

**International  
Conference:  
Co-operation  
of the National  
Parliaments and  
Independent  
Bodies in SEE**

Belgrade, 3-4 April 2012

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Overview and Conclusions from the International  
Conference “Co-operation of the National Parliaments  
and Independent Bodies in SEE”

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## **1. Foreword**

The Media, as well as constitutional law and political science discourse mainly refer to Parliament as an institution whose core competence is legislative. This, of course, is not wrong, since in the traditional division into the three branches of government, the National Assembly is primarily identified as the holder of the legislature. We often hear that parliaments, in addition to this core function, also perform a representative and electoral function. This is not wrong either, but rather completes the picture and gives a better overview of the work and responsibilities of the institution.

In all democratic countries, including countries in the region, the national parliaments have another very important function – oversight function. It is a function whose substance and democratic practice are developing very dynamically, and both Serbia and the region have passed a long way and achieved a lot in the last decade. It would be impossible to carry out this function properly, comprehensively and for the benefit of the society without the existence of independent and regulatory bodies – bodies who are responsible for the protection of citizens' rights and control of the legality of work of holders of public authority. The establishment, competencies and funding of independent and regulatory bodies are regulated by special laws, and they report to the National Assembly which oversees their work.

This brochure is published on the occasion of the international conference "Co-operation of Parliaments and Independent and Regulatory Bodies in South East Europe". The conference was held on 3rd and 4th April 2012 gathering the representatives of parliaments, international organizations, civil society organizations and independent regulatory bodies from Slovenia, Macedonia, Montenegro, Bosnia and Herzegovina, Albania, Bulgaria, Greece and Serbia.

The establishment and functioning of all independent bodies, especially those dealing with protection of human rights, minority rights, anti-discrimination and prevention of corruption in South East Europe countries, requires continuous improvement of co-operation among all levels of power, independent regulatory bodies, and civil society organizations in order to achieve European standards in all social spheres and create possibilities for citizens to utilize the results of their work. Parliaments should define and implement clear procedures that will

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allow the legislative and executive branch to include independent and regulatory bodies in all phases of the legislative process, this being a precondition for legislative solutions that reflect the real situation and a guarantee of their acceptance.

Considering that each country has its own experience and model of these bodies, the conference was an ideal opportunity to establish contacts, exchange experiences and contribute to bigger transparency and better media coverage of the topics related to independent and regulatory bodies. Owing to the importance of setting up independent and regulatory bodies and considering different modalities of functioning, the exchange of experiences and best practices between parliaments, independent and regulatory bodies, and civil society organizations should be a continuous process that would contribute to a development of good governance in the entire region.

Building democratic institutions is a never-ending process, and the role of independent and regulatory bodies in the system of these institutions is indisputably growing more important every day. On the other hand, regional co-operation is not only a necessary condition in the process of European integration, but also one of the key foreign policy priorities of our country. I am convinced that the brochure in your hands and the preceding conference make important contribution to achieving both goals.

Gordana Čomić

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## **2. Summary of proceedings and Independent Bodies in South East Europe”**

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Two-day international conference “Co-operation of the National Parliaments and Independent Bodies in South East Europe” was held in the National Assembly of the Republic of Serbia. In the framework of the current Serbia’s presidency of the South East European Co-operation Process (SEECp), the conference was organized by National Assembly of the Republic of Serbia and European Movement in Serbia (EMinS) with the support of OSCE Mission to the Republic of Serbia, Foundation for an Open Society and Friedrich Ebert Foundation.

Conference gathered more than 150 members of the Parliaments and representatives of the IB’s primarily focused on protection of human rights, rights of minorities and antidiscrimination and fight against corruption as well as representatives of CSO’s from SEECp participating countries.

At the beginning of the Conference participants were welcomed by **Prof. Slavica Đukić-Dejanović**, National Assembly Speaker, **Ambassador Dimitrios Kypreos**, the Head of the OSCE Mission to Serbia, **Prof. Vlastimir Matejić**, President of the European Movement in Serbia and **Mrs. Gordana Čomić**, National Assembly Deputy Speaker.

**Slavica Đukić-Dejanović** emphasized the importance of this conference which gathered 12 participating countries from SEECp and which enabled these countries, each at different level of Euro-Integration, to exchange knowledge and experiences of IRB’s work and their co-operation with the Parliament. Independent bodies are link between citizens and parliament, but also necessary mechanism for the efficient and effective control of the executive.

**Ambassador Dimitrios Kypreos** underlined that the IB’s are an important mechanism of “checks and balances” and that their monitoring function is very important component of any good government.

President of the European Movement in Serbia, **Vlastimir Matejić**, metaphorically presented the extremely important role of IB’s in the institutional system by comparing them with organizations which control quality of products on the market to satisfy customers.

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“Independent control is a crucial requirement to prevent placement of bad products on the market, because such control ensures compliance with standards and possesses authority to point out the culprit, to criticize or punish” Matejić explained and added that these bodies separate good from bad and that such control is certainly pointless if it is under any influence. “Applied to the society and the human community, the quality of the ‘products’ of a democratic order is reflected in the rule of law, respect for human rights and anti-corruption for what IBs are needed but only within a system that has a purpose and is able to ensure continuity of quality by institutionalizing co-operation and correlation between the parliament, IBs and CSOs”, Matejić concluded.

Within the first panel **“Correlation and mutual influence between the Parliament and Independent Regulatory Bodies”**, Gordana Čomić reminded that there is always a choice whether to wait changes to happen or taking an active part in their creation. This applies to IBs whose establishment was necessary because many public services do not work well, do not respect the rules or they are violating the rights of others. “Establishing of these institutions was a real challenge for our legal system, because we didn’t know how they will function and whether they will actually be productive in the circumstances of our society. This bodies are pioneers of good government in Serbia”, Gordana Čomić said and underlined that their effectiveness should be evaluated from the point of the interval in which changes occur as a result of their work.

The Conference was an opportunity to present different experiences in terms of regulating the correlation between national parliaments and independent bodies, and to present and consider experiences of new EU member countries in facilitating the establishment of a proper legal framework and environment for their work.

The Ombudsman of the Republic of Serbia **Saša Janković** said that, from personal experience, citizens are still not satisfied with the work of IBs; but one independent body cannot solve all individual cases from some area by itself, giving the example of Anti-corruption Agency which cannot solve each case of corruption. Ombudsman Janković thinks that rivalry between parliaments and independent bodies should be avoided and instead establish co-operation. He said that no matter if competence of parliament and independent bodies overlap, especially when it comes to implementation of regulation, it is in no parliament interest to have a weak ombudsman, and vice versa, adding that these institutions should build mutual authority. He also stressed necessity of legislative initiatives of independent institutions, as well as necessity of the results of initiatives, emphasizing the case of Serbia where, for 5 years, total of 52 proposals for legislative changes or decisions were submitted to parliament of which 15 are accepted, while in other cases stated that Ombudsman’s proposal was acknowledged and will be considered during adoption of laws. He noted that the fact that parliament has to adopt a report of independent bodies implies influence on its content and that is a question that requires a lot of attention. He pointed the fact that the correlation between parliament and IBs doesn’t end by submitting reports and/or its adoption, and that a lot of room for improving co-operation and correlation still remains.

The Anti-Corruption Agency was presented by director **Zorana Marković**, who pointed out that it is very good that discussions about co-operation and correlation between parliament

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and IBs become practice, especially bearing in mind that issue is no longer how they should cooperate, but how to improve their co-operation. She said that independent bodies are a kind of legally established non-governmental organization with its framework of action and authority and they represent a vacuum in the network of state institutions. She also said that IBs cannot replace state authorities but can contribute, help and speed up their work through recommendations. She mentioned the example of National Assembly of the Republic of Serbia, to whom the Agency submits an annual report on the adopted decisions, and which, taking into account the recommendations of the Agency, began to work on the National Strategy for Combating Corruption and the new Law on financing political activities. The Agency has also initiated the harmonization of the Law on Law practice and the Law on Health Protection with the Law on Agency, because of some elements that imply conflict of interest. As only uncompleted decision, Ms. Markovic mentioned the initiative of the Agency to dismiss the authorities and officials in cases of conflict of interest. Also, a problem is still the unresolved issue of the Agency's premises. She mentioned that the role of this institution is primarily preventive and its task is to make visible mechanisms that exist in the legal provisions relating to the prevention of corruption and thereby to strength the integrity of the institution. This means that Agency can not affect the prosecution of criminal cases, but can accelerate it. Drawing on the work of the Ombudsman, the Agency has established a sectorial model of analysis of corruption risks in the institutions, based on procedures that exist there. Poor and unclear procedures and a lack of objective criteria for granting discretion powers have to change. Since there is often a lack of time to devise new ways of functioning of IB's, it is necessary to carefully observe experiences of others and apply them where possible.

Executive Director of the Fund for an Open Society, **Jadranka Jelinčić** in her presentation pointed to the fact that some of the previous speakers defined independent bodies as state-recognized non-governmental organizations or an intermediary between citizens and government, but that they are de facto state authorities being established by the Constitution or by the Law. She reflects its important this bodies are established by Constitution because that is the only way they can be totally independent and subjected to control only by the Constitutional Court as the highest arbiter and interpreter of the constitution. This would ensure their independence, continuity and avoid situations that they can be establish by any other branch of government and could represent what the modern theory of democratic regimes has called the fourth branch of government. She negatively assessed the situation in which every independent body has been established at different way – for example establishment of Ombudsman is required by constitution, but Commissioner for Information of Public Importance is for instance regulated by Law. Since the work of IB's is specifically related to the work of the executive branch, and therefore comes the greatest threat to IB's, it of great importance to accurately determine the competence of other bodies and establish their non-interference in work of IB's, as well as independently planning their budget and not through the ministries. In IB exercise of power over the government, parliament can defend the position of independent bodies, from which would follow their independence in decision-making (de jure and de facto). The term of IB's representative should be one year longer than the mandate of the government (the principle "plus one") in order to avoid de-politicization of their election. Finally, Mrs. Jelinčić informed participants that the Fund for an Open

Society will issue a study on the solutions applied in establishing IB's with assessment of their work and co-operation they have with the Parliament.

**Polona Tepina**, legal advisor of the Information Commissioner of the Republic of Slovenia explained the status of this institution and its legal framework comparing it to the status of the Commissioner for Information of Public Importance in Serbia, because of their similarity. She briefly reviewed the status of independent entities in Germany, where their position is regulated in accordance with the European recommendations on independent status of these institutions. The European Commission has sued Hungary to the European Court of Justice for violating mentioned recommendations where the Commissioner was dismissed before the expiration of the term as a result of the possibility that the president or prime minister dismiss the Commissioner on arbitrary basis. She explained that the Information Commissioner has a consultative function in the preparation of legislation and regulations as well as constitutional right to review laws and regulations adopted to carry out public authority when the issue occurs within the scope of Commissioner's competence and/or is referring to very important function/area. Interesting fact is that the Ministry of Justice has proposed the abolition of this jurisdiction but it was not accepted. Also, an interesting fact is that this Institution is at the first place regarding public confidence in Slovenia.

Discussion that followed raised many important issues. Stevan Lilić, a professor at the Law School at the Belgrade University, pointed out the fact that the Law of personal data protection is still not harmonized with European regulations, adding that it is necessary to conduct an audit of the architecture of state authorities, because there are too many of them in certain areas and insufficiently in others.

Saša Janković warned on the tendency of prevalence of the executive branch towards other branches of government with oversight and control functions over other authorities or civic entities, which leads to dilution of powers and rights of independent bodies. Consequently this leads to avoiding control of IB over the executive branch which is hardest to control but the place for resolve of these issues is certainly the Parliament. The place to resolve these issues is Parliament.

Referring to the conclusion of Jadranka Jelinčić that the best guarantee of IB's independence is their establishment by Constitution, Zorana Marković expressed opinion that Law is enough insurance for their proper functioning. Jelinčić challenged this opinion saying that the Assembly, which passed legislation on IB's establishing, represents the highest authority, but ultimately, the Assembly is a political forum with a certain proportion of political power in it.

The second panel, **"IRB's involvement in the legislative processes and their initiatives toward the parliament"** presented experiences of the Equality Protection Commissioner of the Republic Serbia, the State Commission for Prevention of Corruption of FYR of Macedonia, Anti-Discrimination Commissioner of the Republic of Albania and of the Ombudsman of Montenegro.

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**Nevena Petrušić**, Equality Protection Commissioner of the Republic of Serbia said that the Commissioner initiates the adoption or amendment of regulations for implementation and improvement of protection against discrimination, and provides opinions on the provisions of the draft laws and other regulations concerning prohibition of discrimination. Legislative initiative applies only to regulations that have a direct impact on the system of protection against discrimination and those related to the exercise and improvement of actual equality. Initiatives are directed to the relevant ministries, government and MPs. Among others initiatives, the Commissioner initiated the concretization and operationalization of individual rights of children by the Law on Administrative Procedure. This Initiative was submitted to the Ministry for Human and Minority Rights, the Ministry for Public Administration and Local Self-Government, but still there is no answer. Regarding the Initiative for the elimination of discriminatory provisions concerning intellectually challenged children submitted to the Government and to the Ministry of Labour and Social Affairs, the Ministry stated that it is not discriminatory. Commissioner highlighted the failure of submitting draft legislation to the Commissioner for opinion as one of the difficulties in co-operation with the Parliament, because it reduces the possibility of preventive acting of this institution, giving the example of the Consumer Protection Act, where in Article 83 states that "... the dealer is obliged to avoid discrimination against consumers", which results that Commissioner issues opinions on its own initiative, in the later stages of the legislative process. As examples of good practice, the Commissioner mentioned the Draft law on free legal aid which the Ministry of Justice submitted for opinion on time, as well as the Commissioner's participation to the public hearing, which resulted in acceptance most of the suggestions of the Commissioner. Also, Commissioner noted timely calls for public hearings by the National Assembly as an example of good co-operation. She pointed out some perceived negative changes such as the absence of a detailed explanation of individual legal solutions resulting in difficulties in interpreting and applying the law and in evaluating harmonization with the terms of anti-discrimination legislation. Absence of assessment of impact on the socially excluded and vulnerable groups during the drafting of the law, taking legal solutions from comparative law without considering the local social context as well as the delay in passing laws for law enforcement were mentioned as negative effects.

President of the State Commission for the Prevention of Corruption, **Voislav Zafirovski**, explained that the Agency is an independent institution, founded with the aim of implementing the Law on lobbying, the Law on Conflict of Interest and the Law on Corruption. Seven representatives of the agency are appointed by the parliament on the basis of public invitation with exact qualifications of the future representatives for a period of 4 years. In 2008, the Commission created State program for the prevention of corruption with an Action plan which clearly defined grey areas in all segments with process of corruption. In the European Commission report, the program is estimated as a comprehensive strategy document, but also as an ambitious plan of the Commission. Based on this program, the Commission conducted a long term strategy which is based on inclusion of good practices, general debate of all relevant stakeholders and maximum inclusive and participatory approach in making legislation. As an example of good practice it was mentioned the monitoring and analysis of the financing of the election campaign which provided 20 recommendations for changes of the Election Law and the Law on financing political parties. After a detailed analysis of campaign financing, based on reports of all parties, media, RBA and all other relevant institutions,

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Commission came to exact data and arguments that pointed out the necessity for amendment of certain legal provisions. Based on these data and having strong arguments, the Commission requested and gained the support of the OSCE and the European Union to amend these regulations and currently works together with the Parliament to modify the Election Law and the Law on financing political parties. He pointed out that the changes do not occur merely by passing a law, but changing the mental matrix of those who are in a position to make decisions. Bearing that in mind, the Commission launched a project "Academy of integrity", which aims to develop individual and institutional integrity through education of the youngest in primary schools, because it is estimated that at that age, and in those circumstances, the awareness, attitudes and attitude towards corruption is formed. As for the discretion and authoritative competences, Zafirovski expressed the view that they can be given only in case of emergency and only with clearly defined responsibility of the person to whom such power is given. He concluded saying that the countries of the region must realize that they are not doing their job because of the EU, Brussels, or even for their own sake, but for generations to come.

**Vilfrida Bushati**, Head of the Inspection and Investigation Department in the Office of Anti-Discrimination Commissioner, Republic of Albania presented the jurisdictions of the Office, assessing the co-operation between her office and NGO sector as very good and seen through many examples of joint organization of training programs and seminars in order to raise awareness of respect for the Law on equality. Anti-Discrimination Commissioner is an independent body established in accordance with the Constitution, which is funded from government sources and through donations. The essence Office's functioning is to combat all forms of discrimination on which each year submits a report to parliamentary committees. The first report was submitted to the Assembly at 2010, and at 2011 Albanian Parliament has passed a resolution on the evaluation of the office. Bearing in mind that this institution is relatively new, it is still needed time for its consolidation.

Deputy Ombudsman of Montenegro, **Budimir Šćepanović** presented Ombudsman's jurisdictions by the Constitution of Montenegro. He stressed that there is good co-operation with the Parliament and that so far Ombudsman has sent many suggestions to the Parliament which were not accepted. Ombudsman of Montenegro is an independent body and is a constitutional category. The shift of co-operation with the Parliament is made by the Law on the Ombudsman, which gives Ombudsman right of legislative initiative and the right to opinions and suggestions on legislative proposals to Parliament. Ombudsman may also raise the question of harmonization of laws and regulations with the Constitution of Montenegro. The Ombudsman submits annual reports to Parliament, in which it analyses and criticizes the situation regarding human rights, make suggestions, and points to the violation of human rights.

**Sonila Kadareja**, Legal Adviser in the Monitoring Department of the Independent Institutions of the Parliament of the Republic of Albania in the third panel, "**Horizontal co-operation between Parliament and NRT in regard to accountability**", presented experiences from Albania. Independent regulatory bodies in Albania occurred in the late 90s of the twentieth century. Monitoring Department of the Independent Institutions within the Parliament serves to support the oversight function that Parliament has in regards to

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work of independent bodies, to prepare information, analyses and reports related to the results of law implementation and precisely because of the law enforcement the independent bodies were established for. The department is facilitator between independent bodies and Parliament (especially its Committees relevant to the work of independent bodies), assessing eligibility for election of IB's staff and assess the need for allocation of additional funds for independent bodies. Department communicate on regular basis with the Research Department that follows legislation correlated to the independent bodies in other countries. Also, Department is responsible for effective communication and coordination of parliamentary committees and independent bodies, monitors the activities of independent bodies and helps them to work in terms of allowing access to all necessary information and take part in important events organized by these bodies. In Albania there are two kinds of independent bodies – those established by Law (14) and those established by Constitution (Ombudsman and National Bank). In most cases, they were established by Parliament and by Law. She indicated that the Department should work to increase the capacity for independent body reporting and on the advancement of parliamentary committees focus on monitoring the implementation of IB's recommendations which Parliament adopts by resolutions and declarations. Correlation between parliament and independent bodies became deeper in 2012 since when IB's representatives are invited to the sessions of Parliament related to law amendments which requires a qualified majority and to which IB's representatives can give their opinion.

Deputy Chief Commissioner of Commission for the prevention of corruption of the Republic of Slovenia, **Rok Praprotnik**, presented the work of this institution and pointed out that, despite the fact that at the very beginning the Commission was faced with various difficulties and wasn't de facto independent, now has the capacity to independently perform all duties from the scope of its competence. The Commission has strong powers to conduct administrative investigations, provides protection for "whistle blowers", supervise the assets of public officials through a system of property registration, maintain a register of lobbyists, approve, coordinate and implement a national anticorruption plan and helps public and private institutions to develop internal mechanisms to prevent corruption. To carry out the given powers, the Commission has free access to all financial and other documents, regardless of the level of secrecy, both in public and state institutions, and private entities. The Commission has the right to review civil servants and officials, to ask additional information from other institutions established to implement the law, to issue fines for various offenses in the area of their jurisdiction to natural and legal persons in public and private sector, to ask direct control of certain institutions from its manager and to suggest dismissal of state officials. Until 2010, the parliament appointed members of the Commission, and there was a separate body for the supervision of the Commission within the Parliament which affected its productivity because the audit and control were absent. From 2012, the committee members are appointed by the president of the state, instead to the separate body Commission submits. Submitting an annual report to the parliament and external audit every two years is mandatory. The Parliament approves the budget of the Commission, submits proposals for investigation and proposes to the President of Republic dismissal of Commission's members, while the Commission has the right to initiate legislation, to advice on the issue of corruption prevention and educates members of parliament in the field of lobbying and conflict of interest.

**Nataša Jelić**, Senior adviser in Department for Resolving Conflict of Interest in Anti-Corruption Agency of the Republic of Serbia, as a major obstacle in the work of this body mentioned non-concise laws regarding the incompatibility of state officials functions and the need to harmonize law on conflict of interest with law which regulates position of the Department for Resolving Conflicts of Interest. The Department has already initiated education of officials on how to complete forms that are related to reports on property.

the fourth panel, **“Annual reports of independent regulatory bodies and their effects”**, **Gheorge Iancu**, People’s Advocate of the Republic of Romania, which described function of ombudsman as mediator between citizens and state administration, explained that this body annually submits reports on its activities for approval at both houses of Parliament of Romania. The reports include recommendations and conclusions on the situation of human rights in Romania. The ombudsman also submits special reports but only if there are gaps in certain laws or in case of corruption. So far, several special reports have been submitted to the President of the Republic and to the Prime Minister. Ombudsman in Romania monitors the control that the Parliament conducts over public administration. He stressed the importance of relation that these institutions have with the media which should constantly monitor the work of the Ombudsman. The media is the main ally of the Ombudsman in performing his tasks. Regarding this, in Romania is currently in force a wide media campaign on all levels, in order to support the work of the Ombudsman. Ombudsman in Romania may ask annulment of the law from the Constitutional Court, if he finds that the law is inconsistent with the Constitution of Romania. So far, many requests have been submitted to the Constitutional Court and most of them were accepted. The institution of ombudsman in Romania has 4 deputies and each of them runs its own department. It is expected that the workload of this institution increases twice in 2012.

**Ljubomir Sandić**, Ombudsman of Bosnia and Herzegovina said the Dayton Agreement (Annex 4 and 6) was a base for the establishment of Ombudsman institutions in B&H. B&H Ombudsman is an independent mechanism for the protection of human rights. In 2011, the Ombudsman of Bosnia and Herzegovina had six initiatives to amend legislation (amendment of the Family Law, Law of Civil Procedure, etc.). In its work, the B&H Ombudsman is specifically dealing with socially vulnerable categories, war victims, etc. As barriers in performing, insufficient awareness of human rights and of the importance of the Ombudsman, poor effective legal assistance, lack of financial independence and the fluctuations of experts were pointed out. Planned activities are focused towards further strengthening of human resources, more field work, the formalization of co-operation with civil society and increased co-operation with state authorities and institutions to promote and protect human rights. B&H Ombudsman considers the co-operation with the executive as satisfactory, as well as co-operation with local authorities. As for co-operation with the Parliament, he said the public hearings are good practice. According to him, relations with civil society organizations also have been at good level. The strategic objectives of the ombudsman institution are transparency in the work, openness and co-operation with the media, protection of human rights of B&H citizens, etc. Ombudsman’s assessment is that the institution operates in an adequate environment and that the main problems in his work are the payment of qualified lawyers and poor awareness of the ombudsman institution. B&H Ombudsman submits his annual report both to the executive and legislative branch, to the B&H Presidency and to

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the Parliament. In 2011, Ombudsman had a total of 21184 activities of which 4750 activities were the complaints of citizens. About 32% of the cases were fully resolved while the 25% of the Ombudsman's requests are not answered. Ombudsman of B&H gave 221 recommendations to other branches of government in 2011.

**Aleksandar Resanović**, Deputy Commissioner for Information of Public Importance and Personal Data Protection of the Republic of Serbia, explained that the institution of the Commissioner is an independent and doesn't receive orders in its work from anyone as well as that the Commissioner cannot be called to accountability for actions taken within the scope of their work. National Assembly elects the Commissioner by majority vote and the Commissioner submits an annual report to the committee in charge of Parliament. Bearing in mind that the institution of the Commissioner was established in 2005, up to date 7 reports were submitted to the Parliament. Report from 2005 was reviewed only by committee in charge, while reports from 2006, 2007 and 2008 haven't been reviewed by any of the committee in charge or by the Assembly. Reports from 2010 and 2011 were reviewed by the Committees and by the Assembly. Results of the institution of the Commissioner are often lacking despite launching many initiatives, especially those for calling to accountability of civil servants and improving the status of the Commissioner. In the Institution of the Commissioner find necessary to adopt a new Law on Data Protection and say that the biggest problems that Commissioner is facing are the unresolved issue of office space, appropriate equipment and inadequate funding. International institutions assessed Commissioner's work with very high marks and Commissioner was given a second term.

Human Rights Ombudsman of the Republic of Slovenia, **Zdenka Čebašek-Travnik**, noted interesting fact that the Law on Ombudsman in Slovenia has not been changed since its adoption and that the law is written on the model of the Scandinavian countries, with certain modifications based on experiences from the transition countries from the region. The Ombudsman can only consider individual complaints of citizens and has the ability of overall and unlimited access to all the institutions of the importance of his work. The annual report is one of the most powerful tools of Slovenian Ombudsman and his goal is to inform the public about the human rights situation in the country. The debate on the Ombudsman's report is part of the regular parliamentary procedures based on rules of procedure of the Parliament and debate about report last all day. Based on the report, Parliament adopts the recommendations and instructs other institutions for their implementation, especially the executive. It is interesting, the ministers of the ministries whose work report refers to, must be present at the session during reviewing of the report. Ministry may also send their additional reports which are annexed to the report of the Ombudsman, with parts related to monitoring the implementation of recommendations from previous Ombudsman's report. Recommendations of the Ombudsman are repeated until they are accepted.

The Greek Ombudsman, **Calliope Spanou**, said that the Annual report of Ombudsman in Greece, among others, represents a form of responsibility towards society and stressed the important role of media in the communication of its contents. Bearing in mind that the Greek Ombudsman recommendations are not mandatory, in this way public can become means of pressure for their implementation. In the Greek parliament there is a standing committee for transparency of the institutions to which the Ombudsman submits the report, but

co-operation is not satisfactory, evidenced by the fact that the last few years, the Standing Committee has not invited Ombudsman to submit the report. Also, the problem is the follow-up of the recommendations, i.e. the inability to determine what happens with the recommendations of the Ombudsman. The institution of Ombudsman accepts about 75% of citizens' complaints, but the competent authorities often fail to meet the requirements of the Ombudsman. The problem is the rivalry between institutions, since the change of the constitution of 2001 introduced the amendment which established five independent bodies with overlapping authorities (broadcasting body, independent body for data protection, body for communications protection, etc.). Also, the political elite have ensured that Ombudsman doesn't receive wide-ranging authority so that its recommendations are not mandatory. The institution of Ombudsman in Greece was established in 1998.

The fifth panel "**Civil Society Organizations (CSO's): perspective: inclusion, involvement and influence**", which was dedicated to the relationships of CSO's with independent bodies in the region, has been opened by **Vesna Malenica**, representative of Think Thank Populari from Bosnia and Herzegovina (B&H). She presented the position of civil society in that country. In B&H was formally registered 12000 organizations, but only 6000 are active. 70% of them are funded by its members, and among other things, public interest is part of the curriculum in 25% of cases. Regardless the number, CSO's in B&H are marginalized and hardly have any form of co-operation with the state and only a small number of them operates on the entire territory of B&H. Their independent actions are being further complicated by political disagreements within B&H. Even if there is co-operation of state institutions, it is only "cosmetic" and only for the sake of co-operation with the EU. Vesna Malenica concluded that 'a democratic society cannot really be democratic without civil society' and that the state must create adequate environment for CSOs and nurture a culture of co-operation with them.

Program Director of the Transparency Serbia, **Nemanja Nenadić**, said that independent bodies and civil society organizations are natural allies, and that CSOs dealing with independent institutions in Serbia use the reports of independent institutions in their work. Nevertheless, he stressed that these bodies, although they are independent from other authorities, are still part of a network of public institutions and that, as such, should be subject to observation by the civil society organizations.

According to **Zlatko Vujović**, President of the Governing Board of the Monitoring Center (CEMI) in Montenegro, the civil society in this country is facing serious problems due to a large degree of political influence and corruption. However, independent bodies and agencies can be divided into two groups – those whose work involve CSO's and those whose work doesn't involve CSO's. He pointed out that in Montenegro there is no independent anti-corruption institution and that the existing anti-corruption initiatives became an integral part of the Ministry of Justice. In his opinion, in the work of independent and regulatory bodies and agencies, civil society should participate more, and political party interference should be less.

CSOs' representative from Bulgaria, **Todor Galev**, on behalf of the Center for the Study of Democracy presented the work of the Center and most significant results. Center had a significant role for introducing institution of ombudsman in Bulgaria and for establishing a

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system for monitoring corruption in Bulgaria. The Center introduced a system for monitoring corruption 15 years ago, which is even used beyond the borders of Bulgaria for the last 5 years. Also he presented the work of Coalition 2000, an initiative of NGOs headed by the Center, whose main goal was to strengthen the resistance of the public towards corruption and establishment of authoritative anti-corruption agency. Thanks to this initiative, the Programme for the implementation of national anti-corruption strategy has been adopted, phone line for reporting corruption has been introduced and, later, the Center for Preventing and Combating Corruption (BORKOR) has been established. The Center has a very successful co-operation with EU institutions, especially the European Commission, OECD and other relevant organizations.

Based on the information, arguments and discussions during the two-day conference, in the final, sixth panel, participants adopted the **conclusions and recommendations** on the work of independent bodies in SEE countries. National Assembly Deputy Speaker, Gordana Čomić, said that the conclusions and recommendations are an indicator of productivity and success of the conference, but also the need to continue this form of co-operation in the future, because the continuous attention to the work of independent institutions and their relations with other state institutions are of great importance for the promotion of democratic processes and good governance in the countries of Southeast Europe.

## 2.1 Conference Conclusions

Stressing the importance of the establishment and operation of all Independent bodies (IBs), particularly those dealing with protection of human rights, rights of minorities and antidiscrimination and prevention of corruption in the South-Eastern Europe countries, we highlight necessity for continuous improvement of co-operation among all levels of governance, IBs and CSOs in order to improve areas of living and give citizens of the region the possibility to benefit from their work and results.

Stressing the importance of good governance, mutual information and communication, efficiency and accountability, participants concluded accordingly:

### 1. Correlation and mutual influence between the Parliaments and Independent Bodies

- a. Establishment and operation of IRBs should include a wide process of consultations with all relevant stakeholders (state authorities, civil society organizations, media, academic community representatives and experts) and thus enable legal framework which will secure functioning, independence and accountability of IBs.
  - b. Election procedure of IBs should be impartial, independent highly efficient in operation and accountable to the Parliament. Legal framework establishing IBs should include clear definition of the selection procedure for IBs representatives which will enable transparent selection, appointment and dismissal processes.
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- c. IBs should be empowered with appropriate competencies, various sources of information and particularly with financial resources in order to perform the functions assigned by the law.
- d. IBs should provide parliament with necessary information, reports, recommendation and conclusions, and vice versa.

## **2. IBs involvement in the legislative processes and their initiatives toward the parliament**

- a. Parliaments should promptly inform IBs when drafting legislation in the area of their competence and involve IBs in the public hearings about legislation in the area of their competence.
- b. Parliaments should define and implement clear procedures for both legislative and executive branch to include IBs in all phases of legislation drafting which is a precondition for legal solutions which correspond to the actual situation on the ground and a guarantee for their acceptance.

## **3. Horizontal co-operation in regard to accountability**

- a. It is necessary to increase the level of understanding of the representatives of the public authorities, media, CSOs and thus among citizens about the role and importance of IBs.
- b. Parliaments and IBs should work together to encourage the development of the culture of independence and accountability.
- c. Parliaments and IBs should jointly work on defining and establishing adequate mechanisms for monitoring the implementation of IBs recommendations with clear division of responsibilities as well as to include CSOs and Media in the monitoring process.
- d. Parliaments should organize public hearings regarding amendments or/and legislation proposals of IBs including representatives of all relevant stakeholders in the process, thus enabling pressure for their acceptance, or their modification in order to make them acceptable and optimal for the involved parties.

## **4. Annual reports of IBs and their effects**

- a. Parliaments should standardize and institutionalize mechanisms, for adopting the recommendations issued in the Annual reports of IB's and to produce clear guidelines for their implementation.
  - b. Parliaments should promote the annual reports of IBs as additional instrument for executing parliaments' competence in oversight the work of the Governments.
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- c. Parliaments should support IBs in their effort to strengthen their capacities and procedures related to the report preparation in order to improve quality of reports' findings.

**5. Civil Society Organizations (CSOs) perspective: involvement, inclusion and influence**

- a. CSOs should be included in all legislative processes related to the area of competence of IBs and participate in all phases of their adoption
- b. Parliaments and IBs should establish institutionalized continued communication and consultations with CSOs related to the issues of their competence and thus allow CSOs to contribute to their efficiency.
- c. CSOs should develop mechanisms for monitoring the work of IBs

Considering the importance of the establishment of IBs and taking into account the variety of modalities of their functioning, the exchange of experiences and good practices of the Parliaments, IBs and CSOs of the SEECP countries should become a continued process which will contribute to the development of democracy and good governance in the whole region.

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### **3. Research of Procedures and Practices of Independent Bodies Dealing with Human Rights and Corruption in the SEECP Countries**

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#### **3.1 Overview**

Institutionalization and proper functioning of Independent Bodies and Authorities is essential for any democratic society, especially in the process of transforming and reforming a country. In this process, enduring stability of institutions guaranteeing democracy, the rule of law, human rights respect for and protection of minorities seem to present the most challenging and demanding task for both the authorities and the society. Thus Independent Bodies and Authorities (IB) should be a subject of the development and implementation of relevant national policies and legislation which enable them to play their role in ensuring the existence of independent, professional, pluralistic and responsible society. In order to play such a role Independent Authorities should have adequate powers and moreover, these bodies need to have the necessary independence from governments, politicians, business or any other interest group. They should operate at a safe distance from all potential sources of influence and serve the society in a dedicated and professional way.

Depending on their legal systems, political and cultural traditions, different states have established independent authorities in different ways. What is important is if these bodies are given adequate powers to fulfill their missions as prescribed by national law, and in an effective, independent and transparent manner. The majority of European states do provide, more or less, adequate legal protection for the independence of IB. Unfortunately, this is not the case everywhere and the legal framework does not always protect the independence IB, especially the protection against political pressure. In many cases, public authorities fail to respect the legal framework or use legal loopholes to interfere with the independence of these bodies. In some cases laws have been defined unclear making it difficult for regulators to make reliable and fair decisions.

Adequate legislation and adequate powers of IB which are being executed without constraints in practice are also part of the criteria every country needs to fulfill on the road to EU

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membership since the capacity and operation of independent bodies is extremely important for the adequate reform of the public administration.

Taking into account the democratisation processes in the South Eastern Europe, strengthening capacities of the Independent Bodies and their co-operation with National Parliaments is needed for the further development of good governance, especially in those countries still in the EU accession process. Though they are in place in many of these countries, further improvement of the legislative framework and a stronger commitment to respect the mandate of independent bodies and providing them with adequate human and financial resources are needed.

The role of national parliaments on the other side is crucial for the proper functioning of democracy itself and its importance rises even higher when a country is engaged in the EU association process. Interrelation and mutual influence between parliaments and IB should be, besides a subject to proper law regulations, also a subject to proper monitoring processes which can demonstrate if the initiatives and the appeals coming from IB are taken into consideration and followed up adequately.

Civil society organisations (CSO) on the other hand represent irreplaceable mechanism for overseeing and evaluation of the quality, effectiveness and transparency of the work of these institutions. Not only are the relevant CSO the expanded hand of IB, standing for the same values and standards and their promotion, but they are also a significant contribution to their competence and activities and a powerful tool for amplifying the results of their work. Therefore, developing relations based on regular communication, consultation and exchange of information between IRB and CSO is one of the crucial places in the whole system of IRB proper placement and functioning.

Taking all this into account and in the framework of the current Serbia's presidency of the South East European Co-operation Process (SEECP), the European Movement in Serbia (EMiNS) in co-operation with the National Assembly of the Republic of Serbia and OSCE Mission in Serbia organized an international conference that gathered members of the Parliaments and representatives of the IRB's primarily focused on protection of human rights, rights of minorities and antidiscrimination (Protectors of Human Rights and Freedoms/Ombudsman) and fight against corruption (Anti-Corruption Authorities) as well as CSO's from SEECP participating countries. Considering the fact that SEECP gathers 12 countries from the region (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Macedonia, Moldavia, Montenegro, Romania, Serbia, Slovenia and Turkey), this conference was excellent opportunity to present and share different experiences regarding the relations between national parliaments and IRB's.

It was valuable to introduce and consider some of the practices of the new EU member states participating in the SEECP in enabling proper framework and environment for establishment and functioning of independent regulatory bodies since the independent authorities will continue to have the same, if not greater importance, in the years to come. This has even greater importance for the countries involved in the process of European integration, which is the case for one half of the SEECP countries. Furthermore, this conference provided

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significant contribution to the regional co-operation and the co-operation within the SEECP itself.

Taking into account the importance of the establishment and operation of all Independent bodies (IBs), particularly those dealing with protection of human rights, rights of minorities and antidiscrimination and prevention of corruption in the South-Eastern Europe countries, continuous improvement of co-operation among all levels of authority, IBs and CSOs in order to improve good governance for the benefit of all citizens of the region is necessary.

For this reason and as a contribution to the understanding of the position and recent development of IB in SEE region, EMinS has conducted a research of the procedures and practices in the SEE CP countries regarding the role and position of the independent bodies dealing with human rights and corruption in respect of the other state institutions and the CSOs.

The research primarily includes analysis of the procedures and practices in the SEE CP countries regarding the role and position of the independent bodies in respect of the Parliament, especially their oversight and legislative functions, their role and position in respect to the Government, as well as the role of the CSOs in the interaction of IB's with the other state institutions.

## **3.2 Procedures and Practices of Independent Bodies in the SEECP**

### **3.2.1 Albania**

#### **Human rights**

The institution of the **Ombudsman** (Advokati Popullit) in Albania has been constituted by the Constitution of the Republic of Albania from 1998, and the Law on the People's lawyer from 1999. The mandate of service of the Albanian Ombudsman is 5 years. It is interesting that the institution of the Ombudsman in Albania as a constitutional category, has widely prescribed responsibilities, functions and objectives within four articles of the constitution itself having in mind that in the constitutions of many counties in the region the ombudsman institution is not even stated. The Albanian Ombudsman is accountable to the Parliament and is elected by three-fifths of its members. The first ombudsman was appointed in 2000.

Responsibilities of the Albanian ombudsman are clearly defined by the Constitution and the Law. In Article 60 of the Constitution it is stated that the Albanian ombudsman protects rights, freedoms and legal interests of individuals from unlawful or improper actions of state authorities. The institution of the Ombudsman in Albania is an independent and autonomous in its work and has its own, self-managed budget granted on its own proposal. It is allowed to give donations to the Ombudsman within limits which ensure that its independence and autonomy is not affected.

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The relationship of the Albanian Ombudsman and the legislative branch is related to the political responsibility to the Parliament of Albania who appoints the Ombudsman with 3/5 votes but can also dismiss it by 3/5 votes.

Being accountable to the Parliament of Albania, Ombudsman submits an annual report to the Parliament. In addition, the Ombudsman has the right to give recommendations and propose measures concerning the violation of human rights and freedoms by the public administration. The obligation of all public bodies to provide all data and information on request of the Ombudsman is stated even in the Constitution. The main difficulties in this regard observed by the Parliament is the frequency of sharing information since the reporting time is the most important moment, but it only happens once a year which is not sufficient. For that reason the Assembly of Albania established a new Monitoring Department within the administration of the Assembly as an internal unit with the purpose, to consolidate, strengthen and establish frequent communication with the Parliament.

The Ombudsman's annual report for 2010 noted several problems encountered in its work mainly focused on the disrespect of the Ombudsman's recommendations given to the state authorities, who show inadequate attitude of the executive authorities toward this institution whose hands are practically being hands tied in such situations. Among other serious complaints about the work of the Executive branch, a considerable number of complaints of torture and mistreatment by the police in 2010 is also stated as a significant problem in the 2010 report which represents one of the most severe violations of individual rights. The Ombudsman notes that the addressing of this problem to the police authorities didn't encounter to adequate reaction and that very little was done by the police authorities in order to reduce the harassment of citizens.

The Assembly on the other hand is trying to strengthen the oversight capacity through the standing committees along with the reporting capacities of independent institutions through focusing on the follow-up of the implementation of recommendations approved by resolutions and declarations.

The recommendations are considered in most of the cases and even additional recommendations are included in the resolutions and declarations of the Parliament. Further on, the Parliament asks updated information from the institutions of the executive branch and other public institutions to evaluate if the issues addressed in the report are being implemented.

When it comes to co-operation between the Albanian Ombudsman with the civil society, the Albanian ombudsman has an active approach, and the important role played by civil society organizations and the media in reducing violence in Albanian society is often emphasized in its reports. One of the examples is the conference organized in with support of the Council of Europe about prevention of violence and discrimination in Albanian society were the Albanian Ombudsman and NGOs tried to share experiences and come to a common platform for the violence and discrimination prevention.

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## Corruption

Albania doesn't have a single independent authority that deals with corruption, however there are several bodies involved in preventing and combating corruption such as the **Governmental Commission for the Fight against Corruption in Albania and Anti-Corruption Monitoring Group**. **Governmental Commission for the Fight against Corruption in Albania**, was established in 1999 by the Government with the aim to oversee the implementation of the Action Plan for the Fight against Corruption adopted in 1998. **Anti-Corruption Monitoring Group** founded to monitor the implementation of the Action plan is the, was also established by the Government in 2000. In addition to these bodies other authorities that are constituted in order to prevent and combat corruption are the State Supreme Audit Institution, The Joint Investigative Unit to Fight Economic Crime and Corruption and High Inspectorate on the Declaration and Audit of Assets.

### 3.2.2 Bosnia and Herzegovina

#### Human Rights

The institution of **Ombudsman** (Ombudsman for Human Rights) in Bosnia and Herzegovina, is an independent institution whose function is protection of rights of individuals and legal entities, from violations by any institution of government in Bosnia and Herzegovina. The institution of ombudsman is established by the Law of ombudsman for human rights in Bosnia and Herzegovina in power since 2000 which thoroughly regulates the ombudsman's jurisdiction. Given the complexity of the very constitution of the state of Bosnia and Herzegovina, a very interesting process is also the establishment of the institution of the ombudsman because it is substantially specific in comparison to similar bodies in the region. The basis for establishing Ombudsman institutions in Bosnia-Herzegovina are the Dayton Peace Accords from 1995, whose Annex VI is named The Agreement on Human Rights. This Agreement establishes a Commission on Human Rights which consists of two parts: the institution of the Ombudsman and the Court of Human Rights. Therefore, the ombudsman was not created as a constitutional category (Annex IV of the Dayton Peace Accords) but was established by the Annex which was an integral part of the Dayton Peace Agreement. The first ombudsman in Bosnia and Herzegovina was appointed by the Organization for Security and Co-operation in Europe (OSCE), could not be a citizen, of Bosnia and Herzegovina or of the neighboring countries. Regarding the legal framework on the level of the entities of Bosnia and Herzegovina, the Constitution of the Federation of Bosnia and Herzegovina lists detailed responsibilities of the ombudsman institution, while in the Constitution of the Republic of Srpska the institution of the ombudsman is not even mentioned.

The powers and functions of the Ombudsman in Bosnia-Herzegovina are clearly defined in the Law of Human Rights Ombudsman of Bosnia and Herzegovina in 2000. Article 2 of the law is very clear and says that the institution of ombudsman reviews objects that are related to poor performance or violation of human rights and freedoms committed by any branch of government. This clearly indicates emphasis on primary functions of the Ombudsman in Bosnia-Herzegovina, which is a corrective, warning and advisory function, who will take specific account of violation of the rights of citizens by the executive. Ombudsman may initiate a

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general investigation, or recommend general measures. Article 4 shows the corrective competence of the Ombudsman, who has the right to investigate all complaints regarding the functioning of the judicial system, or improper processing of individual cases, and can also recommend general or individual measures in that regard. It is clear that the Ombudsman is given wide jurisdiction, so that it could be a corrective bond between different branches of government, while being in the same time a link between the public and all branches of government.

When considering the very relationship between Ombudsman and branches of government of Bosnia and Herzegovina, it is important to mention that the Ombudsman is obliged to deliver reports to both executive and legislative, or in this case, to the Presidency and Parliamentary Assembly of Bosnia and Herzegovina, respectively. Reports delivered by Ombudsman to the mentioned institutions are in the form of annual reports, but also in the form of special reports. In its annual report for 2010 numerous violations of human rights of Bosnian citizens are indicated as well as failure to comply with the recommendations of the institution. As the Ombudsman states in the same report, the disregard of its recommendations is a result of a social rejection of the Ombudsman as preventive mechanism of the State in cases of human rights violations. In 2010 the Ombudsman gave 341 recommendations after the human rights violations were observed, but in only 110 cases Ombudsman was informed that the recommendations were fully implemented. In 29 cases recommendations were neither adopted, nor was Ombudsman given any respond. The Ombudsman Institution made efforts to strengthen mechanisms to following-up the implementation of recommendations in 2011. Indicators available to the Institution show that out of the total number of issued recommendations (221), 71 were completed and other 60 cases were processed but not completed. In 5 cases recommendations were partially complied with and in 57 cases the deadline for response of the authorities has not yet expired. In 28 cases the authorities failed to comply with recommendations of the Ombudsman.

Co-operation between the Ombudsman and civil society is not on a very high level, which can be concluded by the lack of joint actions of CSO's and the institution of Ombudsman. The main reasons for this are marginalization of civil society organizations in Bosnia, political dependence and low number of civil society organizations which are active on the entire territory of Bosnia and Herzegovina.

## Corruption

When it comes to independent bodies involved in fighting corruption in Bosnia and Herzegovina, based on the Law on Agency for Corruption Prevention and Combat against Corruption from 2009, the **Agency for Corruption Prevention and Coordination of Fight against Corruption** is established which is independent and autonomous in its work and accountable to the Parliamentary Assembly of Bosnia and Herzegovina. The objectives of the Agency in Bosnia are the identification and elimination of all forms of corruption, improving the legal framework for fighting corruption, encouraging the participation of civil society in the fight against corruption, etc. In carrying out its responsibilities, the Agency adopts anti-corruption measures, recommendations, instructions and provides opinions and creates initiatives.

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The Agency is responsible for the control of all three branches of government – executive, legislative and judicial, and as stated in Article 9 of the Law, the Agency is responsible for the corruption prevention and fight against corruption in public institutions and in the private sector, and to the office holders in the legislative, the executive in the judiciary at all levels, public officials and employees in government institutions, members of the organs of political parties, etc. Considering the fields of activity of the Agency, it is expected that it suffers from pressures from politicians, and others, which can also be reflected through financial pressures, as the Agency is financed from the state budget and its reduction can reduce the Agencies' capacity.

The Agency is directly accountable to the parliamentary Commission for Appointing and Monitoring of the Agency, appointed by the Parliamentary Assembly of Bosnia Herzegovina to which the Agency is obligated to report twice annually. However, besides the formal legal framework regulating the work, jurisdiction and responsibility of the Agency, the real situation is extremely poor and the Agency practically has not yet "come to life", and is often the subject of criticism from media and the nongovernmental sector.

The organization Transparency International Bosnia and Herzegovina has conducted a research and has come to the conclusion that the founding of the Agency for Corruption Prevention and Coordination of Fight Against Corruption as well as the Law on the Agency is only *de iure* and that the agency has only done 17% of the work undertaken so far. This shows that there is still no political will in Bosnia and Herzegovina to give the Agency greater importance, in order to reduce the rate of corruption in Bosnia and Herzegovina, which is one of the largest in Europe.

### **3.2.3 Bulgaria**

#### **Human Rights**

The Ombudsman of the Republic of Bulgaria is the national human rights institution, as addition to other institutions aimed to fight against malfunctions of administration. The institution was created as the 'Citizen's Defender' in 1998. There are also regional ombudsmen in most parts of the country. According to the law, the ombudsman is elected by the National Assembly for one five-year term with a possibility to be re-elected for an additional five years. The Ombudsman works in close co-operation with a parliament and has the right to appeal to the Constitutional Court on matters concerning human rights and freedoms.

Co-operation with civil society is another dimension of the Ombudsman's work. In Bulgaria, NGO's such as the Center for Study of Democracy, the Bulgarian Association for Fair Elections and Civil Rights, the Association of Young Lawyers, the Independent Ecological and Social Inspection, the Initiative for Civic Culture and many others are promoting the ombudsman institution both at the national and local levels. Bulgaria represents a unique case of this institution's development, since ombudsmen (Local Public Mediators) were first introduced at the municipal level, and the national ombudsman was created only after this proved highly successful. The introduction of local ombudsmen was an initiative undertaken by civil society organizations and the abovementioned NGOs played a decisive role in creating these

municipal ombudsmen. The Ombudsman also contributes on the issue of minority rights protection, which the EU closely monitors especially in candidate States. This issue is prominent in Bulgaria with its large Roma population.

## Corruption

In formulating the public anti-corruption agenda in Bulgaria a significant role was played by the civil society as Bulgarian non-governmental organizations were the first to assess the scope of corruption in the country and show that the rise of corruption practices after 1990 was leading to deepening mistrust in the political elite. The preconditions for good functioning of the non-governmental sector in the country's anti-corruption efforts were the considerable analytical potential mobilized by a number of non-governmental organizations, the developed network of broad-profile and more specialized organizations throughout the country, the good communications with the mass media, the dynamic co-operation with international institutions, and the support from international donor organizations. A convincing evidence of the role of civil society in the fight against corruption in Bulgaria is the Coalition 2000 process: a pioneering initiative of Bulgarian non-governmental organizations, which brought together for the first time representatives of state institutions, civil society organizations, and individual experts in the fight against corruption in the country. Coalition 2000 was launched in the spring of 1997 by a number of non-governmental organizations led by the Center for The Study of Democracy (CSD), which from the very beginning serves as the initiative's secretariat. The Coalition 2000 process was officially launched 1998 with the support of the USAID and the World Bank. CSD had a lot of meetings with Bulgarian institutions and international partners with main aims to create a trustworthy anti-corruption agency, obtain relevant knowledge through a series of corruption assessment panels and tracking progress through process monitoring, defining the impact objectives, development of an Action Plan (AP), and bringing about affective and behavioral change through dissemination and advocacy.

First achievements were recorded in February 2002, when the Council of Ministers of Bulgaria adopted a **Program for Implementation of the National Anti-Corruption Strategy**, as well as a decision for establishment of an Anti-Corruption Coordination Commission with the Council of Ministers. The Commission on Prevention and Counteraction of Corruption (CPCC) was established as the body responsible for establishment of the priorities of state anti-corruption policy and effective prevention and counteraction of corruption with formal organizational and operational independence from the government. During the study period, there were no publicly known cases demonstrating attempts of political interference. However, after the study period ended in September 2008, the Commission was shaken by several controversy events such as checking the mobile phone calls lists of several members of Parliament (MPs) without adequate justification and shutting down an Internet news portal (Dangerous News) due to an alleged leak of classified information and followed by attack and serious injure of the journalist who was believed to be behind the above mentioned website was. These events provoked controversy and serious doubts about the Commission's effectiveness and its function to counteract corruption and organized crime.

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Bulgaria needed better agency for anti-corruption, and the aim of CDS and other civil society organizations was completed by creation of **The Center for Prevention and Fighting Corruption (BORKOR)** in 2011. BORKOR's creation followed one of the governmental measures from July 2010 for meeting the criteria on this country's progress under the Mechanism for Co-operation and Verification in the Justice and Home Affairs area. The recent interim report of the EC has assessed positively that progress. The new center for fighting corruption and organized crime was developed in co-operation of experts from the German interior ministry, who also had given the idea. As explained from one of the directors of the Centre, the idea is to be similar to the horizontal structures in West Europe, where the multi institutional approach is used.

### 3.2.4 Croatia

#### Human Rights

The Croatian **Ombudsman** (Pučki pravobranitelj) is an independent and autonomous institution appointed by the Croatian Parliament on an 8-year term, designed to protect constitutional and legal rights of Croatian citizens in the disputes they have with the public administration and authorities. The establishment of the institution of the Ombudsman is envisaged by the Croatian Constitution and according to the Ombudsman Law from 1992 is an independent institution accountable to the Parliament and other authorities must not interfere with its work. It was entitled with wider authorities in 2009 through the Law on Fighting Discrimination and became the most important institution that deals with the issues of discrimination. It also became a member of the European network of equality bodies. The new Ombudsman law passed in 2011 will come into force in July 2012.

The relations of the institution of the Ombudsman with the executive and legislative branches of government have to be approached in two ways. There is, on one hand, a relation which is proscribed and regulated by the law, but there is also a relation which is a product of real-life interaction between the executive and legislative branches of government and the Ombudsman, a relation which is often saturated by explicit violations of the law, complete disregard towards the Ombudsman's demands and recommendations, and, at last, marginalization of the very institution of the Ombudsman. That is evident from the fact that the Croatian Parliament didn't accept Ombudsman's Annual reports for 2007, 2008, 2009 and 2010, submitted to the Parliament's Judiciary Committee, because of the criticism towards the Government in those reports. The Croatian Parliament simply "acknowledged" the Ombudsman's reports, but it neither accepted or rejected them, which shows negligence of the legislative towards the institution of the Ombudsman.

The role of the Croatian Ombudsman is clearly defined by the law. He examines individual cases of civil rights violations by the public administration, public authorities or the employees in those institutions. The Croatian Ombudsman doesn't have the power to start criminal proceedings, but he can give warnings, information, and recommendations for starting criminal, misdemeanor or disciplinary proceedings. Since it is accountable to the Parliament, the Croatian Ombudsman has a legal obligation to submit annual report of its work to the Parliament. It should also be noted that the Ombudsman has the power to

initiate procedures for changing the laws which deal with the protection of constitutional and legal rights of citizens. However, this instrument is almost completely unused in practice since the Ombudsman's recommendations, demands and initiatives are frequently ignored. In its 2010 Annual report, Ombudsman stated the disregard by the public administration when it comes to responding to the Ombudsman's demands as one of the greatest obstacles in his work. Although the public administration is legally obliged to respond to the Ombudsman's demands in 30 days, this rule is simply ignored. In the 2010 report it is stated that there were 250 cases in which the Ombudsman had to wait for responses from the government for several months, while in 62 of them did not get a response at all. Data like this show that the attitude of the executive towards the Ombudsman is inappropriate, and that there are obvious violations of the law by the public administration.

Regarding the relations of the Ombudsman with civil society organizations (CSOs), it could be claimed that their co-operation is on satisfactory level, especially considering the number of Ombudsman's open calls for CSOs to tackle dominant issues in the Croatian society together such as the public call for co-operation with all interested organizations that deal with promotion of human rights and fight against corruption. At the beginning of 2012 the Croatian Ombudsman launched a campaign "Equal in our differences", which is a good example of co-operation between the Ombudsman and the CSOs on crucial issues like promoting human rights and fighting discrimination. It is also worth mentioning that there is co-operation between the Ombudsman and the CSOs regarding control over the legislative and the executive, where both the Ombudsman and the CSOs had supervisory roles and where the ideal of division of power could be achieved by the principle of "checks and balances", especially since the CSOs are often regarded as a fourth branch of the government.

## Corruption

Authorities in Croatia which deal with fighting and prevention of corruption are not established as independent, which has some advantages, but also some serious flaws. The main advantages of this institutional framework for fighting corruption are powerful mechanisms by which these bodies can successfully fight corruption. The biggest flaw, however, is that these bodies rely heavily on higher institutions, i.e. the Government.

One of the most important bodies that deal with fighting corruption in Croatia is **The Office for Fighting Corruption and Organized Crime** (Ured za suzbijanje korupcije i organizovanog kriminaliteta – USKOK), which was created in 2001 as a special institution under the state prosecutor's office of Croatia, directly subordinated to it. The Law on The Office For Fighting Corruption and Organized Crime was introduced in 2009 and it clearly defined the structure of the Office as well as its responsibilities. In article 21 of the law, it is stated that the work of the office will be focused on discovering cases abuse of bankruptcy proceedings, unfair competition in international trade, abuse of office, bribery, etc. The law provided the Office with wide jurisdiction, and thus with a good foundation for fighting corruption. The Office Director is appointed by the Chief State Prosecutor after consultation with the Ministry of Justice, and his term of office is 4 years.

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Other bodies that deal with the fight against corruption are also **The Commission for Monitoring Implementation of Measures for Fighting Corruption** (Povjerenstvo za praćenje provedbe mjera suzbijanja korupcije), an executive body comprised of the highest representatives of the bodies that deal with the fight against corruption, and The Police National **Office for Fighting Corruption and Organized Crime**, (Policijski nacionalni ured za suzbijanje korupcije i organizovanog kriminala).

### 3.2.5 Greece

#### Human Rights

The Greek Ombudsman is constitutionally endorsed as an **Independent Authority**.

The Ombudsman has jurisdiction over cases concerning disputes between citizens and public administration. The Greek Ombudsman, as an external control mechanism of the public administration, is empowered by founding law to combat bad administration, to defend citizen's rights and to ensure rule of law in areas of its competence. Violations of rights by a Greek public service can be reported by any person regardless of nationality. The complaints citizens submit are investigated in terms of thematic categories, which correspond to five different areas of activity in the Institution: the Human Rights Department, the Health and Social Welfare Department, the Quality of Life Department, the State-Citizen Relations Department and the Children's Rights Department.

Greek Ombudsman's critical attitude, constructive approach and contributions are embodied in the recommendations for legislative and administrative reforms in form of an Annual Reports, and five Special Thematic Reports as well as through conferences and symposiums, frequently organized by the institution. The reports acquire media attention and thus increase public awareness, serve as a reminder to the administration and create pressure on the government.

The Greek Ombudsman's Office seeks to constantly promote its relations with the state institutions and the citizens, by directly addressing them and discussing its work with them, in the form of publications, conferences in collaboration with other authorities or with NGOs and annual visits of the Ombudsman in major cities in the country.

In 2011 a large number of the founded complaints had a positive outcome. More specifically a 71.5% of complaints were resolved (i.e. positive outcome – satisfaction of the complainants' request). In 8.2% of the founded complaints the problem was not resolved, despite the intervention of the Ombudsman. In these cases, the Ombudsman's recommendations were not accepted. In 12% of the founded complaints the problems could not be resolved because of gaps in the legislation, organisational weaknesses and malfunctions. Finally, in 8.23% of the complains the problems were resolved without any action by the Ombudsman, either by the body concerned or following the intervention of another organisation. Compliance with legislative and organizational proposals requires time and is not representative when calculated on a yearly basis. Since the establishment of the Greek Ombudsman Office, in 1998, 31%

of the total legislative and organizational proposals have been adopted, while only 3% have been rejected. The rest are still pending.

The Ombudsman communicates annually, throughout special formal letters, with the Ministers, in order to get feedback and information about the findings and the recommendations of the Annual Report, or the Thematic Reports. Mechanisms for co-operation with the institutions of the Government include Mediation through written correspondence, working meetings, on-the-spot investigations,, drafting special thematic reports submitted to the service and to the responsible minister, setting deadlines by which the administration should adopt recommendations, making public the stance of the service with regard to the institution's recommendations, referral to public prosecutor (forwarding a report), disciplinary offence for breach of duty or grounds for replacement when an official or employee or member of the administration refuses to cooperate with the Ombudsman in the course of an investigation, and participation in governmental bodies aiming at making the best possible use of experience acquired on the protection of human rights and the fight against maladministration. The Ombudsman is member of the National Commission for Human Rights and the National Council for Administrative Reform.

The relation with the judiciary is very important for the overall credibility and establishment of the Ombudsman as an independent authority. The institution has the competence to refer extreme cases of intended bad administration to the judicial authorities, so that citizen's rights are effectively protected and maladministration is, to a certain extent, prevented at a general level. From the beginning of its operation in 1998 till the end of 2002, the institution has referred more than seventy cases to the judicial authorities, which have decided to process a large number of these cases. Of great importance is the positive reference of the Ombudsman's Final Reports in some decisions issued by the Supreme Administrative Court on cases previously investigated by Departments of the Ombudsman.

The Ombudsman participates in higher administrative committees, which elaborate plans and proposals for the reformation and modernization of the administration. The institution has collaborated closely with the other independent administrative authorities, such as the National Telecommunications and Post Commission and the Regulatory Authority for Energy, which inform the Ombudsman during the course of investigation of specific cases.

Some of the most important cases investigated by the Ombudsman have emerged from complaints, which were submitted by NGOs, usually environmental and pro-human. The Greek Ombudsman cooperates with NGOs in order to reach vulnerable population groups who, for various reasons, cannot access the Ombudsman services. To this effect, the Ombudsman maintains the operation of networks for exchange of information on rights' protection and social support of vulnerable social groups such as Roma, asylum seekers and refugees. The Ombudsman assisted to set up the non-governmental organizations' network for monitoring the implementation of the International Convention on the Rights of the Child. The Ombudsman called to co-operation 47 field NGOs, hosted the inaugural meeting and facilitates their meetings throughout the year. The Ombudsman published and edited a legal guide on the environment, in a series of guide books published by WWF Hellas. The guide includes all environmental issues, the respective legislation and scope for action. The

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first section sets the framework for environmental protection, while the second section deals with environmental issues most often encountered.

## Corruption

In 2011 Greece was ranked 80th out of 183 countries by the corruption perceptions index of Transparency International, rated worse than countries like China, Saudi Arabia, Tunisia and Cuba. Only Bulgaria ranked lower in the European Union and Western Europe section.

The Greek Government has tried to fight corruption in public administration. Greece has passed many laws in place to fight corruption but they have not been enforced adequately. Moreover a number of inspection bodies have been established in order to investigate cases of corruption. The main authority is the **Public Administration's Inspectors and Auditors Unit**, established in 1997, at the Ministry of Interior. Independent inspection divisions exist at various Ministries and in the Greek Police and the Hellenic Coast Guard. Investigation procedures and preliminary inquiries on financial crimes come under the jurisdiction of a special unit in the Ministry of Economy and Finance, the Special Audits Service. The responsibility for the prosecution of bribery cases lies with the Ministry of Justice.

In cases where politicians are involved, the Greek Parliament decides whether parliamentary immunity should be revoked to allow a special court action to follow. The Greek Chapter of Transparency International closely follows developments to force for investigation and prosecution of corruption cases.

### 3.2.6 Macedonia

#### Human Rights

The **Ombudsman** is independent and self-governing body of the Republic of Macedonia that protect the constitutional and legal rights of citizens when infringed by acts, actions and omissions by the state administration bodies and by other bodies and organizations that have public authority, and who shall undertake actions and measures for protection of the principle of non-discrimination and adequate and equitable representation of community members in the state administration bodies, the local self-government units and the public institutions and agencies. The Ombudsman is elected by Parliament for the period of eight years, entitled to on reelection. The establishment of the Ombudsman is provided by article 77 of the Constitution and The Ombudsman Law is adopted in 2003. The institution has four organizational units: unit for expert-analytical matters, international co-operation and public relations and human resources and finance.

Within the scope of his competence, the Ombudsman, may forward recommendations, opinions and criticisms, on its own initiative, to the Government and the National Assembly in order to protect the constitutional and legal rights and the principles of non-discrimination and adequate and equitable representation of community members. The Ombudsman does not initiate a procedure upon a complaint if the submission is anonymous (except if the matter is of common interest) or if is not completed after prior instruction by the Ombudsman.

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The Ombudsman submits an annual report to Parliament of the Republic of Macedonia and its content is being discussed at a Parliamentary session including members of the Government. The annual report is published at the official web site and distributed to mass media. The Ombudsman can also submit special reports regardless of the annual report. Ratings show that interest for the content of the annual report for 2011 has increased interest for 5.27% comparing to 2010. Most of the complaints are associated to the System of Justice and fields of customer rights. Since 2010, the Ombudsman has its own newspaper for regular informing the public about its activities and the human rights situation in the country.

The Ombudsman has network of local offices in Tetovo, Kicevo, Stip, Strumica, Kumanovo and Bitola. Moreover it is a member of the International Ombudsman Institute – IOI, European Ombudsman Institute – EOI, Association of the Mediators and Ombudsman from the Francophony and Association of the Ombudsman from the Mediterranean.

A serious problem for the proper functioning of the Ombudsman institution was the fact that until recently there was no law against discrimination. The 2007 Annual report stated that the office received a total of 4068 complaints from which in 913 violations of human rights occurred. The drafting of the law against discrimination started in 2004, and wasn't finished and adopted until 2010 as the Law for prevention and protection from discrimination, still with a substantial flaw – discrimination on basis of sexual orientation. It is interesting that in the original draft of the law sexual orientation was included as a basis for discrimination but before sending the draft to Parliament for approval, the Government removed sexual orientation from the list. In 2011 and envisaged by the Law for prevention and protection from discrimination a Commission for Protection against Discrimination was founded.

## Corruption

The Law on preventing corruption in Macedonia adopted in 2002 stipulated the establishment of the **State Commission for Prevention of Corruption** as an autonomous and independent institution with the aim to implement the Law on Corruption, Law on lobbying and Law on Conflict of Interest and the and composed of seven members elected by the Parliament in 4 years term. The Commission's role among others is to initiate control of the financial means of the political parties, trade unions and citizens' associations before competent authorities. Its work is published in annual reports which are submitted to the Assembly, the Government, and the Supreme Court of the Republic of Macedonia, and announced in the media.

In 2007 the Commission developed the State Program for Prevention of Corruption including action plan with clear identification of gray areas in all segments where processes of corruption exist. The program was evaluated as a comprehensive strategic document in the European Commission's report but together with an observation that it might be too ambitious in the given circumstances. The work of the Commission is based on this strategic program, and conducted in a manner that includes consideration of best practices, wide debate with all relevant stakeholder and inclusive and participatory approach in all legislation processes. Based on this approach, the Commission conducted analysis of the financing of the last political election campaign and provided 20 recommendations for amendments to the

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Election Law and the Law on financing political parties. After detailed analysis of campaign financing based on reports of all parties, the media, the RBA and all other relevant institutions the Commission came to the exact data and arguments that pointed to the necessity of amendment of certain legal provisions. Based on these data the Commission sought and received the support of the OSCE and the European Union to amend these regulations and is currently working with Parliament to change the Election Law and the Law on financing political parties. The Commission has also launched a project "Academy of integrity," which aims to develop individual and institutional integrity through education of the youngest in primary schools caused by estimation that forming the awareness, attitudes and attitude towards corruption happens in that age and in those circumstances.

The commission works closely with the civil society organizations and has signed Memorandum of mutual support in fighting against corruption and preventing of conflict of interest with a group of 17 CSO's in 2010. The same goes for the business community given that the Commission signed Memorandum of mutual support in fighting against corruption and preventing of conflict of interest with the 8 leading business chambers in Macedonia in 2011.

There are a lot of activities of the CSO's regarding corruption issues implemented in co-operation with the Commission or independently. One of them is Join the fight against corruptions – Draw a red line is project of three organizations which encourages citizens to inform the authorities if they encounter a case of corruption. On their project's website citizens can report the town and the concrete institution where the corruption is spotted without giving their personal information.

### 3.2.7 Moldova

#### Human Rights

Institution of the Moldovan **Ombudsman**, or Parliamentary Advocate (Avocaților Parleментарe), was established by the Parliamentary Advocate Law in 1997 as an important non-judicial mechanism for the protection of human rights in this country, with a mandate of five years. Moldovan Ombudsman ensures constitutional rights and freedoms of citizens, who may be affected by central or local public authorities, institutions, organizations, and by officials from all levels of government. The Moldovan Ombudsman should be completely independent of the executive, legislative and judicial powers, and no branch of the government cannot give him instructions, interfere or create pressure on his work. The institution of the Ombudsman is financed through the state budget and is called Center for Human Rights. The ombudsman is elected by simple majority of the Parliament of Moldova, but the replacement can be made only by 2/3 votes in the parliament. The Moldovan Ombudsman takes a pledge to the Parliament.

The law binds the ombudsman to protect the constitutional rights and freedoms of citizens and to promote legislation concerning human rights. Although the Ombudsman should be completely independent in his actions from all branches of government, the institution of the Ombudsman faces serious problems in this regard. In its 2010 Annual report several

issues concerning primarily the relations with the executive branch were pointed. As one of the most prominent problems stands the inappropriate police actions in which excessive force is used, and widespread practice of mistreatment towards citizens is present. The Ombudsman gave clear recommendations to cease with any kind of torture of citizens and to change the tendency of lacking persecution of similar acts. Another recommendation referred to the work of the Ministry of Education, given the large number of cases of violence of teachers towards students.

As for the relationship between the Ombudsman and the Parliament, by law, in case of serious violations of human rights and freedoms the Moldovan Ombudsman is entitled to establish a Parliamentary Commission to determine the material facts. The Ombudsman is also entitled to attend each session of Parliament. What is also important is the fact that the Ombudsman may apply to the Constitutional Court for review of constitutionality of laws and resolutions of Parliament, decrees of the President of the Republic of Moldova, decisions and orders of the Government, and may seek an opinion on compliance with laws and resolutions with international laws in the area human rights.

Co-operation between civil society organizations and the Ombudsman is very important, both for sharing common experiences and training as well as joint work on promotion and raising awareness on issues that are fundamental for the lives of the citizens of Moldova. In this context, the Moldovan Ombudsman has organized or participated in an enviable number of seminars, such as "Partnership for Human Rights", "Observance of Human Rights and Fundamental Freedoms in the states parties to the Eastern Partnership Program", and others organized with the aim to promote human rights.

## Corruption

In Moldova there is no independent body that deals with fight and prevention against corruption. There is however a Center for Combating Economic Crimes and Corruption which is a governmental body engaged also within this field. The legal framework for the forming of this body is the Constitution of the Republic of Moldova and the Law on the Center for Combating Economic Crime and Corruption, adopted in the 2002. This center deals with preventing all forms of corruption and was constituted in order to give authorization of a state government body to successfully cope with the economic crime and corruption in Moldova. The co-operation of the Centre for the fight against Economic Crime and Corruption with the civil society organizations, it is significantly intensified by signing a contract on joint training, seminars and joint projects. Also, in 2007 the Centre signed an agreement with the Moldovan Academy of Science for the purpose of joint expert analysis and forecasts in relation to corruption.

### 3.2.8 Montenegro

#### Human Rights

**Protector of Human Rights and Freedoms (Ombudsman)** in the Republic of Montenegro is an independent and autonomous institution, whose mission is to protect and promote

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human rights and freedoms, if they are violated by an act or failure to act of public authorities. The institution of Ombudsman was established by special law in 2003 to hold its function under the Constitution and adheres to the principles of justice and fairness.

The Ombudsman has good co-operation with CSO's. One of the examples of co-operation is the agreement signed with the NGO Juventas with the purpose of exchanging information and co-operation on the project 'Improving the quality of services for LGBT people'. The co-operation of the Ombudsman is particularly successful with Ministry of Justice, Ministry of Interior, Ministry of Labor and Social Welfare and others which are regularly and promptly respond to its requests and upon its recommendations.

There is a significant correlation between the Ombudsman and the Directorate for Anticorruption Initiative. The Ombudsman does not have direct responsibility for addressing corruption. However, indirectly through complaints suggesting the existence of corruption, co-operation with other competent authorities may contribute to the fight against corruption. In this regard, the Ombudsman institution is involved in the program of fight against corruption and organized crime which is implemented by the Council of Europe in co-operation with the Directorate for Anticorruption Initiative of the Government of Montenegro, and involved the Supreme State Prosecutor, the Police, the Supreme Court, Ministry of Justice, Ministry of Finance Commission for the Prevention of conflicts of interest, the Board for the prevention of money laundering, the Commission for Public Procurement and State Audit Institution. Office of the Ombudsman has also been involved in the project "Strengthening the institutional capacity to act in cases of application of criminal offenses of corruption" in co-operation with the OSCE. Ombudsman tested procedures conducted by public complaints against the specific authorities (courts, building inspection and utility inspection) and the activities undertaken and set out possible violations by the said authorities informed the Administration for Anticorruption Initiative, which could facilitate the work of which is responsible for taking specific measures to combat corruption and prosecution for criminal offenses of corruption.

Co-operation with the Parliament is improved. The regular annual report is adopted, and five separate reports were submitted to Parliament: report regarding the right to restitution of property rights and compensation, report regarding the human rights of the mentally ill and their institutionalization, report regarding the detention and treatment of persons deprived of their liberty, report regarding protection from discrimination and report regarding the children-beggars in Montenegro. One of the latest proposals of the Ombudsman's cabinet as a result of co-operation with NGO "LGBT Forum Progress" was suggestion to the Montenegrin Parliament to adopt the law on same-sex community.

## Corruption

The agency was the first anti-corruption body established with the aim to prevent and raise public awareness about corruption in Montenegro is the **Agency for Anticorruption Initiative** but not as an independent institution but as a result of a Government Regulation. The Agency is established within the Ministry of Justice with the aim to propose ratification and implementation of international standards in the field of corruption and played a

significant role in drafting anti-corruption laws and the establishment of other anti-corruption bodies. In 2004 the Agency transformed into **Directorate for Anticorruption Initiative** and its responsibilities are significantly expanded in 2007.

In terms of providing funds for its annual budget, the Directorate submits proposal to the Ministry of Finance for approval of funds. Ministry of Finance approves and monitors the expenditure of funds approved based on the planned objectives and tasks.

There are examples of co-operation of the Directorate with Civil Society organizations such as the Center for Monitoring in Podgorica. The activities of the Administration are occasionally funded by foreign foundations and organizations. According to the report of the first Donor Coordination Meeting in the area of Anticorruption organized in 2009 a lot of activities of the Directorate were financed by the Fund for Open Society, OSCE mission in Montenegro, the Government of Norway and the European Union.

An important part of the activities of the Directorate are resulting from membership in regional initiatives, especially the Regional Anti-Corruption Initiative (RAI), as the body responsible for monitoring the implementation of the Declaration on 10 joint measures for combating corruption in South Eastern Europe. The Administration submits annual reports to RAI in the fulfillment of the Declaration signed 2005.

With regard to the Convention against Corruption of the Council of Europe, Anticorruption Initiative in co-operation with the Ministry of Justice prepared a draft law on ratification of the Additional Protocol to the Criminal Law Convention on Corruption, adopted by the Parliament in 2007. In co-operation with the Ministry of Finance, the Directorate has prepared a draft law on ratification of the Civil Law Convention on Corruption, adopted by the Parliament of in 2007.

### **3.2.9 Romania**

#### **Human Rights**

The Romanian **Ombudsman** is an independent institution of the Government of Romania, responsible for investigating and addressing complaints made by citizens against other government institutions.

The Romanian Ombudsman was established in 1991 after the ratification of the country's first post-communist constitution. Initially, the ombudsman was appointed by the Senate for a four-year term. After the Constitutional Amendment of 2003, the ombudsman is appointed for a term of five years, by both chambers of parliament (the Chamber of Deputies and Senate), to which it reports annually or upon request. The office of the ombudsman is based in Bucharest and the institution also has branch offices in 14 regional centers.

With the adoption of the amendment of the Law on the judicial review of administrative acts in 2004, the Ombudsman is enabled to address any court directly for processing an illegal administrative act, in situations when he considers that there are no other options for having

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the illegality remedied. The Ombudsman has a disposition to appeal the court on the behalf of the individual whose rights are violated which represents additional means for settlement of legal disputes (for example expiration of time limits). Ombudsman can also submit appeals to the court ex officio regarding administrative acts in cases concerning protection of legal order and human rights.

The interaction with the Constitutional Court consists of both a priori and a posteriori constitutional control by the Ombudsman who can challenge a law before adoption in front of the Constitutional Court if elements of possible violation of human rights are identified; he can also raise an appeal of unconstitutionality of existing legislative. On the other hand, The Ombudsman also offers opinions at request of the Constitutional Court. In addition, the Constitutional Court is required to ask the opinion of the Ombudsman in cases when a appeal of unconstitutionality concerning human rights arises before an ordinary court issues.

## Corruption

In May 2007, the **National Integrity Agency (ANI)** was created after a long process of drafting and changes of the legislation. This has led Romania to become the first European country to create a specialized institution to check wealth, conflicts of interests and incompatibility issues finally enabling systematic control of conflict of interests which previously never existed. The law establishing the ANI is one of the most important and most thoroughly debated anti-corruption policies in Romania but still, applying the current legislation may be problematic given that the institution may consider only conflicts of interests as defined by administrative law, which refers to benefits for oneself and immediate relatives solely of a material nature ignoring non-material profits and intermediaries.

ANI was regulated as an autonomous administrative authority, benefitting from operational independence. The management of the Agency cannot require and cannot be required for any dispositions from any public authority, institution or person. ANI can start an investigation either on the basis of a physical or juridical person's request, or on the request formulated by the president of the Agency. All requests need to be accompanied by the information and proofs which sustain the request. In cases which imply ANI personnel, the requests are submitted to the National Council for Integrity (CNI) which is the body that supervises ANI's activity and is also regulated by Law. CNI members are appointed by the Senate for a period of three years and they represent the parliamentary groups in Senate, the minority group in the Chamber of deputies and a number of administrative bodies.

There are also two directorates founded within ministries that deal with the problem of corruption, the Anti-Corruption General Directorate (DGA) and the National Anticorruption Directorate (NAD).

**National Anticorruption Directorate (NDA)**, formerly National Anticorruption Prosecution Office is the Romanian agency founded by the Ministry of Justice and tasked with preventing, investigating and prosecuting corruption-related offenses (such as bribery, graft, patronage and embezzlement) that caused a material damage higher than €200,000 or whose value of the involved amounts or goods is higher than €10,000. The NAD is headed by a

Chief-Prosecutor and 2 deputies, nominated by the Minister of Justice and appointed by the President of Romania. The Chief-Prosecutor of the Directorate is subordinated to the General-Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

**Anti-Corruption General Directorate (DGA)** is an agency subordinated to the Romanian Ministry of Interior and Administrative Reform, tasked with preventing and investigating the corruption offenses, the criminal acts and misconduct among the personnel of the Ministry. It was established by the Law 161/2005 and its creation was supported by the European Union, with the assistance of experts from Great Britain and Spain. DGA's mission is focused on preventing of and fighting against corruption offenses conducted by the Ministry of Administration and Interior personnel.

Also, the DGA cooperates with public and private organizations with responsibilities in preventing and fighting corruption. Romania has a diverse and active civil society in the area of anti-corruption, where partnerships with Government and anti-corruption coalitions are in evidence. Among most active associations in this area is Transparency International Romania (TI Romania), Open Society Foundation, Centre for Legal Resources, Association Pro Democracy, and Institute of Public Policy. The Romanian Academic Society, the Center for Institutional Reform, the Informal Sector (IRIS Center) and Media Monitoring Agency have contributed to the work in this area.

Many examples of anti-corruption coalitions of NGOs exist in Romania. For instance, the Coalition for monitoring anti-corruption legislation and Coalition for Transparency established in 2003 as well as the National Electoral Transparency Initiative. NGOs and research centers were co-operating with the Ministry of Justice to develop anti-corruption strategy, draft legislation and implement joint activities. For instance, in 2003 the League for the Defense of Human Rights launched a Human Rights and Combating Corruption program together with the Ministry of Justice. The partnership has led to a program involving public authorities in the fight against corruption. TI Romania and Association for Democracy in cooperation with the Ministry of Justice had drafted a package of new anti-corruption laws in 2004. These associations were also involved in the working groups formed by the Ministry of Justice to discuss the new strategy. Several NGOs have provided independent assessments of anti-corruption legislation.

The 2011 European Commission report highlighted that the progress in judicial reform and the fight against corruption in Romania necessities an urgent action to accelerate high-level corruption trials, preserve the fight against corruption as a top priority and take measures to follow up effectively on decisions by the National Integrity Agency (ANI). Further noted is the need to improve the recovery of proceeds of crime, the pursuit of money laundering, the protection against conflict of interest in the management of public funds, building on progress already made, and continue to conduct professional, non-partisan investigations into allegations of high level corruption. Also addressed is the necessity to take measures to prevent and fight against corruption within the local government.

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### 3.2.10 Serbia

#### Human Rights

**The Protector of Citizens of the Republic of Serbia (Ombudsman)** is an independent constitutional state authority mandated to protect human rights and freedoms. The first Serbian Ombudsman was appointed by the National Assembly in 2007, with a five-year-mandate. He has four deputies, who are specialized in the fields of the protection of rights of persons deprived of liberty, gender equality, children rights, minority rights and rights of people with disabilities.

The Ombudsman has competence to initiate proceedings in front of the Constitutional Court on constitutionality and legality of laws, regulations, oversee the work of government agencies, the bodies authorized for legal protection of property rights and interests of the Republic of Serbia and other bodies and organizations, enterprises and institutions which have been delegated public authority. Except above mentioned tasks, Ombudsman can propose laws within its scope of competence, give opinions to the Government and the National Assembly on regulations under preparation and address the Constitutional Court to challenge the constitutionality of laws.

Responding to citizens' complaints it conducts special procedure to verify inappropriate actions or a failure of adequate action by public authorities upon which the authorities are asked to correct the malfunctions or recommended a method for adjustment. The authorities are obliged to respond to all requests of the Ombudsman, and provide all requested information and documents within a deadline of maximum of 60 days. If the authority fails to comply with the recommendation, the Ombudsman may notify the public, Parliament and the Government, and may recommend establishing the responsibility of the chief executive organ of government.

The Ombudsman is responsible for its work directly to National Assembly and submits an annual report providing information about activities of Ombudsman in the previous year, information on observed deficiencies in the work of administrative bodies and suggestions for improving the status of citizens in relation to administrative authorities. The annual report for 2011 shows increase of 40% complains in 2011 comparing to 2010. In the past 5 years the Ombudsman has submitted a total of 52 law proposals and amendments from which 15 have been accepted.

The Ombudsman has network of local and province Ombudsmen, who cooperate between each other. There are a Province Ombudsman of Vojvodina, 10 Ombudsman in bigger cities (Belgrade, Novi Sad, Sombor, Subotica, Zrenjanin, Kragujevac, Backa Topola, Smederevska Palanka) and 13 local offices in smaller towns (Bujanovac, Presevo, Medvedja, Backa Planka, Sid, Krusevac, Novi Pazar, Prijepolje, Svilajnac, Uzice, Bor, Dimitrovgrad and Leskovac). The Ombudsman also cooperates with Ombudsmen from other European countries and organized International Ombudsman conference in 2009 where it was agreed that co-operation between Ombudsman and National Assembly is the best way for exercise civil rights, as well as their mutual co-operation which enables exchange of experiences and good practices.

The fact that 70-80% recommendations are accepted and implemented by the administrative authorities proves the existence of good co-operation with the Ombudsman. The National Assembly and majority of ministries support the autonomy of the Ombudsman and respect its role. Also, different projects are conducted with CSOs regarding human rights, LGBTs, poverty, etc.

At the beginning of 2012, the Ministry of Justice had tried to reduce the powers of the Ombudsman with exempting the jurisdiction of the Ombudsman's control of the State Prosecutors Council and the High Judicial Council. A coalition of civil society organizations dealing with human rights and democracy demanded from the Serbian government disregard the ministry's proposal indicating that the proposal for exclusion of these bodies from the control of the Ombudsman is due to the Ombudsman's opinion regarding the High Judicial Council and warning that this kind of reduction of the competences is forbidden by the Serbian Constitution and international treaties in this field. The request of the Ministry of Justice was thus disregarded. The Civil Society organizations give significant contribution to the work of the Ombudsman office and succeed valuable results in this area.

Although the independent bodies dealing with human rights and others are generally satisfied with their co-operation with the public authorities, they all agree that it is necessary to significantly enhance the co-operation in all areas in a friendly manner providing democratic and public control upon their work as preconditions for prevention of various abuses, irrationality and inefficiency.

## **Corruption**

Agency for Combating Corruption is independent, public authority established in 2009 but officially started to work in the beginning of 2010. With the purpose of providing favorable environment for combating corruption the parliament has ratified the Civil Law and Criminal Law Convention on Corruption of the Council of Europe and the UN Convention against Corruption but there are still significant obstructions and shortcomings of certain laws which significantly reduce capacity and institutional framework for establishing an adequate system for combating corruption and proper functioning of the Agency.

The Law on the Anti-Corruption (2008) defines regulations of the establishment, legal status, competence, organization and operation of the Anti-Corruption rules regarding the prevention of conflicts of interest while performing public functions and reporting assets of persons exercising public functions, procedures and decision in case of violation of this Act, introduction of integrity plans, and other issues of importance. The Agency initiates proceedings and pronounces measures for violation of laws, and rules on conflict of interest. It also gives an opinion for amendment and adoption of new regulations in and coordinates the work of state bodies in the fight against corruption. The Agency has a Board of 9 members mandated for 4 years and is headed by the Director of the Agency elected for a 5 years term.

The Agency is obliged to submit an annual report to the National Assembly which is presented to the Committee of Justice and Administration, and further discussed on the next parliamentary session.

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The Agency has Service for international co-operation for monitor international regulations in the fight against corruption, in particular the Convention and the international treaties ratified by the state and to initiate changes to domestic legislation to comply with internationally accepted legal rules and standards. In this sense, one of the primary goals of the Service is a regular and direct co-operation with the Council of Europe Group of States against Corruption (CEGSC), participation in CEGSC plenary session in Strasbourg, co-operation with the United Nations Office on Drugs and Crime (UNODC) and the Conference member states (of the UN Convention against corruption), as well as with the Network against Corruption within the Organization for economic Co-operation and Development (OECD). The Agency has become a member of the network "European Partners against Corruption".

Taking into account the Agencies recommendations, the parliament has initiated the National Strategy on fight against corruption, and new Law on financing political activities. The agency also initiated adjustment of the Law on Legal Profession Act and the Law on Health Protection with the Law of the Agency due to existing elements that imply conflict of interest. The only initiative of the Agency without positive follow up is the one suggesting dismissal of organs and officials in cases where a conflict of interest occurs.

The Agency promotes good co-operation with civil society organizations through their inclusion in implementation of projects who's aim is strengthen the capacity of society to fight corruption. The first two in 2012 will be financed by the Agency.

Board of the Agency is concerned about the proposal for amending the Law on Public Procurement. If the amended Law is adopted, the Public Procurement Office shall cease to operate as a separate organization and became part of the Ministry of Finance which will reduce its independence and will be a step backward in efforts to combat government corruption.

### 3.2.11 Slovenia

#### Human Rights

**The Human Rights Ombudsman** (HRO) was established by the Constitution of the Republic of Slovenia of 1991 and the Human Rights Ombudsman Act adopted by the National Assembly in 1993 by regular legislative procedure requiring three readings. When drafting the provisions on the duties and powers of the Slovenian HRO, experiences of several ombudsman systems were examined and taken into consideration and consequently, a number of elements in this Act reflect the classical Scandinavian model, while other elements are closer to the model adopted in other transition countries.

The HRO is empowered to examine cases of illegal acts and maladministration of state authorities, local authorities and bearers of public authority. The HRO may propose exceptional solutions in individual, well-grounded cases not contemplated by the law, by analogy with the Latin model of the ombudsman's powers. However, the HRO does not investigate matters where rights and fundamental freedoms are breached by physical or legal persons. The HRO acts when the offender is the state or a local authority (municipality) or a bearer of

public authority and it is not the first instance of appeal, but does intervene when the competent authorities fail to do their work properly. However, the HRO does not interfere in cases in which court or other legal proceedings are being conducted, except in cases of undue delay in the proceedings or evident abuse of authority. The HRO may communicate his opinion, from the aspect of protection of human rights and fundamental freedoms, regardless of the type or stage of proceedings which are being conducted by the respective body. This provision is of utmost importance, as it enables the HRO to act in cases where the proceedings have not yet been concluded, for instance in courts. It gives him the possibility to file a brief with the court in the role of *amicus curiae* – “friend of the court”.

The primary task of the HRO is to investigate complaints lodged by individuals. However, through such investigations it may also come across so-called “systemic” malfunctions and maladministration of public administration. The HRO is the only entity within the public administration to have a 360-degree overview of the implementation of regulations and of relevant practices.

The Ombudsman’s annual report to the National Assembly is one of the strongest tools for the implementation of its proposals and recommendations and it is not only a fulfillment of his legal obligations but has wider implications. It targets the deputies of the National Assembly, various government and administrative bodies, individual citizens, civil society and professional groups (lawyers, university scholars and others).

This procedure concerning the discussion of the report is made official by the Rules of Procedure of the National Assembly and explicitly provides that the ministers whose scope of work the report refers to must be present during the discussion of the report.

A great leap forward regarding HRO’s Reports was made after 2000, when the Minister of Justice requested and granted the condition that a special response report by the Government be prepared and annexed to the HRO’s Report. The grounds for this request may not be found in any rules of procedure or legal provisions, but are part of the general obligation of the Government to prepare its position for each item of the agenda of any session of the National Assembly. The Government response report also contains a chapter on the **monitoring** of implementation of recommendations from the previous report. By way of his reports, the HRO has contributed considerably to the adoption of certain acts, for instance in the field of access to information of public character, protection of personal data, police powers, lawyers and courts, children’s rights, mental health and patient’s rights.

Some executive authorities cooperate with the Ombudsman in a respectful and effective manner, carrying out Ombudsman’s recommendations while other don’t. In the 2010 the Ombudsman estimated that co-operation with the Ministry of the Environment and Spatial Planning (MOP) was entirely inappropriate. Therefore, for the first time in the Ombudsman’s history, the ombudsman acted according to Article 46 of Ombudsman Act, which specifies that the President of the National Assembly, the Prime Minister and Ministers must accept the Ombudsman at his request. The Minister responded to the Ombudsman’s request and after a discussion, agreements to eliminate the deficiencies were adopted within the time

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limit provided. The agreements were also carried out in due time, which showed that acting in accordance with Article 46 is effective.

The **civil society** is a valuable source of information for the Ombudsman on violations and a partner in many activities. CSO's are often the first to discover, respond and provide direct help to individuals and social groups whose rights are violated. Many awareness raising initiatives originate from the civil society and the Ombudsman cooperates with civil society on different projects and at occasional meetings established to identify needs of certain groups regarding the respect of their rights. The HRO regularly monitors efforts by non-governmental organizations, societies, associations and institutions, and organizes regular monthly meetings and open door days with their representatives for several years. The Ombudsman informs the competent state authorities and other institutions of the findings following consultations with civil society, and expects them to create and provide conditions for the successful work of the nongovernmental sector.

## Corruption

**Commission on the Prevention of Corruption** in Slovenia (CPC) is an independent authority with a broad mandate in the field of preventing and investigating corruption, breaches of ethics and integrity of public office. CPS is not subordinated to any other state institution or ministry, and does not receive direct instructions from the executive or the legislature. While Slovenia has an 8 year history of specialized anti-corruption bodies, the current CPC has been established by the Integrity and prevention of corruption Act of 2010 (with later amendments) and fulfils the requirement of an independent body as required by the UN Convention against Corruption (UNCAC).

The CPC has a wide mandate in the field of preventing and investigating corruption, breaches of ethics and integrity of public offices. Its tasks, among others, include monitoring the financial status of high level public officials in the executive, legislature and judiciary institutions through the assets declaration system, maintaining the central register of lobbyists, adopting and coordinating the implementation of the National Anti-corruption Action Plan, creating and implementing different anti-corruption preventive measures and serving as a national focal point for international anti-corruption co-operation on systemic level.

CPC is independent body, and to strengthen its independence, the law provides a special procedure for appointment and dismissal of its staff. It reports directly to the Parliament. Such an independent status enables it to exercise its tasks towards all public instructions in Slovenia, including courts and the Parliament. The CPS has a central office in Ljubljana and its Chief Commissioner and two deputies are appointed by the President of the Republic of Slovenia following an open recruitment procedure and nomination by a special selection board. Candidates which must meet high professional and integrity standards are interviewed and screened by a selection board comprising a representative of the Government, the National Assembly, non-governmental organizations, the Independent Judicial Council and the Independent Council of Officials. The Chief Commissioner's term of office is six years, the deputy's five. They can serve up to two terms in office. If they act in breach of the

Constitution or the law they can be dismissed only by the President. The annual budget of the Commission is approved by the Parliament.

During its first year of operation, CPC had poor relations with the Government which culminated with considerable restriction of its budget by the Government in 2005 which created risk of shutting down the CPC.

CPC has developed and introduced a comprehensive system of declaration of income and assets by public officials at national and local level, including prosecutors and judges. 95% of the officials, who are obliged to declare their income and assets, have submitted the declarations. Greatest resistance to the system of declarations was encountered at local level. CPC finds important that the future anti-corruption activities should focus at education in order to change the attitude of the public tolerating bribes.

In terms of public awareness, the Commission has a Communications Officer to assist with public relations and the dissemination of information. Brochures, pamphlets, and posters have been published to instruct the public of the functions of the Commission and the means by which corruption can be identified. There are also weekly media reports on cases involving corruption, a radio show on integrity, and public debates by members of the Commission on matters of corruption. Trainings for public officials are planned, to be arranged jointly with the Academy of Administration under the Ministry of Public Administration. These seminars are tailored specifically for public officials, including essays and case studies targeting certain fields as working materials. The Commission has also recognized that it is important to provide training on the mandate and functions of the Commission to counter false perceptions.

The 2010 Act also incorporates the role of non-governmental organizations (NGOs) into the anti-corruption efforts, allowing the Commission to finance NGO work in this area. Presentations and discussions with local NGOs regarding points of possible collaboration have already taken place. The CPC has set up email for NGOs (nvo@kpk-rs.si) as another communication channel for the civil society organizations, often put aside by the state bodies, with the purpose to encourage NGO's to cooperate with the Commission by submitting their proposals, ideas and reports on corruption.

### **3.2.12 Turkey**

#### **Human Rights**

While about 50 years ago, the Ombudsman institution existed only in Scandinavian countries today it exists in about 150 countries. However, despite of Turkey being a member of many international and regional organizations who support the establishment of the Ombudsman Institution, Turkey is one of rare countries which have not yet established it.

The ombudsman bill has been on Parliament's agenda for 12 years. The ombudsman bill, originally drafted in 1998 was submitted to Parliament in 1999, but was postponed after the 2002 elections.

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It was updated in 2004 and passed as part of the European Union reform process that started in 2005. However, the President of the country vetoed it 2006, maintaining that the Constitution does not contain any reference to an ombudsman. The government put a reference to one into a Constitutional amendment package that was approved in a referendum held in 2010.

After the referendum, the ruling Justice and Development Party (AK Party) reintroduced the ombudsman bill to Parliament once again and expected to be passed before the elections in mid-2011. The ombudsman's office will be responsible for examining and investigating all manners of administrative acts, actions, attitudes and behaviors in terms of respect for human rights and freedoms, conformity with law and fairness, and appropriateness within the framework of the qualities of the Republic of Turkey as enshrined in its Constitution.

A limitation introduced to the ombudsman bill will exclude activities of a military nature on the part of the Turkish Armed Forces from the jurisdiction of the ombudsman. No authority, organ, institution or person shall issue orders or instructions or circulars or advice to the ombudsman and auditors in the execution of their duties.

The ombudsman's office will be called the Public Monitoring Institution (KDK) and will have an independent and autonomous budget. Both real and corporate persons can file claims. Foreigners' right to file will be limited on the basis of reciprocity. The KDK will convene with the absolute majority of auditors under the chairmanship of the ombudsman and make its decision based on majority vote of the attending members. In case of a tie, the ombudsman's vote will determine the winning proposal. The ombudsman will have a term of five years and will be elected by the General Assembly of Parliament.

## Corruption

Independent authorities are historically unfamiliar type of governance in Turkey whose tradition of public administration favors a strong and centralized state. Independent and regulatory bodies in Turkey are public authorities within the executive branch of the state that are autonomous from the government or any other bodies. They constitute service-based (as opposed to geographical) decentralized administration in terms of the Turkish constitution.

While Turkey already meets many of the requirements for negotiating and completing the EU accession process, Turkey will need to bolster its anti-corruption program. Key elements will include increased public sector co-ordination and the design and implementation of a credible anti-corruption program. Anti-corruption will be necessary to strengthen weak government institutions and forestall the radicalization of the political process.

Unlike other accession countries, Turkey has no real center of anti-corruption. In Turkey, a number of executive bodies deal with anti-corruption including the Prime Minister's Inspection Board, Ministry of Finance Inspection Board, Ministry of Justice, Ministry of Interior, State Planning Office and the State Supervision Institute in the President's Office. However, none of these has been given a definitive leading role and independence to deal with corruption and the relationships between these entities are ambiguous. In most of the

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other accession countries, one or more of the international donors have been involved in anti-corruption work (United Nations in Hungary; World Bank in Slovakia, Latvia and Poland). Transparency International's local chapter in Turkey— while having done important work – is less active than in some of the other accession countries. The Turkish Economic and Social Studies Foundation (TESEV) have sponsored some important work looking at corruption and US based Ethics Resource Center has held a number of ethics and anti-corruption meetings in Turkey with questionable long-term impact.

Turkey is different from the other accession countries because corruption is more damaging to fragile state structures. Turkey has suffered from chronic inflation and budget deficits for the last 25 years, some of which has been caused by corruption. Both the World Bank and the EU have opined that Turkish economic and social fragility is partially a consequence of corruption. The economic crisis of 2001 was partly blamed on a loss of market confidence in the Turkish economic reform which was stalled by corruption.

The government has recently taken steps to address corruption challenges in the country and major international anticorruption conventions have been signed and ratified. An anti-corruption action plan has been adopted in 2010 and the government has implemented series of reforms aimed at reducing opportunities for corruption and improving the country business environment. Nevertheless, the progress in the fight against corruption remains limited. There is no central body in charge of developing and evaluating anti-corruption policies, inadequate coordination of the various institutions involved in the fight against corruption and no independent body in charge of monitoring the implementation of anti-corruption measures. In spite of greater civil awareness and participation, the 2010 strategic action plan on reducing corruption was designed with no consultation of non-governmental actors and civil society only has limited oversight over the implementation of national anti-corruption policies. There are strong immunity regulations for high ranking public officials which are considered to be an important obstacle to the fight against corruption. The country also needs to improve its legislation on the financing and auditing of political parties.

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## **4. Conclusion**

Grounded on the research of the procedures and practices in the SEECP countries regarding the role and position of the independent bodies dealing with human rights and corruption in respect of the other state institutions and the CSOs as well as the results of the conference as well as the information obtained and processed from the questionnaires used as additional means of collecting data it is concluded that IB are in place in many of SEECP countries.

Turkey is the only exception lacking both independent institutions dealing with human rights and corruption. It is also striking that more than a half of the SEE CP countries (Albania, Bulgaria, Croatia, Greece, Moldova, Montenegro and Turkey) haven't established independent anticorruption authorities but have different administrative bodies dealing with corruption within other institutions. The general challenge that all recently established IB's face is to build their position within the institutional system of the country and accomplish empowerment of their competences given by law.

Correlation and mutual influence between the Parliaments and Independent Bodies is established and parliaments include IB in process of consultations when drafting legislation in area of their competence. Financial resources for IB in order to perform the functions assigned by the law are allocated but there are still cases of attempts for obstruction of their work through cutting funds. The initiatives of IB toward the parliament are taken into account but not always followed. Thus, it is noted that introducing mechanisms for monitoring of the follow up of their initiatives and recommendations are necessary. In some cases, parliaments still fail to promptly inform IBs when drafting legislation in the area of their competence and involve IBs in the public hearings about legislation in the area of their competence. Furthermore, procedures for the legislative and executive branch regarding the inclusion of IBs in all phases of legislation drafting need constant improvement in order to be sufficiently clear. Although Annual reports of IBs are adopted, parliaments still need to standardize and institutionalize mechanisms and clear guidelines for their implementation.

It is noted that the level of understanding of the role and importance of IBs of the representatives of the public authorities, media, CSOs and mainly among citizens is not satisfactory. Civil Society Organizations (CSOs) have succeeded to impose themselves as a source of

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constructive criticism, but also as partner of IB's and state institutions within in a significant range of issues in many of the SEECP countries. CSO's actively contribute to the preparation of new legislation and implementation of various policies through advocacy and other activities. However, the participation of civil society is yet to be improved which generally depends on the openness of state authorities, but also the persistence and quality of the ideas provided by the civil society. It is also evident that Media have an essential role as a tool for addressing issues and especially inefficiency of both IB and government authorities.

Considering the importance of the establishment and proper functioning of IBs and taking into account the variety of modalities of their functioning, the exchange of experiences and good practices of the Parliaments, IBs and CSOs of the SEECP countries should become a continued process which will contribute to the development of democracy and good governance in the whole region.

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## 5. Annex

### 5.1 Conference Agenda

**International Conference “Co-operation of the National Parliaments and Independent Bodies in SEE”,** House of the National Assembly of the Republic of Serbia, Belgrade (Trg Nikole Pašića 13)

#### April 3th, 2012 (Tuesday)

##### 15:00—15:30 **Keynote speeches and official opening**

- **Prof. Dr. Slavica Djukić-Dejanović**, National Assembly Speaker
- **Ambassador Dimitrios Kypreos**, Head of the OSCE Mission to Serbia
- **Prof. Dr. Vlastimir Matejić**, President of the European Movement in Serbia

Chair: **Gordana Čomić**, National Assembly Deputy Speaker

##### 15:30—17:00 **Panel 1: Correlation and mutual influence between the Parliament and Independent Regulatory Bodies**

- **Gordana Čomić**, National Assembly Deputy Speaker
- **Saša Janković**, Ombudsman of the Republic of Serbia
- **Zorana Marković**, Director of the Anti-Corruption Agency, Republic of Serbia
- **Jadranka Jelinčić**, Executive Director of the Fund for an Open Society
- **Polona Tepina**, Information Commissioner’s legal advisor, Republic of Slovenia

Chair: **Nataša Novaković**, National Legal Officer, OSCE Mission to Serbia

#### **Discussion Topics:**

- What are the main preconditions for securing adequate legal framework for proper functioning of IRB’s?
  - How is the financial independence of IRB ensured?
  - What should the Appointing and dismissing procedures of the IRBs member staff include?
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17:00—17:30 Coffee break

17:30—19:00 **Panel 2: IRB's involvement in the legislative processes and their initiatives toward the parliament**

- **Nevena Petrušić**, Equality Protection Commissioner, Republic of Serbia
  - **Voislav Zafirovski**, President of the State Commission for Prevention of Corruption (SCPC), The former Yugoslav Republic of Macedonia
  - **Vilfrida Bushati**, Head of the Inspection and Investigation Department, Office of Anti-Discrimination Commissioner, Republic of Albania
  - **Budimir Šćepanović**, Deputy Ombudsman, Republic of Montenegro
- Chair: **Maja Bobić**, Secretary General of the European Movement in Serbia

**Discussion Topics:**

- Involvement of IRB's in the legislative process on bills in the areas of their competence?
- How and why should the internal standards of co-operation with the parliament be established?
- What are the experiences of including the international conventions into national modalities?

20:00 Dinner (upon separate invitation)

**April 4th, 2012 (Wednesday)**

10:00—11:30 **Panel 3: Horizontal co-operation in regard to accountability**

- **Sonila Kadareja**, Legal Adviser, Monitoring Department of the Independent Institutions, Parliament of Albania
  - **Rok Praprotnik**, Deputy Chief Commissioner, Commission for the prevention of corruption, Republic of Slovenia
  - **Nataša Jelić**, Senior adviser in Department for Resolving of Conflict of Interest, Anti-Corruption Agency, Republic of Serbia
- Chair: **Budimir Šćepanović**, Deputy Ombudsman, Republic of Montenegro

**Discussion Topics:**

- How can IRB contribute to the parliament oversight and scrutiny function of the executive?
  - How can the parliaments and IRB undertake successful enquiries?
  - How can the accountability awareness be enhanced?
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11:30—12:00 Coffee break

12:00—13:30 **Panel 4: Annual reports of the IRB's and their effects**

- **Prof. Gheorghe Iancu**, People's Advocate, Republic of Romania
- **Ljubomir Sandić**, Ombudsperson of Bosnia and Herzegovina
- **Aleksandar Resanović**, Deputy Commissioner for Information of Public Importance and Personal Data Protection, Republic of Serbia
- **Zdenka Čebašek-Travnik**, Human Rights Ombudsman, Republic of Slovenia
- **Calliope Spanou**, The Greek Ombudsman

Chair: **Vlatko Ratković**, Chairperson of the Legislative Committee, National Assembly of the Republic of Serbia

#### Discussion Topics:

- Is there a follow up of the IRB reports and recommendations?
- How can a successful strategy for implementation of the recommendations of IRB by relevant public authorities be created?
- Which are the mechanisms that ensure the proper consideration of the IRB recommendations by the relevant authorities?
- Are media successful tool for raising the concerns of IRB among citizens?

13:30—15:00 Lunch break (National Assembly restaurant)

15:00—16:30 **Panel 5: Civil Society Organizations (CSO's): perspective: inclusion, involvement and influence**

- **Vesna Malenica**, Think Thank Populari, Bosnia and Herzegovina
- **Nemanja Nenadić**, Programme Director of the Transparency Serbia
- **Zlatko Vujović**, President of the Governing Board, The Monitoring Center (CEMI), Montenegro
- **Dr. Todor Galev**, Senior Analyst, Center for the Study of Democracy, Republic of Bulgaria

Chair: **Ivan Knežević**, Deputy Secretary General of the European Movement in Serbia

#### Discussion Topics:

- Can CSO amplify the role of IRB?
- Is there a sufficient inclusion of the CSO in the work of IRB in the region?
- Is there a sufficient involvement and adequate approach of CSO in regard to IRB issues in the region?

16:30—17:00 Coffee break

17:00—17:30 **Panel 6: Conclusions and recommendations / Closing Remarks**

- **Gordana Čomić**, National Assembly Deputy Speaker

**5.2 Questionary distributed to the representatives of the Civil Society Organizations (CSO) dealing with human rights, antidiscrimination and rights of minorities and corruption in regard to Independent regulatory bodies (IRB)**

Name:

Organization:

Position:

Area of work (please underline): human rights / corruption

1. Please explain the mechanisms of co-operation with IRB's as well as the main difficulties in this regard?
2. Is there sufficient inclusion of CSO's in the work of IRB's?
3. Please indicate if CSO's can strengthen the role of IRB and how, as well as your experience in this regard?
4. Please evaluate your inclusion in the work of IRB's and your contribution to its results?
5. How can the engagement and approach of CSO's in regard to IRB issues be improved?
6. Additional comments

**5.3 Questionary distributed to the representatives of the Independent Bodies dealing with human rights, antidiscrimination and rights of minorities and Independent regulatory bodies dealing with corruption**

Name:

Institution:

Position:

1. Please state what are the main weaknesses of the legislative that regulates the establishment and functioning of the institution?
  2. Please specify the mechanisms for co-operation with the parliament as well as the main difficulties in this regard?
  3. Please explain the mechanisms for co-operation with the institutions of the government as well as the main difficulties in this regard?
  4. Please indicate if the institution delivers an annual report as well as the range of its effects?
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5. Please explain in what extend are the recommendations of your institution being implemented by relevant public authorities?
6. Please evaluate the inclusion of the Civil Society Organizations in your work and their contribution to its results?
7. Additional comments

**5.4 Questionary distributed to the representatives of the Parliaments regarding the co-operation with Independent Bodies dealing with human rights, antidiscrimination and rights of minorities and Independent regulatory bodies dealing with corruption**

Name:

Institution:

Position:

1. Please state what are the main weaknesses of the legislative that regulates the establishment and functioning of IB's?
  2. Please specify the mechanisms for co-operation with the IB's as well as the main difficulties in this regard?
  3. Please evaluate the contribution of IB's to the parliament's oversight function toward the Government as well as the main difficulties in this regard?
  4. Please indicate if the IB's deliver an annual report to the Parliament as well as the range of its effects?
  5. Please explain in what extend are the recommendations of IB's being implemented by the Parliament?
  6. Please evaluate the inclusion of Civil Society Organizations in the processes of co-operation of the Parliament with IB's?
  7. Additional comments
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## 6. Sources of Information

- Questionary distributed to the representatives of the Civil Society Organizations (CSO) dealing with human rights, antidiscrimination and rights of minorities and corruption in regard to Independent regulatory bodies (IRB)
- Questionary distributed to the representatives of the Independent regulatory bodies dealing with human rights, antidiscrimination and rights of minorities and Independent regulatory bodies dealing with corruption
- Questionary distributed to the representatives of the Parliaments regarding the co-operation with Independent Bodies dealing with human rights, antidiscrimination and rights of minorities and Independent regulatory bodies dealing with corruption
- Information obtained from databases available on the Internet:

### **Albania**

#### Constitution of the Republic of Albania (1998)

<http://www.osce.org/albania/41888>  
[www.avokatipopullit.gov.al](http://www.avokatipopullit.gov.al)  
[www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions/A/Albania](http://www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions/A/Albania)  
[www.e-albania.al/web/People\\_s\\_Advocate\\_18\\_2.php](http://www.e-albania.al/web/People_s_Advocate_18_2.php)  
[www.parlament.al](http://www.parlament.al)  
<http://www.klsh.org.al/index.php?l=e>

### **Bulgaria**

[http://sofiaecho.com/2011/03/07/1054508\\_bulgarias-ombudsman-recommends-stronger-protection-of-bank-customers](http://sofiaecho.com/2011/03/07/1054508_bulgarias-ombudsman-recommends-stronger-protection-of-bank-customers)  
[http://www.anticorruption.bg/ombudsman/eng/readnews.php?id=5608&lang=en&t\\_style=tex&l\\_style=default](http://www.anticorruption.bg/ombudsman/eng/readnews.php?id=5608&lang=en&t_style=tex&l_style=default)  
<http://www.ombudsman.bg/>  
<http://www.anticorruption.bg/index.php?id=824>  
<http://www.init.de/en/news/init-supports-setup-of-bulgarian-anti-corruption-center-borkor>  
[http://info.worldbank.org/etools/antic/docs/Resources/Country%20Profiles/Bulgaria/OpenSocietyInstitute\\_CorruptionBulgaria.pdf](http://info.worldbank.org/etools/antic/docs/Resources/Country%20Profiles/Bulgaria/OpenSocietyInstitute_CorruptionBulgaria.pdf)

<http://www.anticorruzione.it/Portals/altocommissario/Documents/maria%20yordanova.pdf>

## **Bosnia and Herzegovina**

[www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)

## **The Dayton Peace Agreement**

[www.law.kuleuven.be/ipr/eng/CRPC\\_Bosnia/CRPC/new/bo/html/laws/DPA/general.htm](http://www.law.kuleuven.be/ipr/eng/CRPC_Bosnia/CRPC/new/bo/html/laws/DPA/general.htm)

## **Constitution of Bosnia and Herzegovina**

[www.ccbh.ba/public/down/USTAV\\_BOSNE\\_I\\_HERCEGOVINE\\_bos.pdf](http://www.ccbh.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf)

[www.apik.ba](http://www.apik.ba)

[www.parlament.ba](http://www.parlament.ba)

## **Croatia**

[www.ombudsman.hr](http://www.ombudsman.hr)

[www.sabor.hr](http://www.sabor.hr)

## **The Constitution of the Republic of Croatia**

[www.constitution.org/cons/croatia.htm](http://www.constitution.org/cons/croatia.htm)

[www.zakon.hr/z/128/Zakon-o-pu%C4%8Dkom-pravobranitelju](http://www.zakon.hr/z/128/Zakon-o-pu%C4%8Dkom-pravobranitelju)

[http://www.civilnodrustvo.hr/index.php?id=72&tx\\_ttnews\[tt\\_news\]=1529&cHash=d5673c8b0db186dfd689037d8f63819f](http://www.civilnodrustvo.hr/index.php?id=72&tx_ttnews[tt_news]=1529&cHash=d5673c8b0db186dfd689037d8f63819f)

[www.dorh.hr](http://www.dorh.hr)

## **Greece**

<http://www.reuters.com/article/2012/02/29/us-greece-corruption-idUSTRE81S10320120229>

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<http://www.athensnews.gr/portal/1/53709>

<http://livinggreece.gr/2007/05/14/greek-ombudsman/>

<http://www.synigoros.gr/langs?i=stp.en&l=en>

## **Macedonia**

<http://www.ombudsman.mk>

<http://www.transparentnost-mk.org.mk>

<http://www.antikorupcija.org.mk>

## **Moldova**

[www.ombudsman.md](http://www.ombudsman.md)

[www.parlament.md](http://www.parlament.md)

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## The constitution of the Republic of Moldova

<http://confinder.richmond.edu/admin/docs/moldova3.pdf>  
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<http://en.cccec.md>

## Montenegro

<http://www.ombudsman.co.me/>  
<http://www.antikorupcija.me/>  
<http://www.transparentnost.org.rs/dokumenti/d016.html>  
[http://www.mondo.rs/s238173/Info/ex-YU/Ombudsman\\_Crne\\_Gore\\_za\\_gej\\_brakove.html](http://www.mondo.rs/s238173/Info/ex-YU/Ombudsman_Crne_Gore_za_gej_brakove.html)

## Romania

[http://en.wikipedia.org/wiki/Romanian\\_Ombudsman](http://en.wikipedia.org/wiki/Romanian_Ombudsman)  
<http://www.rtsa.ro/en/files/TRAS-31E-4-DRAGOS,%20NEAMTU,%20BALICA.pdf>  
<http://www.rtsa.ro/en/files/TRAS-33E-2011-6Hossu-Carp.pdf>  
[http://en.wikipedia.org/wiki/National\\_Anticorruption\\_Directorate](http://en.wikipedia.org/wiki/National_Anticorruption_Directorate)  
[http://en.wikipedia.org/wiki/Direc%C5%A3ia\\_General%C4%83\\_Anticorup%C5%A3ie](http://en.wikipedia.org/wiki/Direc%C5%A3ia_General%C4%83_Anticorup%C5%A3ie)  
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## Serbia

<http://www.ombudsman.rs>  
<http://www.parlament.gov.rs>  
<http://www.acas.rs>

## Slovenia

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