

Background information about Serbia's Independent Agencies

Establishment of independent agencies and relevance to European integration

Over the course of the last five years, the parliament of Serbia (by law and with the adoption of the 2006 Constitution) provided for the establishment of several independent bodies called for in international conventions to which Serbia is a party (or aspires to be). These bodies include the the Commissioner for Free Access to Information and Personal Data Protection (established in 2004-5 with personal data protection function added in 2008); Protector of Citizens (also known as the Republic Ombudsman, established in 2005); the State Audit Institution (established in 2009); and the Anti-Corruption Agency (established in 2009).

The mandates of these bodies focus on preventing or fighting corruption, improving human rights protection, and ensuring more open and accountable governance. So important are the functions of these agencies that the European Union and Council of Europe have cited the establishment, resourcing, staffing and proper functioning of the agencies as key elements of the EU accession and COE post-accession processes.¹ The EU and Council of Europe recognize that corruption, facilitated by a lack of transparency in administrative practice, is a particular obstacle to Serbia's integration with Europe.

Start up challenges, budget restrictions and political will

The independent agencies now operate with limited resources, staffing and facilities, a situation that is complicated by the economic crisis and questions about the government's ability to adequately resource the institutions. The Council of Europe recently urged the government to provide the necessary resources to allow the institutions to effectively implement the tasks assigned to them by law.²

For example, the Commissioner for Access to Information of Public Importance and Personal Data has had difficulty obtaining appropriate personnel and resources to pursue the personal data protection function of his offices, and the Protector of Citizens/Republic Ombudsman has been handicapped by a delay in obtaining permanent offices, although the institution was established more than five years ago. Several of the independent agencies have noted their difficulties in recruiting and retaining qualified personnel.

¹ See Stabilization and Association Agreement Articles 81, 86 and 92 and Council of Europe, Secretary General, Compliance with obligations and commitments and implementation of the post-accession co-operation programme, 4th Report (February 2008-2009).

² Council of Europe, Secretary General, Compliance with obligations and commitments and implementation of the post-accession co-operation programme, 4th Report (February 2008-2009) , SG/Inf (2009) 3 final, 31 March 2009.

Improving administrative culture

The independent agencies are currently or are well positioned to become agents of Serbian citizens in advocating for improvements of Serbia's administrative culture, compliance with European administrative practice and human rights standards and political candidate, official and government employee integrity. Non-transparent administrative practice is a feature of Serbian government operations, and Article 86 of the Stabilization and Association Agreement between the EU and Serbia notes strong the link of administrative practices with corruption, both in the private and public sector. As Sigma reported in 2009, "the observation of legality and equality before the law in administrative decision making and administrative action [Serbia] needs to be upgraded. This could be furthered by modernizing administrative procedures."³

The independent agencies understand their role in improving administrative practice. For example, the Protector of Citizens comments that his office can play a mediation role between administrative agencies and the public and offer recommendations to these agencies geared at improving and injecting greater objectivity/transparency in administrative practice. He offers that such intervention, coupled with compensation in some cases, can help reduce the number of cases going to court over errors in administrative practice and, eventually, reduce the number of complaints the ombudsman receives. The Anti-Corruption Agency also recognizes the important role it should play in analyzing administrative practice and policy making processes, conducting agency specific corruption risk assessments and recommending changes to practice and processes (through the development of Agency specific Integrity Plans) that will help prevent administrative abuses.

Enforcement of Independent Agency Decisions and Recommendations [and Expected Political Challenges]

Independent agencies depend in large part on the courts and ultimately the executive branch for enforcement of their decisions, or action on recommendations related to official discipline or administrative practice. The Commissioner for Access to Information of Public Importance and Personal Data Protection relies in large part on the Ministry of State Administration and Local Government to liaise with the relevant government or administrative agency and ensure that the government adequately responds to requests for information of public importance. The Commissioner also relies on this Ministry to enforce decisions of the Commissioner for Access to Information of Public Importance and Personal Data Protection with respect to complaints made by

³ The 2009 Sigma report further maintains that "The existing law needs to be updated so as to provide higher legal standards—by better balancing the protection of individual and public interests—and to attain better alignment with European principles of administrative decision making, especially in terms of a more solid legal certainty. ...Accountability and non-judicial control institutions need improvement and consolidation. Administrative justice needs to be better established and developed, and made more capable of protection individual rights."

applicants under the Law on Free Access to Information of Public Importance, or with respect to measures that the relevant administrative agency must take to comply with the law.⁴ Administrative agencies are also required to respond to Protector of Citizens and Anti-Corruption Agency recommendations regarding improvements/corrections in administrative practice or appropriate disciplinary actions.⁵ Prosecutors, misdemeanor courts and courts of general jurisdiction also play a key role in enforcement of independent agency decisions.⁶ The State Audit Institution's filing of misdemeanor charges against officials who authorized expenditures in excess of their budgets is an example of how the independent agencies can foster official accountability for compliance with the law by seeking misdemeanor fines.

Many of the independent agencies have commented that they are facing challenges in seeking enforcement of their decisions or action on their recommendations and charges. As the official with the longest tenure in his job, the Commissioner for Access to Information of Public Importance and Personal Data Protection can most easily document these challenges. Early in 2010, the office of the Commissioner reported that 8% of its decisions relating to inadequate response to requests for information of public importance were unenforced, and that the largest number of unenforced Commissioner decisions related to requests submitted to the Ministry of Finance. The new Law on State Secrets and accompanying by-laws should make it clearer when the government can withhold information from the public and perhaps improve compliance with the Law on Access to Information of Public Importance.

Public outreach and role of media/civil society

The Anti-Corruption Agency will depend in large part on the public, media and civil society to monitor compliance with conflict of interest and political party financing requirements. For example, the Anti-Corruption Agency currently does not have the authority to demand information of media outlets and so cannot verify the amounts political parties have paid for campaign media spots. The ACA has to rely on independent journalists and NGOs to ferret out this information and help the agency verify the disclosures made by political parties.

Likewise the media plays an important role in obtaining information for the public through use of the Law on Access to Information of Public Importance. The Commissioner's Office notes that up to 25% of requests for information come from media outlets or independent journalists.

⁴ Law on Access to Information of Public Importance Articles 24 and 25.

⁵ Law on the Protector of Citizens Articles 20, 31; Anti-Corruption Agency Article 57.

⁶ Law on the Protector of Citizens Article 20; Anti-Corruption Agency Law Article 57; Law on the State Audit Institution Article 41