



**Transparentnost Srbija**  
**Transparency Serbia**

**CAPACITY BUILDING AS ONE OF THE  
KEY FACTORS IN DEVELOPING A  
TRANSPARENT AND NON-  
DISCRIMINATORY PUBLIC  
PROCUREMENT SYSTEM IN SERBIA**

**Swedish Helsinki Committee**

**for Human Rights**

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## Introduction

During the past three and a half years there was an intensive campaign to build a normative framework for the fight against corruption. In 2002 the following laws were adopted: the Public Procurement Law, the Law on Prevention of Conflict of Interest, the Law on Financing of Political Parties, the Law on free Access to Information of Public Importance, and now the Law on the Supreme Audit Institution and the National strategy for the fight against corruption have been adopted as well. In drafting the legislation Serbia had the advantage of relying on laws that already existed in countries comprising the former Socialist Federal Republic of Yugoslavia (SFRY) and some other states that embarked on similar reforms before us.

Normative pillars for the fight have thus been laid, which is perhaps the easier part, but the problem of law implementation remains. By virtue of passing the laws regulatory institutions charged with their implementation have been established as well.

According to Transparency international research related to the Corruption Perception Index, significant initial advances have been made wherein the index went from 1.6 in 2000 to 2.7 in 2004 and 2.8 in 2005. The jump might not be that big, but things are gradually moving forward.
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### • *Weaknesses of anti-corruption laws*

The most tangible success in the fight against corruption has been achieved in the sector of public procurement. In the last three years since the law was adopted the budget savings exceeded USD 300 million. Unfortunately, this was not found to be particularly newsworthy in the daily papers. Was it because the news itself was not bad in nature or because the figure was judged to be low? Nevertheless, it certainly was not adequately followed in the press, even though it was important.

I would now turn to say something about the weaknesses that were noticeable in this and other laws related to the fight against corruption such as the issue of a regulatory body and some other flaws. A chronic weakness is the absence of autonomy with respect to the executive power. If that body is not vested with such autonomy, and it critically analyses the executive branch of government which exerts crucial influence over any appointment changes in that body, it is to be expected that individual members will not ignore the power of the executive branch. For this reason the autonomy is extremely important, so as to help achieve independence for that body along with other effects, as opposed to facilitating arbitrary personnel changes to which the executive branch of government is naturally inclined.

The second weakness lies in insufficient financial and human resources needed to accomplish the task in hand.

By the Law on Prevention of the Conflict of Interest the Committee is entrusted with monitoring of between 6,000 and 7,000 officials, which, when multiplied by four to reflect the need to encompass all connected persons as well, brings some 30,000 officials within their jurisdiction. This is an enormous task.

Despite the huge task the Committee for Resolving Conflict of Interests is faced with, it continues to exist and operate rather well, while directing its activities towards a group of people who are sensitive to public criticism.

When called to task by a member of the Committee, officials react quite emotionally and resign to avoid coming into the public eye, which would not bode well either for them or their political party.

The third way to call a regulatory body into question, which is novel in the theory of the body's organisation as well, is to hint at impending changes within that body. The moment a suggestion of possible changes is made, the people begin to contemplate what lies ahead and how the transformation is likely to affect them, as opposed to focusing on their normal tasks. They expend the energy on other things instead of performing the tasks to the maximum of their ability.

Due to all three noted problems the regulatory institution in question thus becomes a virtual institution, or a so-called "dummy institution". The Law exists, but it is practically of no effect.

#### • *The Law: changes or stability*

Considering that three and a half years have passed since the Public Procurement Law and similar Acts came into existence, the legislator could already draw the appropriate conclusions. At this moment, the lawmaker is in a position to detect the weaknesses and the good sides of the law in Serbia, which finds itself in a delicate place because it needs to strike a balance between two competing objectives in building the institutional framework, which are not always in sync. One goal is to achieve maximum improvements in the law and eliminate identified defects, and the other is to ensure stability and predictability while reducing contingency.

The question now is whether the lawgiver will, in a quest for a perfection of sorts, in fact make frequent and never-ending changes to the law. In this part of the world we gravitate towards a neo-institutional approach and a belief that better institutional solutions are a near panacea.

While the law is being amended with all kinds of trinkets, something else is taking place which is akin to a story of a farmer who initially sows wheat seeds only to replace the crop with corn, and then decides that it would perhaps be best to sow sugar cane after all. Meanwhile, the land yields no returns. Therefore, this metaphor can serve to point out that the legislator has to achieve a fine balance whereby it will be able to make the necessary changes yet retain existing solutions if deemed appropriate and refrain from making some modifications in order to preserve stability, thus enabling the law to realize its full potential over the long term.

**Transparency Serbia has already begun to develop programs for monitoring the process of capacity building of anti-corruption institutions, because there can be no efficient fight against corruption without these institutions.** And now we are looking to evaluate the entire process and examine various ways in which it can be improved, both compared to other countries and the current situation at home.

## **World Bank Procurement and Financial Management Policy and Best Practices in Fighting Corruption**

My colleague Olav Christensen and I would like to inform you about some World Bank (WB) procurement and financial management policies and best practices in fighting corruption. We have decided to present them jointly because the procurement and financial management are the two main sides of the financial management and the issue of corruption in the use of public funds is very important.

### **What is the Bank policy regarding the corruption?**

World Bank has identified corruption as the single greatest obstacle to economic and social development. Corruption sabotages policies and programs that aim to reduce poverty, so attacking corruption is critical to the achievement of the Bank's mission of poverty reduction. In general, the WB policy is: **zero tolerance for corruption.**

### **What is the WB strategy?**

We have five-pronged strategy for tackling the issue of corruption:

1. Increasing Political Accountability
2. Strengthening Civil Society Participation
3. Creating a Competitive Private Sector
4. Institutional Restraints on Power
5. Improving Public Sector Management

Since 1996, the World Bank has supported more than 600 anticorruption programs and governance initiatives developed by its member countries

### **What is the WB policy in field of procurement?**

The WB for its own financing has a very strong and clear policy regarding corruption. Bank Procurement Guidelines and Guidelines for Selection of Consultants are powerful tools in fighting corruption in Bank lending. They define the Bank's policies and procedures for procurement of goods, works and consulting services and ensure that the proceeds of any loan (loan, credit or grant) are used only for the purposes for which the loan has been granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.



The main considerations in conducting procurement and selection of consultants are:

- Economy and efficiency (open competition);
- Equal opportunities for all eligible bidders and consultants (the eligibility of the bidders and consultants are very well defined);
- Encouraging the development of domestic contractors and consultants;
- Transparency: the transparency is something that is very important in the process of procurement and one of the important elements in fighting corruption.

The WB has very well defined the following four practices peculiar to the fraud and corruption:

- **“corrupt practice”** means the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the procurement process or in contract execution;
- **“fraudulent practice”** means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
- **“collusive practices”** means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to establish bid prices at artificial, non-competitive levels;
- **“coercive practices”** means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract.

The definitions for “collusive” and “coercive” practices were introduced recently in May 2004, in the new edition of Guidelines. All “practice” are very clearly defined and any violation and non observance of this policy is sanctioned.

### **What are the sanctions?**

The WB will:

- reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the contract in question;
- cancel the portion of the loan/credit/grant allocated to a contract if it determines at any time that representatives of the Borrower or of a beneficiary of the loan engaged in corrupt, fraudulent, collusive or coercive practices during the procurement or the execution of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation;
- sanction a firm or individual, including declaring ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that the firm has, directly or through an agent, engaged in cor

rupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Bank-financed contract (lists of debarred firms or black listing);

and

- have the right to require that a provision be included in bidding documents and in contracts financed by a Bank loan, a provision be included requiring Bidders, Suppliers and Contractors to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank ( the WB has the right to exercise the control and auditing at any time in process of selection or contract management).

### **What are the other best practices in fighting the corruption?**

- **List of debarred firms** – publicly blacklisting (we have list of the debarred firms which is available on our web-site);
- **Transparency- web-based** (public advertisement in the UN Development Business: all international opportunities for bidding or selection of consultants are advertised and after that the results of these selections or biddings should be also published. The consultants and bidders that have taken part in the selections or biddings are in position to complain or express their disagreements to the respective authorities or personnel dealing with the procurement);
- **Department of Institutional Integrity (INT)** - oversees the investigations of all allegations of fraud and corruption within the World Bank Group or involving Bank-financed contracts, and maintains the site on these topics (The corruptions is something that sometimes we know that it is somewhere around, but it is not easy to be proved or to be found some evidences that these practices: fraud, corruption etc., have taken place. That is why, this INT department has been established and it is dealing with the investigations of all allegations of fraud and corruption);
- **Country Procurement Assessment Report (CPAR)** Another very important “economic sector work” is the assessment of the country procurement environment and identification and planning of some actions that are needed to be undertaken for the improvement of this environment. The CPAR for Serbia was prepared in June 2002. The assessments and the action plans are some of the main parts of the CPAR’s. They (the CPAR’s in general) also include some analysis on the existing legislation and the capacity of the public procurement offices to deal and apply the procurement regulations and laws. In this respect, we consider that one of the most important things in fighting corruption is the capacity of the people dealing with the procurement and application of the respective laws, regulations etc. (e.g. there are some countries where they have very good contemporary public procurement laws, but the capacity of the people, the staff dealing with procurement, is weak and the final result of the application of the law is not satisfac-

tory). That is why the capacity of public procurement offices and all people dealing with the public procurement is very important.

- **Fiduciary Assessment Update (FAU)** The WB staff is preparing Fiduciary Assessment Update Report, because the previous CPAR prepared in June 2002 is outdated and too many things have happened since 2002 till now. The report is currently in a process of finalization and it will be discussed with the Government soon.
- **Public Expenditures and Financial Accountability (PEFA)** The report is in a process of preparation. I would like to draw your attention to its procurement part. The main indicators referred to the procurement are: use of open competition; justification of other less competitive methods; and, existence of procurement complaints mechanism.

### **Mr. Olav Rex Christensen, Senior Financial Management Specialist, World Bank**

For the financial management part we are basically doing the same as procurement. We have two objectives. The first one is to ensure that the bank loan proceeds are used for its intended purposes. I think this is very important and this is something that the World Bank is very good in doing. The other objective is to help to improve financial management performance in client countries. I think we are doing this more and more, also even to link the two by trying to use country systems in the implementation of Bank projects.

When it comes to the World Bank funds financial management staff is doing assessments of the financial management capacity in those institutions that are supposed to implement the projects. One important thing there is the staff. Do we have the staff in place that have experience and adequate qualifications that will enable them to go through this process in a satisfactory way?

We are looking at accounting systems and reporting, and very importantly, we are looking at internal control processes and internal audit. Is it well functioning, so that we could rely on the internal audit? Then we are looking at external audit. World Bank projects are normally audited by private sector auditors. We would like to start using the supreme audit institutions. Serbia is underway now establishing one which is very positive.

So, before money is sent from the World Bank to the projects there are additional controls. Another important thing that is done is the close monitoring of reporting and I think that the most important here is to actually see that the output is produced. One thing is to say: "this is what we wanted to see done". For Bank funded projects, somebody is actually going there and looking at it and seeing that it is happening.

The Bank has an institution called The Integrity Department that is investigating allegations on corruption. For the public financial management in client countries we are

doing analytical work, coming up with recommendations for changes and reforms and so on. One recommendation here would be to establish a supreme audit institution in Serbia and this is something that the Bank in its dialog with the government is following up, I will not say on daily basis, but through out what we doing. We are trying to follow up on the recommendations and trying to support the reforms.

A set of indicators for public financial management was adopted in June 2005 by a number of donors: World Bank, IMF, EU, the UK Government, the French Government, Norway and Swiss. So this is a broadly agreed upon framework. The idea is to go through the budget cycle from the formulation of the budget and all the way until it is reported and audited.

In 28 areas the indicators are reporting what is good practice. Let me just mention one area, the supreme audit, which is currently interesting for Serbia. A good score for the supreme audit would be that all entities of central government are audited annually covering revenues, expenditures, and assets and liabilities. A full range of financial audits and some aspects of performance audit are performed and generally adhere to audit standards focusing on significant and systemic issues. This is the first area.

Then it is sad that audit reports are submitted to legislature within four months of the end of the period covered and in the case of financial statements, from the time they are received by the audit office. The third is clear evidence of effective and timely follow up.

These indicators are now used in a number of countries (the indicators mentioned can be found on [www.pefa.org](http://www.pefa.org)). I think they could be a good tool also to see improvements in Serbia where so many initiatives are ongoing to improve legislation and increase capacities of institutions and so on. I think these indicators could be a way of measuring this kind of improvement we are definitely seeing here in Serbia. For us donor coordination is essential and in this area these indicators are also helpful. The Banks contribution is technical assistance. We are providing policy development lending agreeing on conditions that will push the reforms forward - like the supreme audit institution. The law has been approved in November. Now what we need is to get it implemented, to have the institution established. Our role is to try help pushing this.

## **Institutions in the public procurement system in Serbia: present status**

### *Corruption – obstacle number one to economic and social development*

The information that was just received from the **World Bank** is that **corruption represents the single largest obstacle to economic and social development**, which affects the living standard that is of primary importance for everybody in the country. It is therefore clear how important it is to curb corruption, both for citizens and international institutions that will estimate our progress in the process of reforms.

World Bank Group President Paul Wolfowitz provided an indirect evaluation of progress in anticorruption efforts several months ago by saying that Serbia is a champion in reforms. This pertains to previous four years during which almost all major anti-corruption laws were adopted and subsequently used to establish anti-corruption institutions.

The Corruption Perception Index compiled by Transparency International jumped from 1.3 in 2000 to 2.7 index points four years later, which represents a dramatic increase, but the index grew only 0.1% in 2005. It follows that the initial stage in the fight against corruption, which encompasses the adoption of legislation and formal establishment of institutions, has been completed and evaluated accordingly leading to considerable index growth.

We are now at the beginning of the **second and even more important phase** that is focused on **institutions' capacities, effectiveness and ultimately their real-life impact**. This is of crucial importance, both for institutions themselves as well as for the economic prospects of the country as a whole determining whether Serbia will succeed to achieve faster or slower economic development in coming years.

#### **• Institutional framework**

Institutional framework of the public procurement system in Serbia has not been completed yet, since some of the very important institutions are still missing. One of the highly needed institution that is not established yet is the Supreme Audit Institution. Moreover, the process of establishing of internal control units has begun just recently. The budget inspection and the police have to a certain extent also been active in conducting controls with respect to public procurement. The two most active institutions in the area of public procurement have been the Public Procurement Office (PPO) and the Commission for Protection of Rights (CPR).

Public opinions polls indicate a deep-rooted belief of the corruption presence in public procurement. Consequently a question looms over the activities of the two most visible institutions, i.e. the PPO and the CPR. In order to answer a question on how best to regulate the system, it should first be defined what is actually being regulated.

**The public procurement system of Serbia consists of 12,000 purchasers and 80,000 bidders who conclude over 250,000 contracts each year worth in excess of USD 1.5 billion.** On the other side, the two most active institutions are staffed with around 30 employees in total. It is clear that the system cannot rest solely on these two institutions.

• *Solutions*

The solution is a new and modified concept, which I hope will find its way to the amendments of the Public Procurement Law (PPL). Regarding non-competitive procedures, primarily negotiated procedures, it is necessary to increase transparency furthermore by putting into the PPL obligation of the purchasing entities to make public its decision to initiate negotiated procedure that includes a suitable explanation of reasons that lies behind.

In that way the public and those who have the genuine interest, i.e. the bidders, would have the opportunity to inform themselves on arguments that lie behind negotiated procedure and chance to lodge a complaint or file a request for the protection of rights of bidders. Making such information public would also enable controlling institutions to react timely thus increase their efficiency in controlling and monitoring of public procurement procedures. In other words, it is necessary that a full set of controlling parties should be involved actively, particularly bidders that have genuine interest to protect their rights, as well as all other government controlling institutions.

Secondly, it is important to establish lacking institutions such as the Supreme Audit Institution and internal control units.

Moreover, some institutions should have much more active role, such is the Budget inspection, for example. Finally, the judiciary system that is one of the key pillars of the anti-corruption system has to be much more actively involved in sanctioning cases of abuses in public procurement area. That would have a strong preventive effect at the same time.

Implementation of the well-known concept of “checks and balances” means clear division of tasks among the relevant institutions and cross-control among them. Enabling to all interested parties to effectively monitor and control regularity of public procurement processes would lead to significant increase in number of “controllers” that are controlling each other at the same time thus reduce the risk of corruption.

One of the crucial prerequisites for establishing an efficient public procurement system is to have the efficient Commission for Protection of Rights that has the authority to void a tender in case it finds the procedure was not regular. Beside that, the Commission has to be independent from the executive branch in order to obtain its impartiality. The second precondition for the CPR’s proper work is adequate capacity needed to deal with a large number of cases (on average 600 cases annually) within maximum a three-week period per case.

• *Capacity building*

One of the most important issues in dealing with efficiency of the public procurement institutions is their capacity.

It would be advisable to recall an answer given by Vice-president of the Government, Miroslav Labus to a question: “Why does the Agency for the prevention of money laundering still do not have a chief administrator after six months?” His answer was that: “It is hard to find somebody who is a top expert in the field willing to take such a highly responsible position for a salary of CSD 50,000”.

It is clear that adequate staffing is critical in this respect and a factor of crucial importance for effectiveness of institutions. **A key challenge for the new anti-corruption institutions (where the PPO and the CPR belong) is to offer conditions that would be attractive enough to entice suitable staff in terms of professionalism and integrity to begin working for them.**

Presently, there is a substantial salary gap among operational staff with the same skill and position level in anti-corruption institutions on one side and some other governmental bodies, on the other side with the ratio that varies from **1:2 to even 1:3 to the detriment of anti-corruption institutions.**

If these newly established institutions are to develop further they must be able to **offer better conditions, particularly salaries, so as to entice quality employees.** Otherwise, they will be able only to attract those who are unable to find a job elsewhere or those who are not particularly salary-conscious because they have doubtful motives to work in controlling institutions. In other words, **creating competitive conditions in anti-corruption institutions, particularly in terms of salaries, compared to other governmental institutions of similar level of responsibilities are the main prerequisites for the emerging institutions to really take hold and start functioning properly.**

The second factor of vital importance for recruiting and preventing fluctuation out of the emerging anti-corruption institutions is their ability to offer enough large scale for merit based vertical movement inside the institutions. The third crucial factor is opportunity that the institutions are offering in respect of further professional development of their employees.

The abovementioned indicators, as well as a set of related indicators developed by human resources experts will be used by Transparency International and other international organizations to evaluate the pace of anti-corruption institutions development both in quantitative and qualitative terms.

A set of institutional capacities' indicators will be of crucial importance for measuring progress in anti-corruption efforts in public procurements.

• *Risks*

The key question is what are the pros and cons in respect of institutional building in public procurement. In the scenario that capacities of the regulatory institutions start to stagnate or even weaken, the institutions won't be able to operate efficiently and perform the tasks that have been entrusted to them under the Law. The logical question would be than what the purpose of their existence is and why taxpayers should pay for their operation? Becoming more and more passive the institutions would be brain drain, failing to a vegetative state before winding up operations completely or being taken over by some other organisation. The consequences of such scenario on status of the public procurement system in Serbia and its rating by relevant international organizations, such are World Bank, EC etc. would be devastating.

• *Benefits*

According to the alternative scenario, capacities of the public procurement regulatory institutions would be strengthening. Past results in public procurement area could serve as a solid base for estimation of potential benefits that could be achieved in case this scenario is adopted and implemented. During the past three years, Serbia experienced considerable changes in the practice of public procurement.

Hence today we have a situation wherein **69% of the total value of contracts is awarded through competitive** procedures, whereas only 31% is awarded in procedures with negotiations which resulted in budget **savings of around USD 300 million in the last three years**, that is a rather tangible and relevant result for the country

A further reduction in the ratio of negotiated procedure to the competitive ones would lead to improved rating of Serbia by international institutions, thus creating better conditions to attract more foreign investors, which would help to create a much better business climate overall. At the same time, that could prove conducive to efforts to lure investors away from neighbouring countries to Serbia. Namely, the rates of return have more or less evened out across the region, but there are considerable differences in terms of risks. The primary task is to cut assigned risk rates and so enhance the ratio between the rate of return and the risk rate. That would resulted in greater capital inflow, which means lower unemployment.

It is for this reason that **corruption is said to be the main obstacle to further economic development and its effects can certainly be measured in hundreds of millions of US dollars annually**. In other words, it is obvious what stands to be gained or lost in these two scenarios.



## **Indicators for measuring the capacities of the Public Procurement Office and of the Commission for Protection of Rights**

### **• *Types of indicators***

The Public Procurement Office has been dealing with this subject for some time now. Which items could be good indicators of the current state of affairs in this area? The first component relates to legislative elements, namely the way in which the entire subject is regulated, the location of particular objects, who is responsible to whom, and so on? Next among the possible indicators of the level of development and the applicability of anti-corruption legislation are real operative conditions that are necessary for proper functioning of the system. Another possible group of indicators includes ways of implementing what is prescribed and what the existing organisation is capable of achieving. A further group of indicators comprises concrete results in terms of what and how much has been accomplished, what should have been achieved, etc. Additionally, interested participants can provide valuable evaluations. One independent research conducted by CESID has provided us with some insight as to the thinking of bidders and purchasers on this subject. And yet another indicator pertains to a „top-down“ evaluation by relevant bodies in this area.

### **• *Sources of relevant indicators***

What are possible sources of relevant indicators with respect to the quality of human resources employed in these jobs? First off, information may be derived by considering the framework that regulates work in this area from which resulted the current position of the staff along with the internal organisation and other conditions. Next comes knowledge of psychology and other fields related to the structure of motivation to undertake work on these and similar tasks. Motivation depends on the actual work structure and to that extent it exhibits certain specific qualities in any given case. Furthermore, systematic observation of concrete operations in the field could furnish additional insight into the matter.

What are more operative indicators of the current state and conditions for adequate human resources? Those are, above all, the competency of the staff and an evaluation about how qualified and numerous the workers are, which, generally speaking, form an initial basis for establishing an administrative, that is institutional capacity, along with work motivation, i.e. to what extent does the system encourage or detract workers from performing well and so on. An important issue encompasses the way these institutions function together with their ability to attract additional workforce that they lack while making the most of their existing personnel, which in this field would have to be of a really high quality.

### • *Motivation of university educated staff*

An important element in this structure is a hierarchy of motivational resources or the question what constitutes satisfaction of university-educated staff at work? It extends to varied and challenging tasks, the possibility of further professional development and promotion under the circumstances, and the manner in which the institution is managed and organised. The style of management differs in institutions where university educated personnel is the dominant part of the workforce from institutions where the level of workers' education is generally lower. Moreover, actual work relationships or so-called interpersonal relations and internal climate fall to be considered as well, in addition to salaries and job security. This bears resemblance to Maslow's need theory, albeit somewhat broadened, but such is the case under normal and regular circumstances. Technical conditions at work are at the bottom of these workers' considerations in terms of being a motivational factor.

### • *Basic motivation for work*

What are basic motivations for work, for staying with or for leaving an institution here in Serbia? It is an objective state of all indicators that bear such motivational value. Essentially, the degree and quality of the satisfaction of needs, that is the motivational structure in a given institution, and a comparison of fulfilment possibilities in the surrounding areas, which represents common reasoning and thinking of every employee.

With whom should a comparison be made with respect to these institutions? It should target other institutions within the budgetary domain. We have to view the situation in those closest to us. How are they organised? What is the atmosphere like? How high are their salaries? What kind of conditions for development do they have? Assessment should also be made against banks and similar organisations, which are, according to all indicators, fairly competitive with respect to this type of human resources. Moreover, the situation should be contrasted with that of very competitive foreign companies in Serbia. A comparison ought to include successful domestic enterprises and realistic possibilities for obtaining gainful employment abroad. Another available tool for evaluation purposes is to take into account the possibility of setting up own business.

Where could the needs of existing personnel be better met? How does the preference hierarchy of motivational resources look in Serbia at the moment? Our estimates show that existential needs come first. Job security ranks second, followed by development needs of workers themselves, but also of their families that are in material sense and in other ways connected with each of the associates. The picture is reversed compared to what should be the case in normal functioning of these institutions that have special significance for the state and society as a whole.

### • *What can associates in the Public Procurement Office be pleased with?*

First, a productive working atmosphere and good interpersonal relations. Second, good organisation and management. Adequate business premises and solid technical capability come into play as well. We already have several elements that would follow that basic,

dominant and natural scheme in the motivational structure. The next component that makes the Office interesting is that work experience gained in the Public Procurement Office carries with it exceptional professional references, should somebody wish to change employers. However, a limited scope for salary growth is an unattractive element indeed.

• *Possible consequences of such motivational structure for staff?*

They represent realistic conditions for potential fluctuation. What follows then is capacity loss and reduced quality of existing staff. In these institutions we have a young, quality and dynamic personnel whose performance is omission-free and which seeks certain professional acknowledgement. An important consequence is a halt in the development and strengthening of institutions. If the pause lasts long enough everything that was done so far could be rendered worthless.

• *What is important for the operation, development and credibility of anti-corruption institutions?*

The key is to further build a pool of quality and reliable associates, and current staff has proven to conform to such requirements. Their adequate, crystallised experience arises from intensive exchanges between employees. A certain level of generalization and usability is thus acquired, which is very important in terms of the eventual changes, regulatory improvements and actual practice. Having an administrative capacity that is able to satisfy numerous needs is of considerable significance for the quality of work. It would also reflect positively on the country's image, and all efforts on behalf of society and the state to join Europe and incorporate all international standards we consider important. Every fluctuation, even an internal one, requires the introduction of new people in order to achieve high work efficiency. This in turn entails additional costs, time and other resources.

What should be done to improve human resources in such an institution? This approach with minor modifications, as a tool for measuring the current state of affairs and development, could be applied to all anti-corruption institutions. The first objective in this case should be to eliminate the imbalance between salaries earned in the Office and in the Commission as compared to other bodies with similar social significance. After that, the administrative capacity ought to be reinforced with more quality staff, relevant European standards and experience that is readily applicable to us should be introduced, and associates should be given an even greater opportunity for professional development and training because they are prepared to take on such a challenge. It is necessary to maintain an effective working atmosphere together with a high level of responsibility that we managed to attain thus far. Likewise, it would be good to develop a plan for continued improvement of the associates' status, taken in a wider sociological sense to include better recognition, rising influence, higher salaries for work well performed, possibilities for further development, etc. The sheer act of familiarising associates with such plans carries with it motivational weight. A plan ought to be implemented in a successive and gradual manner in a bid to provide long-term motivation for immediate work and staying with these institutions alike.

## Internal control units - their role in controlling public procurement and needed capacities

### • *Internal audit*

The new system of internal audit that has been introduced in Serbia could serve as an efficient protection mechanism that would assist implementation of the Public Procurement Law.

**Abuses, embezzlements, errors and the like are in 70% of cases committed by people within the organisation and only 30% of cases involve external attacks on resources and assets.**

Internal procedures have been devised, namely controls that form part and parcel of job descriptions and activities of the employees.

All operations and transactions can be divided in four steps including: 1) initiation, 2) transaction approval, 3) execution and 4) recording of the necessary documentation. There must be internal control mechanisms, which will ensure that each of these steps is undertaken in a way as the management prescribed. Internal control is part of an administrative mechanism, i.e. the management, which is responsible under the Budget System Law for establishing and maintaining internal control systems, and making sure that they are being maintained and implemented in a manner consistent with what was initially prescribed, namely that workers are doing their jobs.

This is an enormous field of subjects that are taking part in public procurement. On the one hand we have around 10,000 budgetary users and on the other hand we have around 80,000 bidders with some 250,000 concluded contracts each year worth around USD 2 billion, accounting for approximately 15% of GDP. The system cannot defend itself simply by relying on two or three institutions with less than 50 employees in total.

It has to tighten up the situation **inside** and **establish work procedures, while ensuring that each person does its own job and takes responsibility for the work done.**

The field of public procurement is an extremely risky area. Every organisation needs to estimate where the highest risks in the procurement system lie, whether in the initiation stage or somewhere like that? Here is an example: In order to acquire certain material you have to ask who seeks to obtain that material, what is its quality, how is a supplier going to be selected, how is a contract going to be concluded, meaning who has the authority to contract, what is the contract amount limit and so on? These **procedures have to be written in crystal clear fashion so as to help in determining the exact location where the breach occurred and identifying the person responsible.**

It is important to check whether a procurement plan was prepared, who made it, who approved it, whether sufficient resources were set aside for the undertaking, and how and according to what timeline will it be implemented? All of this is important for determining the quality and quantity of the sought services, goods, or materials, namely the subject of procurement.

A way in which members of the commission are appointed is significant, because it renders decisions. The integrity, expertise and general uprightness of character of its members are very important for reaching proper decisions on the selection of a supplier that offered a suitable quantity and type of the sought service, along with an adequate timeline for delivery.

Publishing an invitation to bidders to submit their offers is also important in addition to the manner in which the invitation is made and whether relevant forms and documentation are complete in that they prescribe the desired timeline, quality, deadlines, price and all other key elements that pertain to procurement, as well as whether a draft contract is enclosed, which is very important in the procurement process, namely whether a draft contract fully corresponds with an invitation for public procurement. It happens that an invitation which is published in the newspapers later differs from a contract that was actually concluded.

The implementation of procedures is also very important. It is not a rare case that procedures are not being documented in a sufficiently transparent manner. The problem could be solved by creating **manuals that would include the forms for each stage of public procurement, as part of efforts to have every step properly documented and to have the information on who ordered, approved, controlled and executed each of the procedures.**

Moreover, publishing information on decisions to award public contracts is highly significant. Due to the lack of openness those who are interested in the matter or those who follow events in the field are not able to react or make an analysis. Purchasers often forget to publish whether and to whom they have awarded a contract, but that is imperative if competitors are to have full insight into the entire documentation.

An important aspect is monitoring of contract execution because there is a possibility that a procedure could conform to all formal requirements, only to have it discovered later upon examining the contract execution that delivered goods were not the ones contracted for, or that their quantity or quality is somehow different, meaning that contract conditions were not adhered to. The issue of contract annexation poses a special problem that leads to various types of wheeling and dealing. Thus performance on a contract deviates greatly from what was agreed.

Major breakdowns in fulfilling contract obligations occur with respect to payment as well. Sometimes bidders price their initial offers very low only to increase the total cost

after winning the contract by other means, thereby enabling a bid that was not in fact the best one to triumph. Different methods used include contract annexation, the issuance of guarantees, compensation, avoidance of the essence of the law and violations of the principle of equality in the bidding.

The experiences of countries with more developed public procurement system suggest that an **“Instruction Manual” is needed to narrow the field for machinations, to pinpoint responsibility on managers and to define accountability in a clear and precise manner by virtue of an internal rulebook.**

## The Supreme Audit Institution - its role in controlling public procurement and needed capacities

The Law on the Supreme Audit Institution is adopted on November 14, 2005 (published in the Official Gazette). Thus after several decades of abstinence the Assembly has begun to

The Republic of Serbia was the last country both in the region and in Europe to establish the Supreme Audit Institution under the statute. The next to last of such institutions was founded by UNMIK in Kosovo in 2004.

exercise its constitutional right of legal initiative, which helped confer independence upon the Supreme Audit Institution and in so doing determined the model of the institution.

Present doctrinal division recognizes three general models of Supreme Audit Institution. The model adopted in Serbia falls in the category of the so-called “**Westminster model**”, which makes it a **body of parliamentary control over government**, i.e. over the executive branch. For that reason it is necessary to refer to the so-called fourth branch of control that deals with parliamentary control mechanisms.

### • *Characteristics of the Supreme Audit Institution*

The Supreme Audit Institution that would be established in Serbia under existing legislation belongs to a modern generation of supreme audit institutions. The principle behind its work is no longer limited just to the examination of legality, rather it extends to the assessment of three E - economy, efficiency and effectiveness in managing public resources. Moreover, modern practice has introduced a fourth E, which relates to the environment and managing public resources in accordance with the principles of environmental protection.

The **audit of public procurement** is being conducted both with a goal of establishing **legal validity**, as well as of judging conformity with the three E's as afforded under the law. This is a special auditing model that concerns **a priori and post factum audits**. It means that it covers past, present and planned business acts.

The organisational, functional and financial independence of the Supreme Audit Institution has been established under the law, but it remains to be seen how these provisions that regulate such independence will be applied in practice.

The **Law on the Supreme Audit Institution is perfectly compatible with the Public Procurement Law** in the sense that from the planning of business activities all the way to contract execution the Supreme Audit Institution has jurisdiction in every stage and over every act that deals with public procurement.

### • *Functions of the Supreme Audit Institution*

The functions of the Supreme Audit Institution are prescribed by article 5 and they relate to: 1) controlling, 2) advisory and 3) regulatory functions of the Supreme Audit Institution with certain interaction between them. The example of public procurement shows that the Supreme Audit Institution would act on all three fronts. It would act as an advisory body to the subjects of public procurement, as a regulatory body in terms of functioning of the institution and in a controlling capacity by mostly reporting to the legislator, which has authorised the public procurement subjects to act in a certain manner.

The matter and subjects of audits also suggest that the Supreme Audit Institution Council extends to a wide range of jurisdiction, both in a functional sense and in terms of legal subjects so that auditing is performed with respect to all fiscal levels of autonomous provinces and local government units.

### • *The jurisdiction of the Supreme Audit Institution*

The Law on the Supreme Audit Institution relates to all budgetary recipients and users of public resources ranging from direct and indirect users all the way to legal subjects that are partially owned by the state or local government units. Moreover, the jurisdiction extends to persons that are connected with subjects of audits, meaning the bidders as contracting parties in this public business.

The jurisdiction includes the audit of internal controls and internal control systems, which represents the major goal of the Supreme Audit Institution and that is “**to control the controllers**”. The Supreme Audit Institution’s jurisdiction encompasses all phases and acts related to public procurement, from planning and selection of the best bidder to contract fulfilment. Moreover, it covers the system of internal controls and acts by subjects that could have a financial effect on revenues and expenses of users of public resources, state assets, the taking out of loans and the issuing of guarantees.

SAI is authorized to have insight into public procurements that have “ <b>confidential character</b> ” which enables a <b>continued audit of all acts related to public procurement, including those that are within the jurisdiction of the Public Procurement Office and those that are not.</b>
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### • *Specific characteristics of the Supreme Audit Institution*

There are several characteristics that make the Supreme Audit Institution unique in a system of public procurement control. First of them is that the institution covers **past, present and planned business activities and respected acts**. Furthermore, the Law is covering a wider area than the Public Procurement Law, since **its scope includes even those subjects that are exempted by the Article 2 of the Public Procurement Law**.



This authority was vested in the Supreme Audit Institution by virtue of functional independence, which the Law defines in such a fashion so as to assure complete access for state auditors to all information on financial activities of the subjects. This also pertains to the part that was exempted from the Public Procurement Law, and it relates to activities that fall within the realm of confidential data.

• *The prerequisites for establishing the Supreme Audit Institution*

There are several prerequisites for establishing an efficient Supreme Audit Institution. The first of them is to constitutionally recognize the Supreme Audit Institution, since it is still not a part of the constitutional system.

Secondly, there is a need for preparation of secondary legislation.

Provisions of the Law prescribe May 14, 2006 as the deadline for the appointment of the Supreme Audit Institution Council members.
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Thirdly, special attention should be devoted to training not only of auditors but also the subjects of audits, as well as to the need to build the capacities of the National Assembly and assemblies of local government and autonomous bodies which deal with audit reports, and media training.

Fourthly, with respect to public procurement, it is important to train external associates of the State Audit Institution to become experts in certain areas so that the institution can rely on them in cases when there simply is not enough regular staff available. This happens most often in relation to the public procurement of arms and medical equipment, when it is extremely important that the expert is properly trained.

Fifthly, it is important to develop information technology system that will meet demands of the Supreme Audit Institution.