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FORMER YUGOSLAV REPUBLIC OF MACEDONIA

PUBLIC INTEGRITY SYSTEM

ASSESSMENT MAY 2008

Introduction

Since Sigma's June 2007 assessment of the public integrity system in the former Yugoslav Republic of Macedonia[1], there have been some positive developments in a number of areas, namely with regard to the strengthening of the actions of the police and the judiciary (especially public prosecutors) in investigating a number of cases of corruption of public officials and civil servants and in pursuing effective court action against their perpetrators. Some of the bodies and institutions that are key components of the public integrity system are now more solidly established and staffed (State Commission for the Prevention of Corruption, Public Prosecutor's Office, Judicial Council, etc.); and in some aspects the legal framework has been refined and fine-tuned so as to make it more effective.

However, in other "systemic" areas (such as the financing of political parties and electoral campaigns), very little progress or no progress at all has been made.

The new State Commission for the Prevention of Corruption (SCPC) seems to have adopted a lower profile than the previous one, at least in terms of visibility of its leadership of the fight against corruption vis-à-vis public opinion. However, it may be too early to make a judgment of the performance of this new Commission, since it has devoted much of its efforts over the past year to the elaboration of a new State Programme, which is meant to be more effective than the previous one.

In any event, the actual implementation of many of the actions envisaged in this new State Programme (in particular, those more directly related to the public integrity system) depend on the political will and initiative of the government and the parliamentary majority. In 2007 the government elaborated and adopted its own Action Plan, which is fully in line with the State Programme for the Prevention and Repression of Corruption adopted by the State Commission. This could be considered as clear support for the State Commission's action and evidence of the political will in gathering efforts to fight corruption. However, the standby situation created by the call for early elections in June 2008 and the uncertainty concerning the anti-corruption commitment of the new government that will subsequently be formed recommend some caution in this year's assessment.

International pressure on Macedonia to improve integrity in political and administrative spheres continues to play a relevant role. In this regard, it must be stressed that in the Accession Partnership adopted by the European Council on 18 February 2008 one of the eight key priorities (benchmarks) for progress in Macedonia's preparations for EU accession is related to establishing a sustained track record in the implementation of anti-corruption legislation. Full implementation of judiciary reforms (mainly those related to the Judicial Council and the Public Prosecutor's Office) is another benchmark, showing how important these issues are in terms of demonstrating Macedonia's readiness and real commitment to undertake accession negotiations. Once again, it remains to be seen whether the early elections will affect efforts to implement the governmental Action Plan aimed at reaching those benchmarks.

[1] In this report, the former Yugoslav Republic of Macedonia will hereafter be referred to as "Macedonia".

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Conclusions and Recommendations

- Some progress can be reported regarding the overall situation of the integrity system in Macedonia. After the elections in 2006, the new government's programme raised expectations that in-depth changes would finally occur. Therefore, the year 2008 was supposed to be decisive in assessing the sustainability and coherence of political support to implement the comprehensively designed policy, strategy, programme and action plan. However, the 2008 political crisis raises some concern with regard to the priorities and commitment of the next government.
- The governmental Action Plan was adopted at the end of June 2007, in line with the wider national Programme of the State Commission for the Prevention of Corruption (SCPC), and important (but still insufficient) budgetary resources have now been foreseen for implementation for the duration of the Action Plan (2007-2010).
- The new State Programme for the Prevention and Repression of Corruption incorporates a system of indicators and prioritises the actions to be accomplished in each of the Programme's three main phases. Although such indicators are not always the most relevant, the mere fact that a system of indicators has been integrated into the programme shows a willingness to carry out a closer monitoring of the implementation of actions foreseen in the Programme and and to measure its results in the fight against corruption.
- In the reform of the judiciary significant progress has been made from the standpoint of legislation and the effective establishment of new institutions, such as the Administrative Court. The Judicial Council is improving its activity, but concerns remain regarding its real independence from political power. The judicial sector is now better staffed but additional resources are still needed.
- Awareness of the need for strong co-operation among the various entities in this area is improving and is now showing some results. For instance, support for the activity of the Ombudsman is contributing to the increasing compliance of the public administration with its recommendations.
- Specialisation in courts and in prosecution is being implemented and some training is being provided (but must be continued and reinforced).
- A specific Law on Conflict of Interest was finally adopted but, unfortunately, the evaluation of the quality of the draft law was insufficient and problems of interpretation of the law are now being raised. It is nevertheless still intended to fully implement the law. Moreover, there are some legislative gaps that will have to be filled. For instance, the law does not apply to professional civil servants, which is a positive step, but the situation regarding conflicts of interest of civil servants needs to be clarified..
- The opportunity was missed during the period under assessment to introduce the measures (legislative and non-legislative) proposed by the SCPC and the State Audit Office (SAO) to improve transparency, control and accountability in party financing, in particular in the funding of electoral campaigns. The current political campaign is thus being carried out under the same legislation and conditions as the previous one, which is not a positive development and constitutes a source of concern.
- Information pertaining to asset declarations of politicians elected for public office and of appointed public officials are now posted on the SCPC's website, which has increased the transparency of such declarations. However, while such transparency might be considered as excessive, the legal and institutional mechanisms for ensuring an effective control of this obligation (penalties for failure to comply with the formal obligation, assets' investigation and taxation by the Public Revenue Office, etc.) are being developed but are not yet effective.
- Further efforts will be needed in the near future for strengthening the court administration as a public service, because the current situation – with huge backlogs of cases in virtually all instances – can be deemed to be disastrous. This situation puts in serious question the capacity of the Macedonian judiciary to guarantee citizens' access to effective and timely judicial protection of their rights and legitimate interests. The draft Law on the Court Service elaborated by the Ministry of Justice and submitted to parliament – which did not have time to adopt it prior to its dissolution – may even worsen the situation, due to its regulation in excessive detail of the system of job positions in the courts; this system is not the main problem facing the court administration. The draft law should possibly be withdrawn and re-elaborated with the widest participation of all those involved in court administration.

- Greater attention should be given to the quality of legislation. Even considering that regulatory impact assessment (RIA) could now be introduced, the practice of abusing the urgent procedure in parliament is undermining efforts to create a better legal framework and thus to protect the rule of law. Further and consistent (not just virtual) consultation with stakeholders is needed in practice.
- The SCPC should develop and implement a more proactive communication strategy in order to increase its visibility with regard to citizens.

1. Background on Integrity

As in many other countries in the region, in Macedonia improving integrity in public life and fighting corruption continue to draw the attention and concern of political actors as well as local and international observers and to influence the adoption of public policies. Important efforts and resources have been gathered to improve the situation and progress is being made.

Public awareness of how corruption and organised crime are still present and have a negative impact on the business environment, on citizens' daily lives, and on the country's international prospects has continued to increase in Macedonia and to create more pressure to obtain results. The fact is that, according to the 2007 Transparency International Corruption Perception Index, Macedonia was rated 3.3 and its rank is 84 (out of 179 countries).[2]

Supporting committed reformers, strengthening the role of civil society, and maintaining pressure from the international community and from the media could reinforce this tendency. However, although implementation capacity is improving it is still weak, and additional efforts are required to develop the quality of the legislation and the co-ordination among entities in charge of controlling the integrity system.

2. Integrity in Parliament

Besides other relevant pieces of legislation[3] dealing with immunities, incompatibilities, asset declarations and examination of the assets of parliamentarians, obligations of parliamentarians, as well as control mechanisms and sanctions, it should be mentioned that a new Law on Conflict of Interest was adopted during the period under review (2007). This new law, which has superseded and derogated from the relevant provisions in the Law on the Prevention of Corruption, applies to MPs.

A separate legislation on conflict of interest had previously been recommended, and it seems that in general the new law addresses the main issues. However, there are some problems related to its clarity and accuracy. For instance, in the definition of its scope, since different laws use different terminology when apparently referring to the same situation, unnecessary difficulties in interpretation are created. Moreover, while the new law applies to MPs, it nevertheless foresees that a measure of "dismissal" (among other measures, such as public reprimand) can be adopted by the "body where the official is employed", which is a clear misunderstanding of what it means to be elected.

A Code of Ethics for MPs is foreseen in the Anti-Corruption Action Plan, but it has not yet been adopted.

Immunity of MPs

As mentioned in previous reports, the immunity of MPs (in terms of both non-liability and inviolability) is protected by the Constitution and regulated by the Law on MPs[4] and by the Rules of Procedure of the Assembly of the Republic of Macedonia[5]. The Committee on the Rules of Procedure and Mandatory and Immunity Issues oversees parliamentary immunity and monitors the enforcement of rules of procedure in parliament.

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[2] This ranking shows a slight improvement of the situation in Macedonia. Since 2004 this is the first positive evidence that things could be changing. In 2004 its rank was 97 (out of 146 countries), in 2005 it was 103 (out of 159 countries) and in 2006 it was 105 (out of 163 countries).

[3] 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, amended in 2006 and 2008); Criminal Code (amended in 2004, 2006 and 2008); and Law on Criminal Procedures (amended in 2004).

[4] *Official Gazette*, no. 84/2005 of 3 October 2005.

[5] *Official Gazette,* no. 60/2002.

In the past ten years, only ten requests for the lifting of immunity of MPs were received from the judiciary. In three of these cases the above-mentioned Committee accepted to lift the immunity, and in a recent case the Assembly gave the authorisation for the arrest and indictment of an MP for abuse of public office.

A previous recommendation endorsed by GRECO for the adoption of guidelines for lifting immunity has not been implemented.

Incompatibilities of MPs

The parliamentary mandate (the "office of a member of parliament") is not only incompatible with any other elective public office (mayor or member of a municipal council) or with any public office filled by appointment (election) of parliament or government (including the offices of Prime Minister and ministers), but also with any other job in the private or public sector (including the civil service and the public service) or with any other remunerated professional or commercial activity (which has to be "suspended" or put on hold during the period of parliamentary mandate).

The control of compliance with these very stringent incompatibilities is a responsibility of the State Commission for the Prevention of Corruption (SCPC), but any decision related to MPs needs to be adopted by the Assembly.

A law on the establishment of an additional condition for performance of public office (Law on Lustration) was adopted at the end of January 2008[6]. The law establishes an additional condition for the performance of public office and applies to persons who are either candidates or holders of public office at central or local level and who are managerial civil servants, members of the management and governing bodies in state enterprises and public institutions, managers and teaching personnel in state and private higher education institutions, notaries, attorneys, mediators, journalists, etc. (as listed in article 5 of the law).

According to this law, the persons included in its scope should not be registered in the files of bodies dealing with state security in Macedonia or in the files of such bodies of former Yugoslavia as undercover collaborators or informants, or as users of information or persons issuing orders in procedures for gathering data and information on persons which represented a breach or a limitation of the citizen's basic freedoms and rights based on political or ideological reasons in the period between 2 August 1944 and the day of entry into force of the law.

A parliamentary committee will be established to verify the relevant facts. Thus, it remains to be seen how effective the implementation of the law will be after the elections and the establishment of the SCPC.

Conflict of Interest

The new Law on Conflict of Interest, which applies to MPs, has already entered into force.

According to this law, the official, when exerting public authority and performing public duties, must not carry out any activity that might influence the unbiased performance of the function and the protection of the public interest, except for the management of his/her own assets, scientific or research work, and artistic or cultural activity. In case of doubt as to whether there is a conflict of interest, the official is obligated to request an opinion of the State Commission for the Prevention of Corruption (SCPC) and to take all necessary measures to prevent any influence of the private interest. In case of a conflict of interests, the official is obligated to act in accordance with the public interest.

The SCPC is the state body responsible for ensuring compliance with this law, and to this end the current SCPC is now preparing a specific programme for its implementation. It would be desirable for the programme to be ready by the time the new MPs elected in June take up office, so that the relevant bodies can start controlling this key element of the integrity system from the very first day.

The receipt of gifts is also regulated by the Law on Conflict of Interest (while the article on this issue included in the Law on the Prevention of Corruption is nevertheless still in force, which increases the risk of legal conflict).

As a general conclusion, it can be said that the new Law on Conflict of Interest represents a positive development in dealing with this issue (a previous recommendation was to have separate regulations on

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6 *Official Gazette*, no. 14/2008.

conflict of interest and on the prevention of corruption) and may help to improve integrity in political life. However, its quality needs to be improved, mainly with regard to the resolution of misunderstandings and the clarification of its scope.

Asset Declaration

The obligation to submit asset declarations remains regulated by the Law on the Prevention of Corruption. However, according to the amendments to the law adopted in January 2008[7], the part of the provision of article 33 of the law related to the statement on consent for public disclosure of property data included in property declarations has been deleted. Moreover, the SCPC published in June 2007 the new form and contents of the asset declaration[8], and since the end of July 2007 the asset declarations of politicians and public officials (including MPs) have been available on the SCPC website.

However, as already indicated in Sigma's 2007 assessment, this kind of publicity could be considered as somewhat excessive, given the fact that there is a difference between not keeping declarations secret and publishing them on a website. There is some concern that this publicity might trigger attempts to hide assets or to conceal them in the declarations, even if such an action could result in a fine.

Verification and Sanction

According to the Law on the Prevention of Corruption, a procedure for the examination of assets may be initiated if MPs fail to submit asset declarations, to provide complete and correct data in their asset declarations, or to report changes. The examination procedure against an MP is also initiated if it is determined that the MP's assets or the assets of a member of his/her family has disproportionately increased in the course of the mandate compared to regular revenues generated in the form of salaries, dividends, and other income derived from business activity or property. The examination procedure is initiated by the Public Revenue Office (PRO)[9] or by the SCPC.

The verification mechanisms and sanctions were improved by the 2008 amendments to the Law on the Prevention of Corruption. These amendments stipulate that during the procedure the concerned individual (for example, an MP) is obliged to present to the PRO evidence of the sources of income that had been used to acquire property as well as other assets at his/her personal disposal or at the disposal of a family member. The state and municipal bodies and other natural and legal entities are obligated to supply all of the information necessary for examination of the assets upon request by the PRO and within the terms that it defines. The individual who does not forward the requested information to the PRO within the specified terms will be punished with imprisonment for a period ranging from three months to one year. If such a deed is committed by an official working in a state or municipal body or if the responsible person is working in a legal entity that carries out public interest activities or in other legal entities, the punishment is imprisonment for one to three years (new article 59-a, added to the chapter on "Penal and Misdemeanour Provisions").

Until now, the most common sanction for failure to submit an asset declaration or for incomplete or inaccurate information was a penalty for misdemeanor, which does not seem to be a very effective mechanism for ensuring full compliance[10]. It remains to be seen whether the 2008 amendments to the law will improve the law's effectiveness.

Operational co-operation between the SCPC and the PRO seems to have been strengthened over the past year.

Notwithstanding the reinforcement of the control instruments placed under the responsibility of the SCPC, parliament itself should be playing a leading role in ensuring the compliance of its members with the rules on incompatibilities, asset declarations and conflict of interest, or with more general ethical standards. The parliamentary rules of procedure should be amended to strengthen the role and expand the scope of responsibilities of the parliamentary Committee for Mandate and Immunities, the President

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7 *Official Gazette*, no. 10/2008.

8 *Official Gazette*, no. 72/07.

9 The Public Revenue Office (PRO) is the body under the Ministry of Finance responsible for tax administration.

10 The Annual Report of the SCPC (March 2008) refers to the case of an MP who had not submitted his asset declaration and was fined 10,000 MKD (less than 200 EUR), which was under the minimum (500 EUR) stipulated by the legislation. The Commission appealed against the court decision.

and Board of parliament, and parliament itself, under conditions that will ensure the transparency of their work and decisions.

State Commission for the Prevention of Corruption

The incumbent State Commission for the Prevention of Corruption (SCPC) was elected by parliament in February 2007 and took as its first and primary task the elaboration and adoption of a new State Programme for the Prevention and Repression of Corruption, covering the period 2007-2010; the Programme was adopted by the SCPC in May 2007[11].

The SCPC recently moved to new premises and now seems to be sufficiently staffed and funded.

In addition to its strategic planning and monitoring function, the SCPC has taken action – on its own initiative or as a result of claims and information submitted by citizens – in a number of cases (about 1,000) of suspected or possible corruption. In some of these cases, after a preliminary examination (which already discarded 52% of the claims due to the lack of any connection with corruption issues), the SCPC proposed the action of law enforcement agencies or of the Public Prosecutor's Office, requested information from other public authorities or formulated recommendations to such authorities. A large number of citizens' claims were related to the functioning of the courts and operations of local governments (concerning especially construction licensing and urban planning). All public authorities are subject to a generic obligation to co-operate with the SCPC. As far as the authorities depending on the government are concerned, co-operation is currently deemed to be satisfactory by the SCPC, following an internal instruction issued by the Prime Minister.

The SCPC has so far made public some 700 declarations of assets of public officials on the Commission's website. In 2007, in 23 cases the SCPC proposed the application of the procedure of verification by the Public Revenue Office.

The new Law on Conflict of Interest assigns to the SCPC a number of tasks, for which the Commission has started to prepare a specific programme of implementation, which will include the review of existing norms and regulations in areas of the public service not covered by the law (for instance, in Law on Civil Servants) so as to set them in line with the principles of the new Law on Conflict of Interest.

On 25 December 2007 a Protocol on Co-operation in the Prevention and Repression of Corruption and Conflict of Interest was signed by the SCPC, PRO, Public Prosecutor's Office, State Attorney, Court Council, Ministry of Internal Affairs, SAO, Customs Administration, Financial Police Administration, Directorate for Prevention of Money-Laundering and State Geodetic Bureau. It is expected that information will now flow more easily and that overall control will be more effective.

The situation of the SCPC has improved since Sigma's previous assessment: better staffed, good premises and sufficient budget.

Although the SCPC seems to be working seriously and in accordance with a consistent plan of action, during the mission information was provided to the effect that external or independent watchdog associations active in this area were quite critical of the current "presence" and activity of the SCPC as a front-row actor in the fight against corruption in Macedonia. The visibility of the SCPC therefore needs to be increased in order to improve communication with civil society and to create allies in promoting integrity throughout the country.

Remuneration of Parliamentarians

No changes have occurred in the legal framework determining the remuneration of MPs, who are supposed to continue to perform their functions on a full-time basis and exclusively. 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 activity, up to a maximum of 20% (i.e. 40 years). In addition to the coefficients previously established, a decision on the salary coefficient for the co-ordinator of an MP group was adopted

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[11] In the elaboration of the new State Programme, the SCPC received technical assistance and support from the USAID-funded Human and Institutional Development Programme, implemented in Macedonia by "World Learning".

in September 2007[12], which established a coefficient of 3.7. The monthly salaries of MPs are in the range of 840-960 EUR.

In comparison with the average salary in Macedonia and in view of the country's economic and budgetary capacity, the level of remuneration of parliamentarians is reasonable.

Role of Parliament in ensuring Integrity in Government

Political Accountability of the Government

Parliament has all of the usual and common mechanisms to make the government accountable to it: vote of confidence, parliamentary questions and interpellations, and parliamentary inquiries.

It must be stated, however, that one of the benchmarks included in the Accession Partnership is aimed at promoting a "*constructive dialogue…in the framework of democratic institutions*", and one of the activities included in the Action Plan of the Government is related to an inquiry committee report that caused serious turbulence in parliament. In Transparency Macedonia's Annual Report for 2007, the case was reported and it was mentioned that some incidents had occurred in parliament involving "physical altercations". This case was highlighted in the report as proof of parliament's failure to take appropriate action following the work of an inquiry committee. Apparently the committee set up for this case finished its work and submitted its report (to the plenary) in October 2007, but since then and "despite the general political proclamations (both domestic and foreign) for a speedy clarification of the case, by the end of 2007 this report was not placed as an item in the agenda of the Parliament".

Ombudsman

The Ombudsman Report for 2007 was sent to parliament, but has not yet been discussed (due to the dissolution of parliament and call for early elections).

In its 2007 report, the number of complaints accounted for by the Ombudsman was very close to the number reported the previous year (around 3000). In about one-third of the cases (950), the Ombudsman concluded that the rights of citizens had been violated. In the majority of cases, the affected institutions accepted to implement the recommendations issued to them by the Ombudsman.

The most frequent complaints have to do with the police (unnecessary use of force or excessive violence and disregard for the presumption of innocence); property rights (although the Ombudsman acknowledged improvements in the cadastre and other regulatory instruments of the real estate markets); judiciary (with an important number of complaints, mostly concerning aspects outside the remit of the Ombudsman); labour and employment (violation of labour rights, including in the civil service and in the public service); prisons (general conditions of inmates, lack of personnel); equitable representation of minority communities (especially concerning employment in public enterprises); and protection against discrimination (where the Ombudsman considered that the legal framework was still incomplete).

On the last issue (principle of non-discrimination), the Ombudsman considered itself as virtually the sole institution that was working to ensure the effective and across-the-board implementation of this principle. In particular, its assessment of the role played by the judiciary was rather negative, and for this reason the Ombudsman has been promoting legal reforms that will empower it to directly represent and defend citizens' fundamental rights to the courts and other institutions in cases of violation. According to the Ombudsman, the areas in which the principle of non-discrimination was less respected were: ethnicity (particularly with regard to employment and working conditions); gender (salaries, retirement age, access to managerial positions); and the situation of the Roma population.

With regard to the public sector, the Ombudsman highlighted progress in the implementation of the principle and of the legislation to ensure the equitable representation of national minorities. However, the institution considered that further efforts were still needed, especially concerning the "education" of public officials and administrators, namely judges.

At present, it seems that the work and reports of the Ombudsman are widely accepted (in particular by parliament) as an accurate description and evaluation of the situation in the country with regard to human rights and citizens' rights, and that co-operation of public administrations with the work of the

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12 *Official Gazette*, no. 106/2007.

Ombudsman and acceptance of its recommendations concerning the improvement of public services are increasing. The monitoring system introduced by the government as a way of reinforcing implementation of the Ombudsman's recommendations is proving to be an effective tool for increasing the effectiveness of this institution.

State Audit Office

The Government Rules of Procedure were amended at the end of September 2007[13] in order to establish a new Audit Committee as a permanent expert body of the government. The reports of ministries and other bodies of state administration on the measures taken to overcome the irregularities established in the audit reports of the State Audit Office (SAO) had previously been reviewed by the three standing committees of the government (on the political system, economic system and human resources). In accordance with these amendments, these reports will henceforth be subject to review by the Audit Committee. The Audit Committee will be composed of a president and six members, all of whom are appointed by the government. The president is the Minister of Finance, two members are ministers, three are managerial civil servants (one each from the General Secretariat of the Government, Office of the Prime Minister, and Ministry of Finance) and one member is from academia. The Chief State Auditor, who has elaborated the final report and is the legal representative of the SAO, should also attend the sessions of the Committee. The Committee is to submit written reports to the government, containing opinions and proposals on the measures taken based on the findings in the audit reports, while the Secretary-General of the Government is to notify the SAO concerning the government's conclusions.

The Law on State Audit was amended in November 2007[14] in order to provide for the establishment of a special Audit Authority for EU Pre-accession Funds. The amendments to the State Audit Law also introduced increased fines for misdemeanours committed by legal entities that are audited, as well as by the responsible persons in these legal entities and by state auditors.

Following the resignation of the Chief State Auditor at the end of September 2007, parliament appointed a new Chief State Auditor on 25 December 2007.

Changes introduced in the area of the SAO's legal framework are aimed at reinforcing the effectiveness of audit activities, improving integrity and creating better conditions for EU accession. Although these changes seem to constitute a positive move, it is still too soon to assess whether they reach the objectives that have been set.

Political Party and Electoral Campaign Financing

Although these two issues are unanimously seen as the most important risk factor affecting the public integrity system and the fight against corruption, and despite the measures and actions on this front envisaged in the State Programme for the Prevention and Repression of Corruption, the new electoral period has opened without parliament having passed new legislation with better control tools, which are demanded by many sectors of Macedonian society.

Since this assessment is being undertaken while the electoral campaign is still ongoing, it has not been possible to gather specific information and data that would allow a comparison with the situation arising from the 2006 electoral campaign, as reported in the 2007 assessment.

Therefore, a more accurate assessment of progress made on this front will have to be undertaken in the context of next year's assessment, once the data and information corresponding to the 2007 election (including the audit reports by the SAO) are available.

For the time being, concerns have been raised with regard to the current electoral period due to the problems reported during the previous elections, which have still not been resolved. The SCPC is adopting a plan to oversee the process more closely, but expectations are not high. Moreover, according to the law, the SCPC should have analysed all tender procedures since the last elections and attempted to establish whether some of the companies that had provided funds to the parties did in fact receive some illegal advantages. This work has not yet been done.

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[13] *Official Gazette*, no. 116/2007.

[14] *Official Gazette*, no. 133/2007.

Integrity in Government

At the time of this year's assessment and as a result of the call for early elections in June 2008, the government that was formed after the 2006 elections has turned into a caretaker government.

With regard to the government's declared intentions at the beginning of its mandate, while it seems that this government has taken effective and positive action in a number of areas related to the integrity system (including the adoption of a governmental Action Plan for the Implementation of the State Programme for the Prevention and Repression of Corruption, within the government /state administration sphere, and decisive budgetary and material support to the strengthening of key elements of the system), in other aspects the picture is bleaker.

A Code of Ethics for the government was prepared and submitted but was not adopted due to some reservations about its contents and legal orientation. It was reported that the Code had been drafted rather as a law than a code of ethics.

The situation regarding political, penal and legal accountability of members of the government, as well as their incompatibilities, is the same as reported in the previous assessment. It is considered to be almost in line with European practices.

Concerning conflict of interest, the provisions of the new law (including those related to the acceptance of gifts) also apply to members of the government.

Remuneration of Members of the Government

Since the previous Sigma assessment, no relevant changes have been made in the legal framework establishing the remuneration of members of the government.

However, in accordance with the law appending the Law on Salaries and other remunerations of MPs and other elected and appointed officials[15] of October 2007, the salaries of members of the government (and of all elected and appointed persons covered by this law, including civil servants) are to increase by 10% each year in the period 2007-2009, starting with the payment of salaries in September 2007. Therefore, multiplying the coefficients established in the law means that the Prime Minister's salary should be approximately 960 EUR, a minister's salary 890 EUR, and a deputy minister's salary about 790 EUR.

On the one hand, the government has shown a commitment to supporting the development of a comprehensive policy for fighting corruption and improving integrity in Macedonia. For instance, the adoption of an Action Plan in this regard and the reinforcement of capacities of the entities in charge of preventing and fighting corruption are evidence of this commitment.

On the other hand, the government is being blamed for practicing an anti-corruption policy that seems to be mainly geared towards demonstrating or "showing off" its commitment to a "zero tolerance" approach (with frequent leaks to the media of information about planned police arrest operations, so as to ensure maximum publicity, while neglecting to give proper consideration to some of the basic rights of affected citizens) rather than to pursuing a more consistent and systematic approach to eliminating the remaining loopholes in legislation and to improving the practices of institutions and bodies responsible for ensuring integrity in the public system and for fighting corruption.

2008 was expected to be a decisive year for determining which of these contradictory directions would prevail. However, due to the early elections and the need for a new government (perhaps a new political coalition), it seems that more time is needed to clarify this issue.

Integrity in the Judicial System

The new Law on the Public Prosecutor's Office[16], mentioned in the previous assessment as a draft law, was adopted and came into force in December 2007. This new law has strengthened the role of prosecutors in the "investigative stage", so that they now lead the pre-investigations, together with investigators from the Ministry of Interior, Ministry of Finance and Customs. Further legal changes, which would give to prosecutors the leading role in the remaining investigative stages of criminal procedures as well, are

15 *Official Gazette*, no. 121/2007.

16 *Official Gazette*, no. 150/2007.

currently being considered in the context of a new Law on Criminal Procedures (still in preparation). The new Law on the Public Prosecutor's Office has also redefined the jurisdiction of the Unit of Basic Prosecutors for Organised Crime and Corruption so that it now deals with cases of corruption (see below).

The amendments to the Law on the Courts[17] provide for the establishment of a specialised court unit, within the first-instance court in Skopje (Skopje I), for cases of organised crime and corruption across the entire territory of the republic (prior to these amendments, the law had provided for the establishment of specialised units on organised crime cases in five different courts). Among the functions of this specialised unit is decision-making in the following cases: abuse of official position and authorisation; receipt of a bribe of considerable value; illegal mediation committed by an elected or appointed functionary, official or responsible person in a legal entity; money-laundering of considerable value; offering a bribe of considerable value, etc.

In addition, amendments to the Law on the Courts have given to the Supreme Court a relevant role in guaranteeing the citizen's right to "due process". A specific procedure has been introduced for this purpose, whereby a special section of the Supreme Court, made up of three judges, has been established to deal with complaints concerning the violation of this right by the lower courts, through a summary procedure.

However, the effectiveness of this new mechanism is likely to be hampered, at least with regard to possible compensation for damages caused by such violations, by a legal provision specifying that any compensation accorded by the Supreme Court would have to be paid out of the judiciary's budget. Moreover, if a decision acknowledges that there has been a violation of the right to due process, the Supreme Court must initiate disciplinary procedures against the judge or judges responsible for the violation.

In summary, by adopting these legal provisions, parliament has apparently decided to make the judiciary (and not the republic) not only accountable, but also liable, for any violations of the right to due process. This arrangement may obviously trigger some sort of corporatist resistance to the full and effective implementation of such guarantee. Therefore, that provision must be abolished so that whenever such compensations are due, the republic should be in charge of them.

It is expected that the new unit in the Public Prosecutor's Office and the centralisation of resources and competence in just one specialised court could improve integrity in the judiciary and enable it to more effectively fight corruption and organised crime. For the time being it is too early to assess the effects of these changes.

Judicial Council

The composition of the Judicial Council was finally completed in late 2007 with the election of the three members representing parliament and the confirmation of the other two members nominated by the President. The Council has now moved to its definitive premises and is expecting to complete its staffing in a short period of time.

The Judicial Council has already started managing the processes of recruitment and appointment of judges, as well as its work concerning disciplinary procedures.

The Council's decisions on appointments cannot be appealed. Decisions on dismissal of judges can be appealed to a special panel that has been set up within the Supreme Court, consisting of three judges from the Supreme Court, one judge from the court in which the claimant was serving before being dismissed, and one judge from the relevant court of appeals.

The Judicial Council is also in charge of reviewing the reports of the courts and carrying out the performance evaluation of judges. For this purpose, a rulebook was adopted and is now being implemented. Salary awards can be given to judges according to the performance of the court, but not on an individual basis; all of the judges of the court are to be rewarded.

The law sets the criteria for the Judicial Council' application of the principle of equitable representation of minority communities, but there are neither pre-established "quotas" nor judicial positions reserved for such minorities.

It seems that the Judicial Council is endowed with and exercises all of the competences and powers needed for ensuring more professional recruitment and appointment of judges, protecting judges'

[17] *Official Gazette*, no. 35/2008 of 14 March 2008.

independence, and guaranteeing their professional and ethical behaviour. However, the Judicial Council apparently does not consider itself responsible or accountable for the efficient performance of the court system as a whole (as a public service). For instance, although the Council is now preparing its annual report on the functioning of the judiciary in 2007, it seems that the true debate on the problems of the court system as a public service is in fact taking place within the Supreme Court.

Moreover, the difficulty in reaching a parliamentary agreement on the nomination of members of the Judicial Council seems to indicate that there are still political attempts to control the Council or, at the least, some misunderstandings about the Council's role and relevance.

The Judicial Council is still understaffed.

Council of Public Prosecutors

The Law on the Council of Public Prosecutors aims to strengthen the autonomy of the public prosecution and to increase the professionalism and competence of public prosecutors.

The Council is composed of 11 members: the Chief Public Prosecutor and the Minister of Justice are *ex officio* members; one member is elected by public prosecutors in the Public Prosecutor's Office (PPO) from among their ranks; four members are elected by public prosecutors in the higher PPO from among their ranks; one member should belong to a minority community and should be elected by all public prosecutors; three members are to be elected by parliament from among university law professors, attorneys and prominent lawyers, two of whom should belong to a minority community. It should be emphasised that the majority of the Council is composed of public prosecutors and directly elected by them.

While the announcement for election of six Council members from among the public prosecutors was published on 23 January 2008, and the elections within the PPO were held on 22 February 2008, the three remaining members of the Council must be elected by parliament. After the problems encountered in relation to the election of members of the Judicial Council, this election of members of the Council of Public Prosecutors will provide an opportunity to verify the commitment of the Assembly in building a professional and independent judiciary.

Public Prosecutor's Office – Unit for the Fight against Organised Crime and Corruption

Four additional prosecutors have now reinforced the PPO's Unit for the Fight against Organised Crime and Corruption (POCC), which has also moved to new premises, where all the members of the unit have individual offices and sufficient support and IT equipment.

In accordance with the new Law on the Public Prosecutor's Office adopted in December 2007, the POCC's competence was recently redefined, and it will soon become an autonomous department or office, although still accountable to the Public Prosecutor and to the Public Prosecutor's Council. The POCC is now in charge of the pre-investigation and prosecution of crimes perpetrated by an organised or "structured" group (of at least three persons), for which a sentence of at least four years in prison is foreseen in the Penal Code. It is also responsible pre-investigating and prosecuting all cases of corruption (bribery, abuse of public office, illegal mediation, etc.) in which the suspect is an elected or appointed public official (MPs, ministers, persons appointed by parliament or the government for various positions, judges and prosecutors, etc.), an "official person" (civil servants working in state authorities, police, customs, etc.), or a manager of a public enterprise or other legal entity, provided that the damage to the state or to the public budget reaches a "significant amount" (currently 750,000 MKD or 12,200 EUR).

The activity of the POCC again increased in 2007, as in previous years (since its establishment in 2004). Requests to the investigative judge for starting judicial investigations affected 64% more persons than in 2006. Indictments were filed by the POCC against 153 persons (17% increase from 2006). Following these indictments, first-instance courts issued decisions against 127 persons (30% more than in 2006), of which 119 persons (26% more than in 2006) were convicted. The number of special investigative measures applied by the POCC (suspect unknown) or authorised by the judges (suspect known) increased from 22 in 2006 to 95 in 2007.

At national level, the POCC has established good co-operation with the Ministry of Interior (Special Investigations Unit), Customs, Directorate for the Prevention of Money-Laundering, Public Revenue Office, Financial Police, and State Commission for the Prevention of Corruption. At regional level, the POCC co-operates with prosecutor's offices in the SEE region (Albania, Bosnia and Herzegovina, Croatia,

Montenegro, Serbia and Slovenia) and participates actively in the work of SEEPAG (South East European Prosecutors' Advisory Group).

The assistance and co-operation established with the Italian Ministry of Justice and Italian National Anti-Mafia Bureau through a twinning project that started in December 2006 is recognised as being very positive. In the context of this twinning project, it is envisaged to develop a system for the exchange of data and information among law enforcement and anti-corruption agencies in Macedonia, which is expected to increase their efficiency and co-operation in the fight against organised crime and corruption.

For cases related to corruption in which decisions have been made since the last assessment, convictions were pronounced in the cases of two civil servants from the Bureau for Insufficiently Developed Areas (Ministry of Local Government) for having taken bribes; in three cases involving customs and police officers (also for bribes); in the case of Jaka Tabac (15 defendants, including two general managers and a judge, for the misuse of official position); in the case of AD Ohis (in which the president of the steering committee, the general manager and the head of the legal service were sentenced to imprisonment); in the case of the former director of the Public Revenue Office (for "unprincipled operation within the service"); and in February 2008 in the case of the National Bank, in which the former Governor of the National Bank and a well-known businessman, owner of a bank, went bankrupt and were both sentenced to more than four years of imprisonment.

In line with the arrangements and practices that are now common in EU Member States, the Macedonian POCC has become one of the key and most effective actors fighting corruption and ensuring public integrity in the country. The POCC seems to be a team of well-trained and motivated professionals, enjoying sufficient independence and powers to carry out an effective task. Its international contacts and activities will further contribute to the strengthening of this unit, as well as to the fast alignment of its working methods with good practices in the EU.

Recruitment and Promotion of Judges and Prosecutors

Judges and public prosecutors are no longer recruited or promoted by political bodies. However, complete independence of the Judicial Council and the Council of Public Prosecutors from political interference and, more importantly, full implementation by these two bodies of a system of recruitment and promotion based solely on merit (with no traces of nepotism or cronyism) are still awaited.

Judicial Academy

The Academy for Training of Judges and Prosecutors, fully operational since 22 November 2006, has been established as an autonomous institution (with its own budget, premises, equipment and staff) that is managed by a Management Board in which the most relevant judicial institutions are represented.

With a view to setting in place a more detailed regulation of the Academy's work, the following rulebooks were adopted: Rulebook on the manner and procedure for administering and evaluating the qualification test[18]; Rulebook on the manner and procedure of administering and evaluating the entrance examination; Rulebook on the commencement, course and development of order and discipline, disciplinary liability and other rights and responsibilities of the candidates relating to initial training in the Academy (adopted in 2007 and amended in January 2008[19]; Rulebook on the course and manner of implementation of the practical part of the initial training, the rights and duties of the candidates for judges and public prosecutors and the mentors (adopted in January 2008[20]); Rulebook on implementation of the programmes for continuous professional development[21]; Rulebook on educators and mentors in the Academy[22]; and Programme for taking the entry examination in the Academy[23]. The Rulebook on the contents and manner of administering and evaluating the final examination has not yet been adopted.

[18] *Official Gazette*, no. 51/2007.

[19] *Official Gazette*, nos. 95/2007 and 5/2008.

[20] *Official Gazette*, no. 5,2008.

[21] *Official Gazette*, no. 108/2007.

[22] *Official Gazette*, no. 44/2007.

[23] *Official Gazette*, no. 57/2007.

The first generation of 27 candidates who participated in initial training in the Academy successfully finished the five-month theoretical part of the training (17 September 2007 – 17 February 2008) and have now started the practical part of the training in the courts and the PPO, which should last nine months. The Academy delivered 123 training courses for 2987 participants in 2007 as part of the activities for continuous training of judges and public prosecutors.

For the time being, the courses at the Academy are not a prerequisite for entry into a judicial career (although they will be compulsory in three years' time). However, it seems that the Academy has now consolidated its position as the source of an important number of well-trained young candidates for the Macedonian judiciary so that, *de facto*, a certain percentage of the new judges now recruited by the Judicial Council have come from the ranks of the Academy's graduates. This is in itself a positive development.

The Academy for Training of Judges and Prosecutors (Judicial Academy) is also planning to provide training to the personnel of the Court Service.

The progressive operation of the Academy and the reinforcement of its capacity will be an important part of the process of building a professional and independent judicial system.

Accountability of Judges and Prosecutors

The accountability of judges and prosecutors is legally defined and protected.

The Constitution and the Law on the Courts define the cases for termination of the office of a judge. Notwithstanding the unrestricted term of office and immunity, a judge may be dismissed. However, a judge can only be dismissed under the conditions set down by the Constitution, in accordance with the legally prescribed procedure, and under the competence of the Judicial Council.

As public officials, judges (and prosecutors) are also subject to the Law on the Prevention of Corruption and the Law on Conflict of Interest.

Disciplinary procedures and sanctions against judges are conducted, managed and decided by the Judicial Council, which has to date initiated this type of procedure in five cases (three in 2007 and two in 2008). To date the total number of dismissed judges is eight (three in 2007 and five so far in 2008), including those dismissed upon their personal request so as to terminate dismissal procedures on the grounds of incompetent or unconscientious performance. The situation of prosecutors is similar, but the Council of Public Prosecutors is only now starting its operations, and some members of the Council have still not been nominated.

Code of Judicial Ethics

The Code of Judicial Ethics adopted by the Association of Judges is now routinely used by the Judicial Council to assess and ensure the ethical conduct of judges.

Remuneration of Judges

The new Law on the Salaries of Judges was adopted in September 2007[24]. It stipulates that a judge has the right to a salary corresponding to the significance and reputation of the function that he/she performs, the difficulty of the work and his/her responsibility (article 2, paragraph 1). The salary of a judge, as established by the law, cannot be reduced by a law or by a decision of a state body (article 2, paragraph 2). The salary can be reduced only when the disciplinary liability of the judge has been established by the Court Council and a disciplinary measure has been pronounced, reducing the monthly salary by 15-30% for a period of one to six months (article 2, paragraph 3). The funds to cover the salaries and other allowances of judges are to be provided by the court's budget.

The amount of a judge's salary is established depending on: type of court; type of cases to be decided by the judge; internal duties within the court (president of the court or of a court section, court unit or council); length of service as a judge; scientific and expert titles and specialisations; and results achieved in discharging the office of a judge (article 4). The salaries are determined according to the coefficients established by law (from 2.8 to 3.7). Thus, in 2008 the lowest salary of a judge should be approximately

[24] *Official Gazette*, no. 110/2007.

40,835 MKD or almost 670 EUR, while the highest salary, that of the President of the Supreme Court, should be approximately 53,960 MKD or 880 EUR (the highest coefficient and the salary should be the same as for ministers).

The Law on the Salary of Judges lists other remuneration and allowances to which judges are entitled (e.g. transport to and from work; food allowance for an amount equivalent to 25% of the average monthly salary paid in the country in the last three months; removal costs from the place of residence to the place where the judge performs his/her functions; per diem for official domestic and foreign trips; hotel costs upon presentation of hotel bills; compensation for the use of a private car for official purposes, based on the number of kilometres; and retirement severance pay for an amount equivalent to two average monthly salaries paid in the preceding three months in the country). Judges are entitled to a jubilee award for 10 years of service of an amount equivalent to their monthly salary; the equivalent of two monthly salaries is granted for 20 years of service, and the equivalent of three monthly salaries for 30 years of service. They can use public transport free of charge in the performance of their official duties.

The law stipulates that the salaries of judges are to be increased by 10% annually in the period 2007-2009, starting with the payment of salaries for September 2007.

In the transitional and final provisions (article 20), the law stipulates that the Court Council should adopt a regulation, within 60 days of the entry into force of the law, in which it establishes the procedure and criteria for monitoring and performance assessment of judges. This term elapsed at the end of November 2007, but the Court Council did not adopt the Rulebook on the Procedure and Criteria for Monitoring and Performance Assessment of Judges until 7 February 2008[25].

The Rulebook states that the purposes of the performance assessment of judges are as follows: to affirm the judiciary as an independent branch of power and increase the trust of citizens in the judicial branch of power and the judicial system; to increase the personal motivation of judges and ensure their further professional development based on their personal abilities; and to strengthen the independence and neutrality of judges in the performance of their office. Performance assessment should be carried out regularly – once a year, following review of the annual report on the work of the court and the judges, and occasionally when the Court Council deems it to be necessary.

The Rulebook distinguishes between quantitative and qualitative performance assessment criteria for judges and for presidents of courts. Among the quantitative criteria for performance assessment of a judge are the following: data from the personal file of the judge on previous assessments, promotions, disciplinary procedures and other judicial and professional activities; data provided by the judge and confirmed by the president of the court on the number, type and complexity of resolved cases and data on confirmed, annulled and changed decisions; data on complaints submitted by citizens or by the president of the court; opinion given by the Court Council to the higher court on the abilities of the judge to decide legal issues, that is, to apply the laws, to establish the facts, and to write clear decisions based on arguments; and data and information on the behaviour of the judge, which either contributes to raising the reputation and dignity of the judge and the court or to deteriorating their reputation and dignity. It must be stated that the last two criteria mentioned above do not sound like quantitative criteria at all.

The qualitative criteria include: professional knowledge of the judge; his/her attitude towards the work; ability to decide on legal issues, taking into account the confirmed, annulled and changed decisions (by the higher court); upholding of the reputation and dignity of the court and the judicial position; ability of oral and written expression; doing extra work by deciding on backlog cases; educational or mentoring activities; participation in seminars;, and attitude towards collaborators and towards the court administration.

The salaries of judges have recently increased significantly. In fact, these salary increases and the lack of a similar policy for the staff of the Court Service seems to have underpinned the recent strikes of this staff, who consider it unfair that all of the salary improvements in the judiciary have been addressed to the judges themselves.

The system of rewarding judges according to their performance has some risks, but as these awards are not defined on an individual basis the risk could be minimised. However, more attention should be given to performance assessment once its accuracy has been improved. For the moment it seems to be too personal and does not guarantee objectivity. Moreover, the system is too complex, and its implementation will entail a huge additional workload (data should be collected and filed every three months), and could divert judges from their main tasks.

[25] *Official Journal*, no. 31/2008 of 5 March 2008.

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

The situation regarding the institutional capacities of the justice system to promote integrity and fight corruption has shown some improvement since last year's assessment, but it must be stressed that, in general, the systemic or structural problems of the court administration have not yet been tackled in an effective way. The Ministry of Justice and the Supreme Court are striving to provide additional financial resources and to improve the material and technical resources, as well as the management of the courts and court procedures. New IT-supported systems for case management are being developed, but are not yet in place and operational.

With a backlog of 1.2 million cases, increasing year after year (80% of which are concentrated in the two courts Skopje I and II and in Kumanovo)[26], some urgent measures will have to be adopted – including at legislative level – to enable the court system to respond not only to the demands of public integrity and anti-corruption policies, but also to its core mission of protecting the rights and legitimate interests of the citizens of Macedonia.

Of the backlog cases, 64% are cases related to misdemeanor offences or to the enforcement or execution of administrative decisions (electricity and water supply bills, vehicle parking and traffic fines, mobile phone bills, etc.). Recent legislation foresaw the transfer of these cases, as from 2007, to private enforcement agencies. However, due to obstacles and difficulties faced by these agents in the event of resistance of the affected parties, the Ministry of Justice decided to postpone this transfer of responsibilities.

Also, according to the President of the Supreme Court, other measures, which could help to ease the problem, would be related to the development of arbitration systems (which already exist, but their effectiveness is weak because they are also submitted to unnecessary procedures), as well as measures to increase the role of public notaries for certain issues (e.g. inheritances). The latter possibility already exists, but citizens prefer to process these problems in the courts, because the services of notaries are expensive and not everyone can afford them.

The judiciary complains that the government and parliament are constantly adopting measures concerning the courts without proper consultations with judges (for instance, the draft Law on Court Service), and that in many cases such decisions are not effective in resolving problems and may even aggravate them.

To fight against the slow and inefficient procedures in the courts and abuses in legal procedures, the right to due process was introduced, and the competence to decide on cases filed for violation of this right was allocated to the Supreme Court. A special chamber comprised of three judges was created for this purpose in March 2008 and by mid-April 2008 a total of 77 motions had been filed. Following procedures in accordance with the European Convention on Human Rights, several rulings are expected before the summer break. The expectation is that, if the Supreme Court acts efficiently in such cases, the number of motions will rapidly increase (citizens would rather submit their cases to the Supreme Court special chamber than to the European Court of Justice). The creation of this chamber could have a positive impact in terms of the image of the judiciary, but it will create other problems: more cases and fewer funds available for the courts (as any compensations are to be paid from the court's budget).

Positive steps have been taken to improve the integrity of judges and their capacity to control corruption and promote integrity in Macedonia. For instance: the Administrative Court started its operations, full membership of the Judicial Council was accomplished, the Judicial Council has improved its activity, the special unit in the Public Prosecutor´s Office is working better, court specialisation in fighting corruption and organised crime is being implemented, the Judicial Academy is developing its training activity for judges and prosecutors (training of court staff will also be provided), and the activity of the courts and performance of judges are being better monitored. Along with the expected implementation of the right to due process, these developments are sufficient to conclude that reforms are moving in the right direction.

[26] Figures based on reports concerning the activity of the courts in 2007, as well as information on new cases initiated and cases closed in the first months of 2008; some comparative data could be provided to illustrate the problem:

	2004	2005	2006	2007
Cases solved	720,605	864,983	860,840	794,140
No. of judges	630	672	660	632
New cases	-	-	869,480	956,686

However, outstanding problems, such as the increasing backlog of cases, the delay in full implementation of the Council of Prosecutors, the lack of funds, some reported attempts of political interference in the area of the judiciary, the recurrent issue of the overall poor quality of the legislation, and the insufficient accuracy of the regulation for assessing the performance of judges, will continue to have a negative impact on the image and capacity of the judiciary.

Anti-corruption Policies and Strategies

As mentioned above, a new State Programme for the Prevention and Repression of Corruption was elaborated by the new State Commission for the Prevention of Corruption (SCPC), set up by parliament in early 2007. The Programme, which includes an Action Plan covering actions to be undertaken in the period 2007-2010, was adopted by the Commission in May 2007 and, following its adoption, the government elaborated and adopted its own Action Plan, which is fully in line with the State Programme. A Council for Implementation of the Government 2007-2011 Action Plan to Fight Corruption, headed by the Prime Minister, was established at the end of January 2008[27].

The new State Programme for the Prevention and Repression of Corruption is based on the premise that "although implementation of the (previous) State Programme was generally satisfactory, the results of the fight against corruption in the Republic of Macedonia remain unsatisfactory. The impression of insufficient implementation of the declared political will persists, and there is no comprehensive action towards increasing the effectiveness of the fight against corruption". The SCPC's analysis of the situation with regard to corruption in Macedonia "reveals that there is still no comprehensive system of measures for prevention and repression of corruption in the Republic of Macedonia"; and that "corruption and the deficit of transparent governance constitute the greatest obstacle to Macedonia becoming a member of the EU and achieving sustainable development". The analysis also records that "according to…surveys (and public opinion studies carried out over several years)…the public perception is one of widespread corruption, with foreign investors considering corruption to be one of the key factors accounting for the reluctance to make direct investments that are indispensable for economic growth and job creation".

According to the SCPC's sources, the most relevant feature of the new State Programme is that it has now shifted its main focus from the adoption of legislation and basic institution-building towards ensuring effective action and efficiency of the institutions dealing with the various aspects of the anti-corruption policy.

To this end, the objectives of the new Programme are: 1) permanent adoption of a widely accepted consensual system of measures for the prevention and repression of corruption; 2) establishment of a system of criteria, with indicators for measuring and assessing the effectiveness of corruption prevention policies; 3) creation of an environment of "zero tolerance" for corruption; 4) transformation of corruption from a low-risk/high-profit activity into a high-risk/low-profit activity; and 5) detection and punishment of perpetrators, along with the removal of material and non-material benefit, advantage or privilege resulting from criminal activity.

The State Programme addresses a number of "problems", identified as key factors for corruption in six different areas or pillars": 1) political system, parliament and political parties; 2) judiciary; 3) public administration and local government; 4) law enforcement agencies/watchdog bodies; 5) economic and financial system and private sector; and 6) civil society, media and unions. For each of these problems, the Programme formulates a number of actions and specific activities to be implemented and defines a series of "performance indicators" (at action and activity levels), which will be used for monitoring the implementation of the programme and assessing its effectiveness. Moreover, the Programme identifies the priority actions to be undertaken or accomplished in each of the three main stages or phases of implementation (years 1-2, years 2-3, and years 3-4).

Among the problems identified, the State Programme mentions, under Pillar 1 (political system and parliament), the lack of transparency in political parties and election campaign financing; insufficient transparency and accountability with respect to the disclosure of assets of politicians and public officials; the high level of political party nepotism (cronyism) in the appointment and replacement of top civil servants after elections; and the low level of interest/support in parliament for activities related to the prevention of corruption. Under Pillar 2 (judiciary), the Programme indicates as problems the external influences in the court process and in the decision-making of judges, prosecutors and the Attorney-General; inappropriate

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[27] *Official Gazette*, no. 19/2008.

working conditions in courts and the absence of a sound system of performance evaluation for judges and prosecutors; lack of transparency and absence of public information in the court system; failure of law enforcement agencies to act in a timely manner upon the request of the judiciary; and insufficient implementation of control mechanisms and sanctions within the judiciary. As for Pillar 3 (public administration), the problems relate to the low level of independence and professionalism in the civil service; insufficient transparency and accountability towards citizens; and limited access, quality and responsiveness of public services (especially in health care and education).

Co-operation among the various institutions acting in this area is increasing. In this regard, the Decision on the Establishment of an Inter-sector Body for the Co-ordination of Activities against Corruption (April 2006[28] , reinforced in November 2006[29]) was amended again in November 2007[30] to include among the body's members representatives of the State Commission for the Prevention of Corruption, the SAO and the Directorate for the Prevention of Money-Laundering.

Lack of funds for the implementation of the Action Plan for the Prevention and Repression of Corruption was frequently mentioned as evidence of the lack of effective commitment of Macedonian authorities in the fight against corruption. This problem is finally being addressed, and a budget was adopted in March 2008 (400 million MKD will be needed for the period 2008-2010. Even considering the fact that part of these funds will be provided by the state budget, donor contributions will also be needed.

Within the twinning project in the Public Prosecutor´s Office, an overall assessment of anti-corruption legislation is being carried out.

Several seminars and workshops on anti-corruption, smuggling, organised crime and international co-operation are being organised, mainly by the Public Prosecutor's Office.

The anti-corruption strategy is now more consistent, co-operation is increasing and available resources (budget, staff and premises) are increasing. However, the overlapping of institutions acting in this area still exists, the quality of the relevant legislation needs to be improved, political interference should be refrained, enforcement capacity needs to be developed and, for this purpose, more training will be required.

Legislative Activity against Corruption

The legal framework related to fighting corruption and organised crime continues to be developed. Therefore, a new Law on the Prevention of Money-Laundering and Other Proceeds from Crime and Financing of Terrorism was adopted in January 2008[31], aimed at harmonising the legislation with international conventions ratified by Macedonia and with EU Directive 2005/60/EC and the *acquis*. According to this new law, the Directorate for the Prevention of Money-Laundering was replaced by a Bureau for the Prevention of Money-Laundering and Financing of Terrorism, established within the Ministry of Finance.

A new Law on the Financial Police was also adopted in May 2007[32]. As this law gives the Financial Police the status of a legal entity within the Ministry of Finance, they have increased their independence[33]. In the 2008 State Budget[34] it is stated that the Financial Police submitted 35 criminal reports in 2007 (on money-laundering, corruption, tax fraud, evasion of other duties established by law, etc.) and established that the total damage to the state budget amounted to 749,406,950 MKD (or approximately 12,300,000 EUR).

The legal framework is more complete now and some new relevant pieces of legislation are foreseen in 2008 (new Law on Criminal Procedures, for instance). However, it must be stressed that, rather than

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[28] *Official Gazette*, no. 44/2006.

[29] *Official Gazette,* no. 115/2006.

[30] *Official Gazette*, no. 133/2007.

[31] *Official Gazette*, no. 4/2008.

[32] *Official Gazette*, no. 55/2007.

[33] The Constitutional Court recently annulled a portion of the new law which stipulated that the Financial Police should carry out financial investigations for crimes considered to be organised financial crimes. Based on the strict interpretation of the Criminal Procedure Law, an investigation, as part of the criminal procedure, can only be carried out by an investigating judge, while certain operational and technical actions can be entrusted to other state bodies, which include the Financial Police.

[34] *Official Gazette*, no. 160, 2007.

legislation, it is now implementation that needs to be ensured and closely monitored. In any case, the ongoing project aimed at assessing the entire anti-corruption legislation could be a good opportunity to improve its overall quality through the identification of loopholes, overlapping and inconsistencies, at both legislative and organisational levels.

International Co-operation against Corruption

From the standpoint of repressive measures, it is to be noted that at least with regard to the activities of the Unit for the Fight against Organised Crime and Corruption in the Public Prosecutor's Office (POCC), international co-operation is now well established at regional (SEE) and sub-regional (countries of former Yugoslavia) levels. The Public Prosecutor's Office (PPO) has stressed the importance of the bilateral co-operation established within the above-mentioned ongoing twinning project with the Italian Anti-Mafia Bureau and Italian Ministry of Justice.

At multilateral level, in October 2007 GRECO adopted its Compliance Report for the Second Evaluation Round in Macedonia, and concluded that two-thirds of the recommendations of the Second Round Evaluation Report had been implemented satisfactorily or dealt with in a satisfactory manner by the Macedonian authorities.

Otherwise, the new State Programme explicitly considers “international support” as one of the “prerequisites for the realisation” of such a programme. However, this support is mainly regarded from the viewpoint of financial “donations” to a “separate budget”, to be created to support the State Programme, as well as of “foreign assistance”.