59</sup> *Official Gazette*, nos. 37/96, 80/99, 4/02, 43/03 and 19/04.

<sup>60</sup> *Official Gazette*, nos. 15/97, 44/02 and 74/04.

<sup>61</sup> *Official Gazette*, nos. 28/02 and 46/04.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is expected to be signed in 2006.

Macedonia is also engaged in regional co-operation related to these matters and in this connection has signed and ratified several “declarations” and agreements, including:

- The “Zagreb Declaration” of 24 November 2000 and the Thessaloniki EU-Western Balkans Declaration of 21 June 2003.
- Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Bulgaria on Cooperation in the Fights against Terrorism, Organised Crime, Illegal Trade with Narcotics, Psychotropic Substances and Precursors, Illegal Migration and other Illegal Activities (ratified in January 2003).
- Agreement between the Government of the Republic of Macedonia and the Government of the Republic of Montenegro on Cooperation in the Fights against Terrorism, Organised Crime, Illegal Trade with Narcotics, Psychotropic Substances and Precursors, Illegal Migration and other Criminal Acts (ratified in July 2003).
- Agreement between the Government of the Republic of Macedonia and the Government of Republic of Romania on Cooperation in the Fights against Terrorism, Organised Crime, Illegal Trade with Narcotics, Psychotropic Substances and Precursors, and other Illegal Activities (ratified in June 2004).
- Agreement between the Government of the Republic of Macedonia and the Council of Ministers of the Republic of Albania on Cooperation in the Fights against Terrorism, Organised Crime, Illegal Trade with Narcotics, Psychotropic Substances and Precursors, Illegal Migration and other Illegal Activities (ratified in April 2005).
- The “Zagreb Declaration on International Cooperation on Counter-Terrorism, Corruption and the Fight against Trans-national Organized Crime” of 9 March 2005: This declaration was adopted as a result of expert experience-sharing on international co-operation in counteracting terrorism, crime and corruption. The Macedonian Delegation joined with delegations from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Romania, Serbia and Montenegro, Slovakia and Slovenia to confirm their strong commitment to the efforts of the international community, working together as states to counteract the increasing menace of terrorism and the spread of trans-national organised crime. The Declaration adopted 20 conclusions on legal and practical tools designed to facilitate international co-operation; these tools will increase the ability of states to combat terrorism, trans-national organised crime and corruption. Participating countries also concluded that terrorist offences should never be considered as political offences, that bank secrecy should not be grounds for refusal of mutual legal assistance in criminal matters, and that national authorities should promote adequate measures to facilitate the reporting of corruption.

On matters related to extradition, Macedonia acts according to the provisions of the European Convention on Extradition, with its Additional Protocols<sup>62</sup> (ratified in June 1999) and of other international agreements ratified according to the Constitution and the Law on Criminal Procedure. If there are any requests for extradition from a country that has not signed that Convention, the issue is resolved in accordance with bilateral agreements or through the principle of reciprocity (in the absence of any bilateral agreement).

There are no available statistics on extradition related to corruption cases. The available data concern all criminal offences and show that in recent years this activity has increased, as follows:

- 2001: 29 cases were concluded
- 2002: 26 cases were concluded
- 2003: 29 cases were concluded
- 2004: 50 cases in procedure (40 new cases)
- 2005: 75 cases in procedure (50 new cases)
- As at May 2006: 68 cases in procedure (17 new cases)

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<sup>62</sup> *Official Gazette*, no. 32/99