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The National Assembly, Independent Bodies and the Fight Against Corruption in Serbia[31]

I. Introductory Notes

In contemporary societies, the quality of life of the people greatly depends on the principles that public institutions adhere to with a view to contributing, through their work, to realising public imperatives and advancing the values of a democratic society.

Under present circumstances, the duties that public institutions are authorised to perform are becoming increasingly complex. For an administrative system to be able to perform its basic tasks within the framework of democratic transition at the required level of quality, it is necessary that undergoes an appropriate transformation in order to find new organisational forms and functional varieties. Thus, one of the ways of achieving the values referred to above is by constituting and developing independent state bodies.

The advent of independent state bodies as a new organisational form poses numerous challenges to the legal and political doctrine and practice. Independent state bodies may be entrusted with various public, control, administrative, development, regulatory and other kinds of authority. The nature of the duties conferred upon them influences the organisational and functional characteristics of independent state bodies, and the modes of controlling these institutions by the parliament.

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In the professional literature, one can find several conceptual models dealing with the reasons for creating independent state bodies.[32] According to the so-called "buffer" theory, independent state bodies and agencies are created in order to protect certain affairs of public importance from the increasing prevalence of political influence and corruption. According to the "escape" theory, independent bodies have been created as a form through which it is possible to eliminate the shortcomings of the traditional form of state administration. All these views, however, are based on the opinion that, if the existing state institutions cannot perform the functions for which they are authorised at the requisite level of quality, especially when it comes to controlling the realisation of matters of public importance, a reorganisation should be carried out, resulting in the establishment of corresponding independent bodies and agencies.[33]

II. The Constitutional Framework and the Legislature in Serbia

Following the changes of October 5th 2000, in the legal system of Serbia, independent bodies and agencies initially appeared "spontaneously" on the basis of special decisions passed by the Government (for example, the Agency for the Reform of Administration, the Committee for Resolving Matters Pertaining to Conflict of Interest, the Anti-corruption Council). The reasons for this were two-fold: on the one hand, getting involved in certain reform and financial trends, especially when it came to foreign donations and financial aid, required the establishment of special organisations that do not belong to the formal system of state administration (such as ministries and bodies and organisations within the framework of the ministries), and on the other, to control certain areas of the state (administrative) system of government under the conditions of democratic transition. That is why, in the period following these changes, certain independent state organs, bodies and agencies were introduced by special laws, for example, the Protector of Citizens, the State Audit Institution, the Commissioner for Information of Public Importance, the Anti-corruption Agency and others.

The constitution is the basic legal framework of a country. As such, the Constitution of the Republic of Serbia (2006)[34] also contains corresponding provisions pertaining to preventing conflict of public and private interest, and also to certain independent bodies as institutions upholding the rule of law, the purpose of which is, among other things, protection of human rights, realising public imperatives, preventing conflict of interest and fighting against corruption. Thus, the Serbian Constitution, among other things, prescribes the following:

32 P.P.Craig, Administrative Law, 5th edition, Sweet & Maxwell, London, 2003, pg. 97.
33 D. Hague, W. MacKenzie, A. Barker, Public Policy and Private Interests - The Institutions of Compromise, MacMillan, Leicester, 1975, pg. 262.
34 The Constitution of the Republic of Serbia, "The Official Gazette of the Republic of Serbia", no. 83/2006.

- No one may perform a state or public function that is in conflict with his/her other functions, business affairs or private interests (Article 6).
- Any form of discrimination, be it direct or indirect, on any grounds, and especially on the grounds of race, sex, nationality, social origin, birth, religion, political or other beliefs, financial situation, culture, language, age, psychological or physical disability, shall be forbidden (Article 21).
- Everyone shall have the right of access to information possessed by state bodies and organisations entrusted with public authority, in keeping with the law (Article 51/2).
- The State Audit Institution shall be the highest state organ for the purpose of auditing public funds in the Republic of Serbia; it shall be independent and subject to monitoring by the National Assembly, to which it shall be accountable (Article 96).
- Acts that, contrary to the law, restrict freedom of competition by establishing or abusing a monopolistic or dominant position shall be forbidden (Article 84/2).
- The Protector of Citizens shall be an independent state body that protects the rights of citizens and controls the work of state administration organs, the organ authorised to effect the legal protection of the property rights and interests of the Republic of Serbia, and other bodies and organisations, firms and institutions entrusted with public authority (Article 138/1).

Apart from the Constitution, corresponding laws have been passed recently, the purpose of which is to secure and protect public interest, especially when it comes to the institutional control of the executive branch of government by independent bodies and agencies, among others, the Law on the Protector of Citizens, the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection, the Law on the Anti-corruption Agency, the Law on the State Audit Institution, the Law on Public Procurement[35] and others.

23 Author's note: In a broader sense, public procurement belongs in this category. However, in view of the very specific nature and complexity of this matter, on the occasion we shall not deal with this issue.

III. Preventing Conflict of Interest

The Ethics of Public Officials

In every country, the administration has a significant role and performs many duties for the purpose of realising the existential and developmental aims of society. The administration is not an isolated entity in society. Many social reforms have administrative implications, while many administrative reforms have social repercussions. The administration is dependent on social factors, and at the same time, it influences, by resolving current and future problems, the shaping of the future of society. The administration is no longer a mere instrument of the powers-that-be for achieving political aims, but also a complex system of "structures" and "procedures" for conducting economic, technological, political and social affairs. That is why the administration and civil servants, who are in touch with the citizens on a daily basis, must themselves be subjects who will change ossified bureaucratic procedures and be mindful, at all levels, of "ethical considerations" and facilitate an "intensive ethical dialogue with the citizens".

A public official, as an authorised representative of the state, by performing his/her tasks and functions that are manifested in the acts of the administration, has a public interest. Public interests are closely connected with administrative decisions, for they give them direction and meaning in whatever they do. Since this relationship involves a moral duty and obligation of public officials, it also involves ethics. Ethics therefore become crucial for the entire scope of activities that a public official is involved in.[36]

The professional vocation of administrative officials and administration as a "highly demanding profession", through which most human freedoms and rights are realised, requires the presence of a corresponding (high) code of ethics. "It is certainly a normative system that does not come into being at once, is not created through codification, but constitutes a system of specific rules regulating the behaviour of particular professions in the course of performing their duties, shaped by the empirical experience of many years, on the basis of practice, envisaged not as being static but in continuous development, following the dynamics of the development of society and the process of humanisation of relations in society."[37]

Administration is incompatible with unethical behaviour. Blind loyalty to the system, behaviour that results from the pressure of special interest, indifference towards public interests, corruption, inertness and maltreatment of citizens, laziness, favouritism and the like are examples of unethical behaviour. Bribery and corruption occur in all states, being present to an exceptionally high degree in some (Nigeria) and to a low degree in others (New Zealand, Switzerland). Their

36 Jong S. Jun, Public Administration and Problem Solving, California, 1986, pg. 271.
37 [illegible], Prilog diskusiji o etici i pravu [A Contribution to a Discussion of Ethics and Law], Arhiv za pravne i društvene nauke, Belgrade, no. 3, 1978, pg. 213.

energetic prevention constitutes (in our country as well) a precondition for all the other measures aimed at reorganising the administration.[38] The administration must be a highly moral institution, and its officials should demonstrate high standards of behaviour.[39]

In mediaeval Venice, "...owing to a very complicated electoral system, worked out to the level of finely realised details, and to a multitude of regulations and laws, the Doges took strict care not to usurp more power than was due to them. As a sign that they were merely humble servants of the state, the title of the Doge was conferred upon them while their hands were tied. They were prohibited from building houses within the territory of Venice, and also from depositing money abroad or owning any property abroad; moreover, they were forbidden from marrying their daughters to foreigners and giving high positions to their relatives and providing them with sinecures." And in Dubrovnik, "... above the door to the room where the Grand Council held its sessions, there stood the inscription: *Obliti privatorum, publica curate* (Forget private matters, take care of public affairs)."[40]

Preventing Conflict of Interest in the State Administration

In our law, preventing conflict of interest among public officials belongs to the realm of "new" legislation.[41] As a legal category, prevention of conflict of interest was introduced by *The Law on Preventing Conflict of Interest in the Course of Performing Public Functions* (2004).[42] Also, the Constitution of the Republic of Serbia (Article 6) contains an expressly stated provision to the effect that" No one may perform a state or public function that is in conflict with his/her other functions, business affairs or private interests".

For practical purposes, especially when resolving certain conflictual issues pertaining to conflict of interest, the basic notions must be clearly articulated and defined. In this sense, one should distinguish between "general" and public importance. General interest is "politically generated" by the corresponding social subjects, first of all, political parties. These interests, in the form of "input", are directed towards the parliament, which processes these political interests and turns them into normative forms and acts (the law). In this way "public" interest, which is the subject of legal regulations, is generated. It is particularly necessary to clearly define "private" interest, for conflict of interest that should be prevented by law is created precisely on the dividing line

38 Cf. [illegible], Organizacija moderne federalne države [The Organization of the Modern Federal State], Belgrade, 1992, pg. 93.
39 Cf. Robert Denhardt, The Pursuit of Significance: Strategies for Managerial Success in Public Administration, Belmont, California, 1993, pg. 263.
40 Cf. Milo Dor, Srednja Evropa – mit ili stvarnost [Central Europe – Myth or Reality], Belgrade, 2000.
41 Cf. Stevan Lilić, Državni službenici i sukob interesa [Civil Servants and Conflict of Interest], the collection of papers "Conflict of Interest in officials and Civil Servants in Serbia", Transparency Serbia, Belgrade, 2006, pg. 18–25.
42 The Law on Preventing Conflict of Interest in the Course of Performing Public Functions, "The Official Gazette of the Republic of Serbia", no. 43/2004. This Law ceased to have effect when the Law on the Agency for Fighting against Corruption was passed, "The Official Gazette of the Republic of Serbia", no. 97/2008.

between "public" and "private".[43] This is not always a simple matter. For example, how is one to establish whether there is a conflict of public and private interest when a public official is a member of a non-governmental organisation or a professional association? Does it constitute a conflict between public and private interest (as, for example, when a public official owns an agricultural firm)? In this case, one could speak of "particular" rather than "private" interest. In any case, when determining what constitutes conflict of interest, one must proceed from objective, not subjective elements. For a law to be successful and for its goal to be successfully achieved in accordance with the proclaimed value orientation, it must be clearly visible to everyone, in "legal" terms, when a conflict of interest exists, for example, in the situation referred to in civil law as "confusion", that is, when one and the same person has both the status of creditor and the status of debtor.

The Law on the State Administration (2005)[44] stipulates that a ministry may have one or more secretaries of state, who are accountable for their work to the corresponding minister and the Government. A state secretary assists the minister within the scope of authority determined by the minister. A minister may not authorise a state secretary to pass regulations or to vote in the course of Government sessions. A state secretary is an official appointed and relieved of duty by the Government, acting on a proposal submitted by the corresponding minister, and his/her term of office ceases when the minister's term of office expires. The Law on the State Administration (Article 24) expressly states that "a state secretary shall be subject to the same regulations on incompatibility and conflict of interest pertaining to Government members (with the provision that he/she may not be a representative of the people)".

The Law on the State Administration also introduces the category of civil servants (Article 84), who are entrusted with performing duties from the scope of activities of state administration organs, stating that the position of civil servants shall be regulated by a special law. In this particular case, it is *The Law on Civil Servants* (2005).[45] This Law regulates the rights and duties of civil servants and some of the rights and duties of employees. According to the provisions of this Law (Article 2), a civil servant is a person whose work consists of duties from the sphere of work of state administration bodies, courts, public prosecutors' offices, the State Attorney's Office, National Assembly services, the President of the Republic, the Government, the Constitutional Court and the services of bodies appointed by the National Assembly, or work pertaining to general legal issues, information technology, material-financial, accounting and administrative

43 Cf. Nemanja Nenadić, *Sprečavanje i rešavanje sukoba javnog i privatnog interesa u Srbiji* [Preventing and Resolving the Conflict between Public and Private Interest in Serbia], Transparency Serbia, November 2005. Material for the round table "Preventing and Resolving Conflict of Interest in Public Officials and Civil Servants – Legal Regulations and Monitoring Their Implementation", Transparency Serbia, 19th January 2006, Belgrade.

44 *The Law on the State Administration*, "The Official Gazette of the Republic of Serbia", no. 79/2005.

45 *The Law on Civil Servants*, "The Official Gazette of the Republic of Serbia", no. 79/2005.

matters, whereas an employee is a person whose work consists of supporting technical duties within a state body.[46]

This Law forbids acceptance of gifts and the exploitation of one's position in a state organ (Article 25), in the sense that a civil servant must not accept a gift in connection with performing his/her duties, with the exception of protocol-related or symbolic gifts of small value, nor can he/she accept any service or other benefit for him/herself or other persons. A civil servant must not use his/her position in a state body to influence the realisation of his/her rights or the rights of person(s) connected to him/her. The rules regulating the prevention of conflict of interest in the course of performing public functions apply when it comes to determining the circle of persons connected with a civil servant and the acceptance of gifts.

The Law prohibits civil servants from establishing companies and public services (Article 28). Thus, a civil servant must not establish a company or public service, nor can he/she be an entrepreneur. The rules regulating the prevention of conflict of interest in the course of performing public functions apply to the transfer of management rights within an economic entity to another person. A civil servant shall be obligated to submit the data on the person onto whom he/she has transferred management rights and evidence of this to his/her superior, whereas a civil servant occupying a post shall be obligated to submit information to the Republican Committee for Resolving Conflict of Interest.[47]

The Law restricts the membership of civil servants in bodies of a legal entity (Article 29). Thus a civil servant cannot be the manager, deputy or assistant manager of a legal entity, and may be a member of the managing board, supervisory board or another management body of a legal entity only if he/she is appointed by the Government or another state body in accordance with a special regulation.

According to the Law, it is obligatory to report the existence of interest in connection with a decision passed by a state organ (Article 30); a civil servant shall be obligated to inform his/her superior in writing of any interest that he/she, or a person connected with him/her, may have in connection with a decision of a state body in the passing of which he/she is participating, for the purpose of deciding on his/her exemption from it. When a state body is managed by a civil servant, he/she must inform in writing the state body authorised to appoint him/her of any interest that he/she may have.

46 According to *The Law on Civil Servants*, "The Official Gazette of the Republic of Serbia", no. 79/2005, civil servants, in terms of the provisions of this Law, are not (Article 2, paragraph 3): "... representatives of the people, the President of the Republic, judges of the Constitutional Court, Government members, judges, public prosecutors, deputy public prosecutors and other persons appointed by the National Assembly or the Government, nor persons who are officials in accordance with special regulations."

47 Editor's note: Text written prior to transfer of authority to the Anti-Corruption Agency.

"Insiders" (Whistle Blowers)

When a civil servant finds out that the administrative organisation he/she works for has betrayed the trust of the public whose interest it is supposed to serve, he/she is faced with an ethical dilemma. Should he/she address the public and blow the whistle, offering the media information and thus becoming a whistle-blower? Or should he/she try internally to rectify the unethical behaviour of the organisation? Or should an employee keep quiet out of loyalty to the organisation and thus protect his/her job? As has been pointed out, insiders (whistle-blowers) tend to "act on the basis of motives that are not rooted in fear, anger or selfish pleasure; they are able to review the current definition of the situation and to act on the basis of their critical understanding".[48]

For the purpose of regulating the legal protection of insiders, the Protector of Citizens has recently submitted an amendment to the Law on Free Access to Information of Public Importance to the National Assembly. In a press release pertaining to the vote on the Proposal of the Law on Amendments to the Law on Free Access to Information, the Commissioner for Information of Public Importance and Personal Data Protection remarked that it would be a great pity if the representatives of the people failed to use this opportunity to enable Serbia to make a big step towards establishing a very important anti-corruption mechanism by adopting the amendment on the protection of insiders submitted by the Protector of Citizens. In connection with this, the Commissioner stated the following: "Ensuring the legal protection of insiders is a formal obligation of this country arising from the compulsory Recommendation of GRECO that should have been implemented by the end of 2007. Needless to say, of course, even without that formal obligation, we have more than enough reasons for doing so. The experiences of many countries show that insiders can very significantly contribute to the fight against corruption. But for something like that to happen, it is necessary that people who have brought to light corruption and abuse in their own surroundings for the purpose of protecting matters of public importance by placing the relevant information at the disposal of the public, thus acting contrary to the formal and informal rules on keeping secrets, should be protected from potential negative consequences, first of all, from various procedures pertaining to responsibility."[49]

48 Cf. Gene Weinstein, Bureaucratic Opposition, New York, 1976.

49 The Commissioner for Information of Public Importance and Personal Data Protection, Press release of 16th December 2009. http://www.poverenik.org.rs/index.php/sr/saopstenja/960-1-12-2009

IV. Independent Bodies in Serbian Law

1. The Ombudsman

In many countries, a special form of control of public institutions, above all, the state administration, is realised by introducing the institution of the Ombudsman as the "protector of citizens' rights".[50] Originally, the Ombudsman is an institution of Swedish provenance, introduced in the early 19th century (by the Constitution of 1809). In the post-feudal political struggle between the then absolutist Swedish monarch and the Parliament as the representative of the people, the Ombudsman was a special Commissioner of the Parliament, entrusted with monitoring how the King and the Administration implemented the laws passed by the Swedish Parliament.[51] The authority of the then Swedish Ombudsman consisted in his being able to request information and explanations from the administrative authorities on why certain laws were not implemented at all or were not implemented the way they should be, and to initiate procedures for establishing the responsibility of administrative clerks in connection with it. The Ombudsman submitted reports on his findings to the Parliament, which could raise the issue of confidence in (and dismissal of) the King's ministers on the basis of the report.

Essentially, these powers have remained until the present day, even though a number of modes of this institution have been developed depending on the country in question and the particular legal system. The Ombudsman as a parliamentary institution has been present in Nordic countries from the beginning of the 20th century and many other countries introduced it around the middle of the 20th century, so that today there is almost no country that does not have the Ombudsman in one form or another.[52] In this context, Serbia has long been a significant exception.[53] Still, it should be pointed out that our legal, political, scientific and expert thought has contributed to the analysis and comparative study of the institution of the Ombudsman.[54] In this sense, the Ombudsman is not the fruit of the political thought of only one nation. Under this name, and commanding the respect and authority that it has in the political system of Sweden, today this institution has become an inspiration, if not a model for the increasingly necessary efforts required for the reconstruction of the traditional political institutions created by rationalist practice, and later on the increasingly mediatory bureaucratic and legalistic thought and practice.[55]

50 Cf. Slaven Ulić, Dejan Milenković, Milena Vasić-Ilić, Ombudsman – medunarodni standardi, uporedno pravo, zakonodavstvo i praksa [The Ombudsman – International Documents, Comparative Law, Legislation and Practice], Kantar pravila za lijepo pravo [The Committee of Legal Practitioners for Human Rights], Belgrade, 2003.

51 Cf. Donald Rowat, The Ombudsman, Citizens' Defender, London, 1965.

52 Cf. Dragan Đukanović, Ombudsman i kontrola vlasti [The Ombudsman and the Executive (Branch of Government)], PhD thesis, the Faculty of Law in Belgrade, 1999.

53 Slaven Ulić, Zašto je kod Ustavotvorca Srbije bez ombudsmana? [Why the New Constitution Has (still Serbia without the Ombudsman], Arhiv za pravne i društvene nauke [The Archive for Law and Social Studies], Belgrade, no. 2–3, 1991.

54 Cf.: Milan Jovanović, Ombudsman – Zaštitnik građanskih prava [The Ombudsman – the Protector of Legality and the Rights of Citizens], Belgrade, 1968.

55 Jovan Đorđević, Politički sistem [The Political System], Belgrade, 1967, pp. 606.

Even though the Ombudsman has basically remained a parliamentary trustee, entrusted with the duty of monitoring how the administration and the executive branch of government implement the laws, today the Ombudsman is regarded as an institution whose basic task is to protect the rights of citizens, especially from unlawful and irregular activities of the administration (so-called maladministration). As has been pointed out, the Scandinavian term Ombudsman has become a part of our everyday speech, even though only thirty years or so ago it was almost unknown to both the general and the legal public. Today, not only has it become customary in almost all the countries of the world, but the very essence of this institution is regarded with great respect.[56]

In a sense, today the Ombudsman is the basic institution when it comes to protecting human rights and citizens' rights, the way that, at the beginning of the previous century, the judiciary was the institution that protected legality and the organisation of the rule of law.[57] What is the "secret" of the efficiency in protecting the rights of citizens and controlling the administration that the Ombudsman achieves, which cannot be achieved by the existing forms of administrative and judicial control of the administration? As has been pointed out, "...the essence of the institution of Ombudsman boils down to its immanent ability to penetrate the vicious circle of bureaucratic circles and to render impenetrable authoritative administrative systems transparent, that is, accessible to parliamentary control and the general public. Its efficiency derives, first of all, from its ability, based on reports submitted to the parliament, to draw the attention of the public and the parliament to citizens' complaints. The public character of its work, based on unbiased investigation, is a powerful tool. The mere awareness of the monitoring carried out by the Ombudsman has a positive influence on the entire administrative system, making it subject to the public and justice."[58]

The Law on the Protector of Citizens (2005)[59] establishes the Protector of Citizens as an independent state organ (the Ombudsman), which: a) protects the rights of citizens and b) controls the work of state administration organs. The Protector of Citizens oversees the protection and advancement of human freedoms and rights. The notion of citizen, in terms of this Law, presupposes not only a physical person who is a domestic national, but also every physical person who is a foreign national, as well as every domestic and foreign legal entity whose rights and duties are decided upon by administrative organs. The Constitution of the Republic of Serbia also expressly states (in Article 138/1) that: "The Protector of Citizens shall be an independent body that protects the rights of citizens and monitors the work of state administration bodies, the body authorised to deal with the legal protection of the property rights and interests of the Republic of Serbia, and other bodies and organisations, companies and institutions entrusted with public authority.

According to this Law, the Protector of Citizens shall be independent in carrying out the duties established by law, and no one has the right to influence his/her work and actions. The Protector of Citizens is elected by the National Assembly of the Republic of Serbia, acting upon a proposal submitted by its committee authorised to deal with constitutional matters. The Protector of Citizens is appointed for a period of five years, and one and the same person may be elected to perform this function twice in succession at most.

The Protector of Citizens is authorised to control whether the rights of citizens are observed, establish any violations committed through actions or lack of action on the part of administrative bodies, in cases when national laws, other regulations and general acts are violated. The Protector of Citizens is authorised to monitor the legality and correctness of the work of administrative bodies. He/she is not authorised to monitor the work of the National Assembly, the President of the Republic, the Government, the Constitutional Court, courts and public prosecutors' offices.

The Protector of Citizens is authorised to submit initiatives to the Government, or to the National Assembly, for amending laws and other regulations and general acts if he/she is of the opinion that violations of citizens' rights occur on account of flaws contained in the existing regulations, and also to initiate the passing of new laws, other regulations and general acts if he/she considers it to be of importance for realising and protecting the rights of citizens.

The Protector of Citizens is authorised to issue a public proposal that an official who is responsible for violating citizens' rights be dismissed, and to initiate a disciplinary procedure against an employee of an administrative body who is directly responsible for a violation that has been committed, specifically, if it follows from the repeated acts of an official or employee that he/she has no intention of cooperating with the Protector of Citizens, or if it is established that the said violation has resulted in extensive material or other damage to citizen(s).

The Protector of Citizens shall submit a regular annual report to the National Assembly, wherein he/she provides information about his/her activities in the previous year, about the shortcomings observed in the work of administrative bodies, and proposals for improving the position of citizens in relation to the administrative body. The report on the work of the Protector of Citizens is published in the "Official Gazette of the Republic of Serbia" and on the website of the Protector of Citizens, and is also submitted to the media. The funds for the work of the Protector of Citizens are secured from the budget of the Republic.

In his *Regular Annual Report for the Year 2008*, the Protector of Citizens, among other matters, points out that the purpose of this document is to present to the National Assembly, the interested

56 Kal Freedman, The Ombudsman, Canadian Essays On Human Rights And Fundamental Freedoms (Eds. R. Macdonald, J. Humphrey), Toronto, 1970, pg. 207.
57 Cf. Slavoka Đukić, Ombudsman u Srbiji – ustavni i zakonski okvir [The Ombudsman in Serbia – the Constitutional and the Legal Framework], in "The Local Ombudsman – the Comparative Experiences of Serbia, Bosnia and Herzegovina, Switzerland", the Swiss Agency for Development and Cooperation, MSP, Kragujevac, 2007, pg. 23–37.
58 H.W. R Wade, Administrative Law, 5th edition, Oxford, 1982, pg. 76.
59 The Law on the Protector of Citizens, "The Official Gazette of the Republic of Serbia", no. 79/2005.

institutions and the public the situation concerning human and minority rights in the Republic of Serbia, and the quality of the realisation of citizens' rights before bodies exercising public authority and applying the regulations of the Republic of Serbia; to present to the National Assembly and the general public the most important aspects of the work of the institution of Ombudsman, in keeping with legal obligations and the principle of responsibility for performing public duties, and to point out the need for changes in the work of the public sector that would result in improving the realisation of human and minority freedoms and rights, thus contributing to improving the quality of the relationship between the citizens and the administration. The report also states that the Protector of Citizens controls much more than mere formal observance of the law, for he/she investigates the ethics, conscientiousness, objectivity, professional qualifications, purposefulness, efficiency, respect of the dignity of the parties appearing before administrative bodies and other characteristics that should be manifested by the administration, and which the citizens rightfully expect of those they pay for as taxpayers.[60]

According to *The Law on Local Government* (2007),[61] a local government unit in Serbia may establish a Protector of Citizens (Ombudsman), who protects the individual and collective rights and interests of the citizens by exercising general control of the work of the administration and public services. So far, at the local level the Ombudsman has been established in, among other places, Subotica, Zrenjanin, Bačka Topola, Belgrade, Kragujevac, Leskovac, and some other places.[62]

In Vojvodina, according to *The Decision on Establishing the Ombudsman of the Autonomous Province of Vojvodina* (2002),[63] the Province Ombudsman was established as an autonomous and independent body, in charge of the protection and advancement of the human rights and freedoms of each person as guaranteed by the Constitution, ratified and published international treaties on human rights, the generally accepted rules of international law, the law and regulations of the Autonomous Province of Vojvodina.

60 The Protector of Citizens, *The Regular Annual Report for the Year 2008*, Belgrade, 2009, pg. 9, 21. http://www.ombudsmanrs/index.php/lang-e_YU/izvestaji/godisnji-izvestaji/589-2008

61 *The Law on Local Government*, "The Official Gazette of the Republic of Serbia", no. 129/2007, Article 97, paragraph 1.

62 In the course of a public debate presenting the results of the project "I have a right to know", carried out by the European Movement in Serbia, in cooperation with the Legal Practitioners for Democracy, the Protector of Citizens stated that it was necessary to increase the number of Ombudsmen in local government units, but all for the purpose of exercising a more successful control of the work of civil servants. Cf.: http://www.ombudsmanrs/index.php/lang-e_YU/aktivnosti/vijesti/733-2010-01-27-16-04-18

63 *The Decision on Establishing the Ombudsman of the Autonomous Province of Vojvodina*, "The Official Gazette of the Autonomous Province of Vojvodina", no. 23/2002.

2. The Commissioner for Information of Public Importance and Personal Data Protection

The idea of the public character of the work of administrative bodies dates from the 18th century and was first given legal form in Sweden in 1766, when citizens were first granted access to documents and information held by administrative authorities (*Tryckfrihetsforordning*, 1766). However, it was foregrounded during the last three decades of the 20th century, along with the expansion and universal acceptance of the concept of "human rights", on the one hand, and the concept of "good governance" and the principle of transparency in the work of state bodies, on the other.

Today, there are more than 30 countries that constitutionally guarantee this right to their citizens. In addition to that, over 50 countries have regulated by law free access to information of public importance in the possession of state bodies, whereas more than 30 countries are in the process of preparing or adopting such laws.[64] In addition to states, international organisations have also started adhering to the principle of transparency and free access to information. In this respect, it is especially important to mention the example of the European Union, whose contract of establishment declares that the information in the possession of its Parliament, Commission and Council of Ministers shall be accessible, whereas the EU Charter of Fundamental Rights guarantees the citizens of the Union free access to this information.

Free access to information of public importance is a precondition for quality and efficient enjoyment of other human rights and freedoms (freedom of thought, the right to information, the right to vote, etc.), and is an irreplaceable instrument of control of the work of public institutions. This right makes it possible for citizens to participate, without any intermediaries, in real terms and responsibly, in carrying out public affairs and the process of decision-making, and also to influence the content of those decisions and their efficient implementation.

As has been pointed out in the publication *The Implementation of the Law on Free Access to Information of Public Importance (A Report on Monitoring)*: "The authorities' reluctance was reflected in their hesitation to efficiently conclude the already initiated procedure of passing the law, which lasted for years. On a number of occasions, the law entered parliamentary procedure, only for it to be suspended suddenly, apparently without any particular reason, and then forgotten. Under the circumstances, civil society and the media showed admirable perseverance in their efforts to finally get this law adopted. In 2002, civil society experts provided two models of legal regulation of access to information possessed by the administrative organs. One of them, with certain alterations, became the official proposal and later on a law passed by the National Assembly of Serbia in November 2004. Thus, Serbia entered the circle of

64 John M. Ackerman, Irma E. Sandoval-Ballesteros, *The Global Explosion of Freedom of Information Laws*, "Administrative Law Review", Vol. 58, no. 1, 2006, pg. 86.

those contemporary democratic societies that are based on the idea that it is in their citizens' justified interest to know everything, or almost everything, about the affairs of the state, for they are the bearers of sovereignty, and through the taxes that they pay they create the budget from which the work of public services and their employees is financed. The recognition and observance of this law is especially important in the so-called new democracy countries, of which Serbia is one, where there is no long tradition of parliamentarianism or the rule of law, and where the notion of good governance has yet to become a part of standard democratic procedures. As a rule, all these countries have a problem with the responsibility of their elected elites. By passing the Law on Free Access to Information, a new independent body was introduced into the system of government in Serbia – the Commissioner for Information of Public Importance. In his work so far, the Commissioner has shown a high degree of independence in relation to both the legislature and the judiciary. From the very start, he did not hesitate to fully use the legal rights due to him, in order to ensure the realisation of the right of free access to information of public importance. By consistently exercising his authority, he drew the attention of the public to the institution of the Commissioner and insisted on autonomy, independence and objectivity in doing his work, which should be the main characteristic of the work of all independent bodies, as the growing fourth branch of government. So far, the Commissioner has very clearly pointed out the problems caused by the actions of public bodies, and insisted on the implementation of legal procedures and on criticising those public authority bodies that did not act in conformity with the Law. In this way, the current Commissioner has managed to establish this institution's independence, to make the issue of the right to access to information of public importance an important one for the future work and position of other independent bodies."[65]

In Serbia, free access to information of public importance is regulated by *The Law on Free Access to Information of Public Importance* (2004).[66] Even though the Serbian Constitution did not expressly envisage the Commissioner as an independent body, it did stipulate (Article 51/2) that: "Everyone shall have the right of access to data in possession of the state bodies and organisations entrusted with public authority, in accordance with the law."

Information of public importance, in terms of this Law, is information at the disposal of a public body, created during the work or in connection with the work of a public body, contained in a particular document, and relating to whatever the public has a justified interest to know. For information to be considered of public importance, it does not matter whether the source of that information is a public body or some other person, nor the type of archive (paper, tape, film, electronic media and the like), containing the information, the date of the origin of the information, the manner of obtaining the information or other similar characteristics of the information.

65 The Implementation of the Law on Free Access to Information of Public Importance [A Report on Monitoring], Fund for an Open Society, Belgrade, 2006, pp. 7-8.

66 The Law on Free Access to Information of Public Importance, "The Official Gazette of the Republic of Serbia", nos. 120/2004, 54/2007, 104/2009.

The Law on Free Access to Information of Public Importance regulates the right of access to information of public importance in the possession of public authority bodies, for the purpose of realising and protecting the interest of the public to know and the realisation of a free democratic order and an open society. In order to realise the right of access to information of public importance at the disposal of public authority bodies, this Law establishes the Commissioner for Information of Public Importance as an autonomous state body, independent in carrying out his/her authority.

In accordance with Article 16 of the Law, the administrative body in question shall be obligated to inform the petitioner immediately, within 15 days of having received a request to that effect at the latest, of whether it possesses the required information, to enable insight into the document containing the said information, or to issue or send the petitioner a copy of the said document. If the request pertains to information which can be supposed to be of importance for protecting the life or freedom of a person, or for endangering or protecting the health of the population and the environment, the public authority in question must inform the petitioner of whether it possesses such information, provide insight into the document containing the required information, or issue a copy of the said document within 48 hours of receiving the request at the latest.

If an administrative body refuses to inform the petitioner, entirely or partially, of whether it possesses the information, to provide insight into the document containing the required information, to issue or forward a copy of the said document, it shall be obliged to pass a decision on rejecting the request, to provide a written justification of that decision, and to inform the petitioner of the legal remedy that he/she can resort to in order to submit a complaint against such a decision.[67] The petitioner may lodge a complaint with the Commissioner within 15 days of the date of delivery of the decision of the administrative body if: a) the administrative body refuses to inform the petitioner of whether it possesses a particular piece of information of public importance or whether it is available to it otherwise, to provide insight into the document containing the information required, to issue or forward a copy of the said document, or if it fails to do so within the prescribed deadline; b) the administrative body fails to respond to the petitioner's request within the prescribed deadline; c) the administrative body imposes payment of a sum of money exceeding the amount of expenditure necessary for preparing a copy of the said document as a precondition for issuing the copy; d) the administrative body does not provide insight into the document containing the required information; e) the administrative body does not provide insight into the document containing the required information or does not issue a copy of the said document. The Commissioner shall pass a decision within 30 days of receiving a complaint, having enabled the administrative body to issue a written statement, and having done the same with the petitioner, if the circumstances warrant it.

67 Cf. Stevan Lilić, *Upravno pravo – Upravni postupci i upravni sporovi* [Administrative law – Administrative Process and], 3rd edition, Belgrade, 2009, pp. 170-171.

Based on the Law on Personal Data Protection (passed in 2008),[68] the protection of personal data was entrusted to the Commissioner for Information of Public Importance and Personal Data Protection (the Commissioner), as an autonomous state body, independent in exercising its authority (Article 1/3). The Commissioner for Information of Public Importance, established by the Law on Free Access to Information of Public Importance, carries on working under the title of the Commissioner for Information of Public Importance and Personal Data Protection (Article 59).

3. The Anti-corruption Agency

As pointed out in professional publications: "In totalitarian regimes, corruption is often directly connected with human rights violations. In Latin America, many dictators have justified their rule for years by pointing to the corrupt regimes from the recent past. The very same dictatorships were often merely a screen for thieves and crooks. Under the circumstances, the citizens and journalists were deprived of the legal means that are necessary to expose, within the framework of a competent and credible judicial system, the effrontery and the corruptibility of their governments. At the same time, corruption is best exposed and attacked in a democracy. A nation that arises out of a repressive system need not be aware of the scope of corruption in the previous regimes, when it was not allowed to investigate it and to inform the public of it through the media. At the same time, this new democracy may be sullied by scandals exposed by the free press. The lack of transparency in undemocratic regimes has left the citizens the wrong impression that democracy is essentially prone to corruption. Democratic leaders are faced with the responsibility to explain and rectify this wrong impression. Democracy must be characterised by transparency and dedication to transparency."[69]

In a press release on 9th December, the International Anti-Corruption Day, the Anti-corruption Council of the Government of Serbia, among other things, states the following: "The greatest advance is reflected in the fact that independent anti-corruption bodies have been provided with better working conditions, which has enhanced their influence. Having been delayed for several years, the State Audit Institution has commenced work, which has already yielded significant results, and the establishment of the Anti-corruption Agency, along with strengthening of the existing bodies, will create the conditions for advancing the struggle against corruption. However, there is still a problem: the independent bodies entrusted with the complex task of controlling the authorities do not have adequate conditions for carrying out work of high quality, and the laws on the basis of which these bodies were established were passed in such a way that numerous shortcomings that remain do not allow them to contribute to the fight against corruption in a way that the citizens justifiably expect of them. In the course of the process

68 Zakon o Zaštiti Ličnih Podataka, "The Official Gazette of the Republic of Serbia", no. 97/2008.
69 "Anti-corruption Manual I Opposing Corruption through a System of Social Integrity), Transcript", Transparency International, Belgrade, 2004, pg. xv.

of preparing and passing the Law on the Anti-corruption Agency, the Council pointed out its shortcomings, especially concerning control of the financing of political parties. We expect that when the Anti-corruption Agency starts its work, it will lead to demands that these shortcomings be eliminated, and that the Government will deal with the task of improving the law with due seriousness in order to create conditions for proper control of the financing of political parties. Compared to the states with a similar corruption index in recent years, Serbia has stagnated according to the results of the latest survey, while other countries have progressed in suppressing corruption. The danger of becoming a state paralysed by corruption can only be eliminated if the work of anti-corruption bodies is further empowered, complemented by the requests of the public to suppress corruption."[70]

The Law on the Anti-corruption Agency (2008)[71] regulates the establishment, legal status, authority, organisation and the manner of work of the Anti-corruption Agency, the rules pertaining to preventing conflict of interest in the course of performing public functions and reporting on the property of persons performing public functions, the procedure in cases when this Law is violated, the introduction of integrity plans, and other issues of importance for the work of the Agency (Article 1). According to this Law, "corruption" is a relationship based on the abuse of one's professional or social position or influence, be it in the public or in the private sector, for the purpose of gaining personal benefit for oneself or benefit for another person; an "official" is considered to be each person elected, appointed or nominated to a post within bodies of the Republic of Serbia, its autonomous province, local government unit and bodies of public companies, institutions and other organisations founded by the Republic of Serbia, its autonomous province, local government unit, or any person elected by the National Assembly; a "public function" is considered to be a function within bodies of the Republic of Serbia, its autonomous province, local government unit, and bodies of public companies, institutions and other organisations founded by the Republic of Serbia, its autonomous province, local government unit, and also functions performed by persons elected by the National Assembly, and presupposes the authority to manage, make decisions or pass general or individual acts; a "related person" is a spouse or extramarital partner of an official, a blood relative of an official, be it directly or indirectly, up to relatives at the second remove, an adoptive parent or child of an official, and any other physical person or legal entity that can be considered, on other grounds or based on other circumstances, to be connected with an official in terms of interest; "private interest" is any kind of benefit or advantage to an official or a related person; "conflict of interest" is a situation in which an official has a private interest which influences, may influence or seems to influence his/her behaviour in the course of performing a public function or professional duty in such a

70 The Council for Fighting against Corruption of the Government of Serbia, Press Release on the Occasion of 9th December, the International Anti-Corruption Day, Belgrade, 9th December 2009.
71 The Law on the Anti-corruption Agency, "The Official Gazette of the Republic of Serbia", no. 97/2008.

manner that it endangers public importance; a "gift" is money, some thing, right or service given without proper recompense to an official or a related person in connection with performing a public function; a "protocol-related gift" is a gift that an official receives from a foreign state, its organ or organisation, an international organisation or a foreign legal entity, in the course of an official visit or in some other similar circumstances.

The Law expressly states that the Agency is an autonomous and independent state organ, answerable to the National Assembly for performing the duties within the scope of its authority (Article 3). The bodies of the Agency are its Board and the Director (Article 6).

Concerning conflict of interest, the Law stipulates (Article 27) that an official shall be obligated to perform his/her public function in such a way as not to subordinate public importance to private interest. An official is obligated to adhere to the rules regulating his/her rights and obligations, and to create and maintain the citizens' trust in his/her conscientious and responsible performance of the public function assigned to him/her. An official is obligated to avoid establishing a relationship of dependence upon a person who may influence his/her objectivity in the performance of his/her public function, and if he/she cannot avoid such a relationship or if such a relationship already exists, he/she should do whatever is necessary to protect public importance. An official must not use his/her public function to gain any benefit or advantage for him/herself or a related person.

Concerning the prohibition of performing another public function (Article 28), the Law prescribes that an official may perform only one public function, unless he/she is obligated by law or some other regulation to perform more than one public function, with the proviso that he/she may perform another public function only on the basis of agreement granted by the Agency.

The measures that may be used against an official who violates this Law (Article 51) are as follows: a) warning, and b) a public announcement of a recommendation that he/she be dismissed.

The Law envisages the obligation of "prevention of corruption" as a special responsibility of the Agency (Article 62), in the sense that the Agency should monitor the implementation of the Anti-corruption Strategy, Action Plan and sector action plans, and also that, with a view to implementing the Strategy, the Agency may submit initiatives for changing regulations and proposals for implementing measures from the Action Plan and sector action plans.

Among other things, the Law authorises the Agency (Article 5) to initiate the requisite procedure and pass measures on account of violations of this Law, and to resolve matters pertaining to conflict of interest. For violations of the provisions of this Law, the Law envisages punishment by way of fines and/or prison sentences.

On the day when the Law on the Anti-corruption Agency comes into effect, the Law on Preventing Conflict of Interest in the Course of Performing Public Functions shall cease to have effect ("The Official Gazette of the Republic of Serbia", no. 43/04). On the day when this Law begins to be implemented, the Agency will take over the staff of the Republic Committee for Resolving Conflict of Interest, as well as the rights, obligations, cases, equipment, means of work and the archive, which are necessary for performing the work that the Agency is authorised to do within the scope of its authority (Articles 77, 81).

4. The State Audit Institution

The Law on the State Audit Institution (2007)[72] regulates the establishment, activities, legal status, authority, organisation and manner of work of the State Audit Institution, other issues of importance for the work of the Institution, and the rights and duties of the subjects of auditing (Article 1).

According to Article 2 of this Law, the Institution is the highest state organ for auditing public funds in the Republic of Serbia. The Institution is an autonomous and independent state body. For performing the duties within its remit, the Institution is answerable to the National Assembly of the Republic of Serbia. The acts through which the Institution carries out the auditing it is authorised to do may not be contested before courts of law and other state bodies.

Among other things, the Institution performs the following duties: a) "auditing financial reports" (examining documents, reports and other information, for the purpose of gathering sufficient, adequate and dependable evidence for pronouncing its opinion on whether the financial reports of the subject of auditing truthfully and objectively present its financial position, business results and financial flows, in accordance with accepted accounting principles and standards); and b) controlling "the business operations of the subject of auditing" (that is, all the activities of the subject of auditing that influence the state of public property, public debt, safeguarding public goods or the state of the environment – Article 2).

According to the Law (Article 9), the subject of auditing encompasses: 1) income and expenditure, in accordance with the rules regulating the budget system and those pertaining to public income and expenditure; 2) financial reports, financial transactions, accounting, analysis and other records and information in the possession of the subject of audit; 3) compliance of the business operations of the subject of auditing, with the law, other regulations and authority; 4) the rational expenditure of public funds, be it in their entirety or a part of them; 5) the system of financial management and control of the budget system and the systems of other bodies and organisations that are the subject of auditing by the Institution; 6) the system of internal control,

72 The Law on the State Audit Institution, "The Official Gazette of the Republic of Serbia", nos. 101/2005, 54/2007.

internal auditing, accounting and financial procedures in the subject of audit; 7) the acts and activities of the subject of auditing that produce or may produce financial effects on the income and expenditure of beneficiaries of public funds, the property of the state, raising loans and providing guarantees, and purposeful use of funds at the disposal of the subjects of audit; 8) the regularity of the work of managing bodies, administrative bodies and other responsible persons authorised for planning, realising and monitoring business operations of beneficiaries of public funds; and 9) other areas envisaged by special laws.

The Institution has a President, Vice-President, the Council, audit services and attendant services (Article 12). The President of the Institution (Article 25) is the general state auditor and head of the Institution. Members of the Council (Article 18) must not be direct blood relatives, or indirect relatives up to the fourth remove of kinship, or spouses, in-laws up to the second remove, even after the dissolution of a marriage, guardians, adoptees, adoptive parents or providers. A Council member may not participate in an auditing procedure if he/she has worked for the person that is the subject of auditing or has performed certain assignments for the account of the subject of auditing, unless a minimum of five years have elapsed since the end of that work or those assignments.

According to the Law (Article 35), the Institution conducts the audit on the basis of the annual auditing programme, which it is obligated to adopt before the end of the year for the next calendar year. Within the framework established by the Law, the Institution independently decides on the subjects of auditing, the object, scope and type of audit, the beginning and duration of audit, unless this Law stipulates otherwise. Every year the auditing programme must encompass: 1) the budget of the Republic of Serbia; 2) the organisations of obligatory social insurance; 3) the appropriate number of local government units; 4) the operations of the National Bank of Serbia pertaining to the use of public funds; 5) the appropriate number of public companies, firms and other legal entities established by a direct or indirect beneficiary of public funds, wherein the said beneficiary owns a share of the capital or participates in the management. The Institution shall be obligated (Article 41) immediately to submit a request for initiating criminal law proceedings, or criminal charges to the authorised body, if it should discover, in the course of the auditing procedure, materially significant acts indicating elements of violation, that is, a criminal offence.

The Institution shall inform the National Assembly by submitting (Article 43): a) the annual report on its work; b) special reports during the year; c) reports on auditing the annual balance sheet of the Republic budget, the balance sheets of the financial plans of organisations of compulsory social insurance and the consolidated financial reports of the Republic.

Towards the end of 2009, the State Audit Institution published its Report on the audit of the budget for the year 2008, based on a review of a part of the documentation of 14 ministries,

three head offices and the Directorate of the Property of the Republic of Serbia. The President of the Institution explained that flaws had been discovered in the accounting system, especially with regard to the data from general ledger of the Treasury, which was not kept properly. In addition to this, it was pointed out that the internal audit and control were not organised in accordance with the Law, that there was no complete and updated record of state property, and that irregularities had also been detected with regard to short-term receivables and obligations.

According to media reports, "immediately after the publication of the report, representatives of some ministries voiced public criticism of the Institution and its work, claiming that there were parts of the report that were not accurate". For years, there had been talk about the need for state audit, and it was only in September 2007 that the Law establishing this Institution was adopted. "The scenario is the same as in the case of establishing other anti-corruption institutions: they waited for the auditors, proposed by political parties, to be elected, then there were no suitable offices in which the State Audit Institution could work properly, then no one wanted to work for this institution because the salaries were too low. The Rules of Procedure regulating the institution were only adopted by the National Assembly in January 2009, when the conditions were fulfilled for the Institution to start performing the duties it is authorised to carry out." It should also be pointed out that the auditors examined only "samples of the transactions that were performed", that is to say, not the complete financial operations of the institutions audited. In addition to the 18 institutions that were monitored, there are more than 8,000 that are not subject to auditing, among them public companies, which means that this year the auditors merely "scratched" the surface of the Treasury.[73]

73 Cf. "Vreme", no. 980, 10th December 2009: Čudesni svet državne kase [The Wonderful World of the Treasury]: Why the first Audit report on how the taxpayers' money is spent caused a political storm, why the ministers do not feel that this concerns them, and whether there will be any consequences]

V. The Control of Independent State Bodies by the National Assembly

For the purpose of realising human rights, the values of a democratic society and the rule of law, the independent state bodies themselves, established for the purpose of efficiently controlling public institutions, are subject to appropriate forms of control. There are two basic forms of control that are at the disposal of the National Assembly in relation to independent bodies. On the one hand, the National Assembly has the sovereign right to decide on appointing and dismissing, and on the other, independent bodies submit reports to the National Assembly on "the state of affairs" in the area for which they have been established. Finally, the actual passing of a law by the National Assembly to establish a corresponding independent body and determine its functions clearly points to their mutual relations.[70] The legal regulation of the status of independent bodies in relation to the National Assembly in Serbia, first of all, with regard to some aspects of control and surveillance effected by the National Assembly in relation to independent bodies, is regulated by the corresponding provisions of the Constitution and some laws.

a) The Protector of Citizens (the Ombudsman), according to the Constitution, is an independent state body that protects the rights of citizens and controls the work of state administration bodies, the body authorised for the legal protection of the property and interests of the Republic of Serbia, and other bodies and organisations, companies and institutions entrusted with public authority (Article 138/1). The National Assembly elects the Protector of Citizens and relieves him/her of duty by a majority vote, monitors his/her work (Article 99/2/5, Articles 105/2/14, 138/3) and revokes his/her immunity (Articles 105/2/7, 138/4). The Protector of Citizens is elected and dismissed by the National Assembly, in accordance with the Constitution and the law (Article 138/2). For his/her work, the Protector of Citizens is answerable to the National Assembly (Article 138/4). The Protector of Citizens is not authorised to control the work of the National Assembly, the President of the Republic, the Government, the Constitutional Court, courts of law and public prosecutors' offices (Article 138/2). A law shall be passed on the Protector of Citizens (Article 138/5).

According to The Law on the Protector of Citizens, the Protector of Citizens is elected by the National Assembly of the Republic of Serbia, acting on a proposal submitted by the committee authorised to deal with constitutional matters (Article 4). The Protector of Citizens and Deputy Protector of Citizens cannot be held responsible for opinions, criticism or proposals expressed while performing their function. The Protector of Citizens and Deputy Protector of Citizens may not make statements that are political in character (Article 10).

70 It should not be forgotten that, apart from the parliament, the control of action, especially with regard to the specific decisions of an independent body, is effected by courts in the course of appropriate proceedings, and also by the media.

The Protector of Citizens submits a regular annual report to the National Assembly, containing information about his/her activities in the preceding year, the perceived shortcomings in the work of administrative bodies, and proposals for improving the position of citizens in relation to administrative bodies. The report on the Protector's work must be submitted by March 15th the following year at the latest, and is published in the "Official Gazette of the Republic of Serbia" and on the website of the Protector of Citizens, and is also forwarded to the media. During the year, the Protector of Citizens may submit special reports as the need arises (Article 33).

The Protector of Citizens has the right to propose laws from the scope of his/her authority. The Protector of Citizens is authorised to submit to the Government or to the National Assembly an initiative for amending a law and other regulations and general acts, if he/she is of the opinion that citizens' rights are violated on account of the shortcomings of the regulations themselves, and also to initiate the passing of new laws, other regulations and general acts, if he/she is of the opinion that it is of importance for realising and protecting the rights of citizens. The Government, or the authorised committee of the National Assembly, shall be obligated to take these initiatives submitted by the Protector of Citizens into consideration. The Protector of Citizens is authorised to submit his/her opinion to the Government and to the National Assembly, in the course of the procedure for preparing regulations, concerning proposals of laws and other regulations if they regulate matters that are of importance for protecting the rights of citizens (Article 18).

The Protector of Citizens is dismissed by the National Assembly, acting upon a proposal submitted by the authorised Committee, or by a minimum of one-third of the overall number of representatives of the people. If a proposal for dismissing the Protector of Citizens is submitted by the Committee, it is necessary that the majority of the overall number of Committee members should vote in favour of the proposal. The Protector of Citizens may only be dismissed in the following cases: a) if he/she does not perform his function professionally and conscientiously; b) if he/she performs another public function or professional activity, if he/she performs another duty or job that could influence his/her autonomy and independence, or if he/she acts contrary to the law regulating the prevention of conflict of interest in the course of performing public functions; c) if he/she is convicted of a criminal offence that makes him/her unfit to perform this function. The Protector of Citizens has the right to address the representatives of the people in the course of a National Assembly session when the Assembly is to decide on his/her dismissal (Article 12).

b) The Commissioner for Information of Public Importance and Personal Data Protection. According to the Constitution, everyone has the right of access to information that is in the possession of state bodies and organisations entrusted with public authority, in keeping with the law (Article 51/2).

According to The Law on Free Access to Information of Public Importance, for the purpose of realising the right of access to information of public importance possessed by public administration bodies, this Law establishes the Commissioner for Information of Public Importance (the Commissioner) as an autonomous state body, independent in exercising his/her authority (Article 1/2).

The National Assembly of the Republic of Serbia elects the Commissioner, acting on a proposal submitted by the committee of the National Assembly in charge of information (Article 30).

Within three months of the end of the fiscal year, the Commissioner shall submit to the National Assembly his/her annual report about the activities of administrative bodies undertaken for the purpose of implementing this Law, and also about his/her actions and expenditures. In addition to this, the Commissioner may submit other reports to the National Assembly when he/she considers it necessary (Article 36).

The decision on the termination of office of the Commissioner is passed by the National Assembly. The Commissioner shall be dismissed if he/she is convicted and receives a custodial sentence for a criminal offence, if he/she becomes permanently incapacitated, if he/she performs a function or is employed with another state body or political party, if he/she loses citizenship of the Republic of Serbia, or if he/she does not perform his/her job professionally or conscientiously. The procedure for dismissing the Commissioner will be initiated upon a proposal submitted by one-third of the representatives of the people (Article 31).

The Constitution stipulates that protection of personal information shall be guaranteed. Everyone has the right to be informed about the data on his/her person that have been collected, in accordance with the law, and the right to judicial protection in the case of abuse of such data (Article 42).

According to The Law on Personal Data Protection, the duties pertaining to the protection of personal information shall be performed by the Commissioner for Information of Public Importance and Personal Data Protection (the Commissioner), as an autonomous state organ, independent in exercising his/her authority (Article 1/3). The Commissioner shall forward the report that he/she submits to the National Assembly to the President of the Republic, the Government and the Protector of Citizens, and shall place it at the disposal of the media in an appropriate manner (Article 44/3). The Commissioner for Information of Public Importance, established by the Law on Free Access to Information of Public Importance, shall continue working under the title of the Commissioner for Information of Public Importance and Personal Data Protection (Article 59). The provisions of the Law on Free Access to Information of Public Importance shall apply accordingly to the procedure for dismissing the Commissioner (Article 58).

c) According to the Law on Anti-corruption Agency, the Agency is an autonomous and independent state body, accountable to the National Assembly for the duties performed within its remit (Article 3).

The bodies of the Agency are the Board and the Director (Article 6). The Board of the Agency appoints and dismisses the Director of the Agency, decides on complaints submitted against the decisions of the Director pertaining to measures passed in accordance with this Law, adopts the annual report on the work of the Agency, which it submits to the National Assembly, monitors the work and the financial situation of the Director, proposes the budget funds for the work of the Agency, passes the Rules of Procedure regulating its work and performs other duties stipulated by this Law (Article 7/1).

The Board of the Agency consists of nine members. Board members are elected by the National Assembly, acting on a proposal submitted by the Administrative Committee of the National Assembly, the President of the Republic, the Government, the High Court of Cassation, the State Audit Institution, the Protector of Citizens and the Commissioner for Information of Public Importance, based on their joint agreement; and by the Social-Economic Council, the Bar Association of Serbia; the Journalists' Association of the Republic of Serbia, based on their joint agreement (Article 9).

A member of the Board of the Agency shall be dismissed if he/she does not perform the function of a Board member in a conscientious manner, if he/she becomes a member of a political party, if he/she violates the reputation or the political neutrality of the Agency, if he/she is convicted of a criminal offence that makes him/her unworthy of the function of a Board member, or if it is established that he/she has violated this Law. The decision on relieving a Board member of duty shall be passed by the National Assembly, acting on a proposal submitted by the Board of the Agency (Article 13).

The Agency shall be obligated to submit the annual report on its work to the National Assembly by March 31st of the current year, for the preceding year, at the latest. This report shall also contain a report on the implementation of the Anti-corruption Strategy, Action Plan and sector action plans. The Agency may also submit special reports on its work based on a request of the National Assembly, or acting on its own initiative (Article 26).

d) According to the Constitution, the State Audit Institution is the highest state body for auditing public funds in the Republic of Serbia; it is autonomous and subject to monitoring by the National Assembly, to which it is answerable (Article 96). The State Audit Institution controls the realisation of all budgets. The National Assembly reviews the proposal of the budget balance sheet, having obtained the opinion of the State Audit Institution (Article 92/3-4).

According to the Law on the State Audit Institution, the Institution is the highest state body for auditing public funds in the Republic of Serbia. The Institution is an autonomous and independent state organ. It is accountable to the National Assembly of the Republic of Serbia for performing the duties from its scope of authority (Article 3).

The Institution has a President, a Vice-President, Council, auditing services, and support services (Article 12). The Council is the highest body of the Institution. The Council is a collegiate body. It consists of seven members, namely: the Chairperson, Deputy Chairperson and five members. The Chairperson of the Council is at the same time the President of the Institution (Article 13). The President of the Institution is the general state auditor and manager within the Institution (Article 25).

The Chairperson, Deputy Chairperson and members of the Council are elected and dismissed by the National Assembly, on the basis of a majority vote in the course of a session attended by the majority of the overall number of representatives of the people, acting upon a proposal submitted by the authorised working body of the Assembly. The authorised working body reviews the applications, establishes whether the conditions stipulated by this Law have been fulfilled and compiles a list of candidates which it forwards to the National Assembly. The proposal containing a list of candidates must be justified, and must have the candidates' statements to the effect that they accept the nomination attached. If the proposed candidates for the Chairperson, Deputy Chairperson and members of the Council fail to get the requisite majority of the representatives' votes, the authorised working body of the National Assembly shall draw up a proposal for new candidates (Article 19). A Council member shall be dismissed: if he/she has received a custodial sentence from court of law of a minimum of six months, or for a criminal offence punishable by a shorter prison sentence but rendering him/her unfit to perform this function; if he/she has been pronounced unsound of mind by a court; if he/she has taken over a job or a function that is incompatible with the function of a Council member; if he/she acts contrary to the Constitution and the law (Article 22). If there is a valid reason for the cessation of this function or for the dismissal of a Council member, the Council shall inform the National Assembly of this forthwith. A motion for the dismissal of a Council member may be initiated by a minimum of 20 representatives of the people. Such an initiative shall be reviewed by the authorised working body of the National Assembly. Following a discussion and a vote, the authorised working body of the National Assembly submits a report to the Assembly, containing a proposal to the effect that the Assembly should decide on the dismissal of a Council member or reject the motion. The authorised working body of the National Assembly may propose to the Assembly, of its own initiative, that a Council member be dismissed when, on the basis of continuous monitoring of the work of the Council in accordance with the law, or on the basis of information obtained otherwise, it establishes that there are grounds for dismissal (Articles 23-24).

The Institution informs the National Assembly of its activities by submitting: an annual report on its work, special reports in the course of the year, the report on auditing the Republic budget balance sheet, the balance sheets of the financial plans of organisations in charge of compulsory social insurance and the consolidated financial reports of the Republic (Article 43). The Institution informs the local government assemblies of audits pertaining to the subjects of auditing that are within their jurisdiction. These reports are simultaneously forwarded to the National Assembly (Article 44). The authorised working body of the National Assembly, after reviewing the Institution's reports, submits its view and recommendations to the Assembly in the form of a report. On the basis of essential facts and circumstances pointed out in paragraph 1 of this Article, the National Assembly decides on the recommendations and measures proposed, and on the deadlines for their implementation. The National Assembly may require additional explanations from the Institution concerning certain facts and circumstances (Article 48).