Defence against corruption

The risk of corruption in the defence sector in 9 countries in Southeast Europe

Memo 2015:1.
ISSN 978-82-7483-122-3

Preface

On assignment from the Norwegian Ministry of Defence and Ministry of Foreign Affairs, the Agency for Public Management and eGovernment (Difi), has conducted a study of the risk of corruption in the defence sector in 9 countries in Southeast Europe. The findings from the study are documented in 9 country reports. In addition, Difi has prepared a methodological document for the study. This report summarises the findings in the country reports. The report was prepared by Senior Advisor Svein Eriksen. Head of Section Asgeir Fløtre has been responsible for the study.

Oslo, October 2015

Ingelin Killengreen

Director General

Contents

Summary

This report describes the risk of corruption in the defence sector in 9 countries in Southeast Europe. The risk is assessed based on a set of international standards which the countries have approved. A key question is the extent to which the standards have been institutionalised in the countries' administrative systems. The institutionalisation has maximum depth when a legal framework that fully reflects the standards is supported by an effective and competent public administration and corresponds with the attitudes of key decision-makers.

A principal viewpoint in the report is that corruption, and particularly systematic corruption, cannot be understood without applying an institutional perspective. We look at defence ministries as an integrated part of, and not something separate from, the public administration. The risk of corruption and abuse of authority is particularly high when a great deal of power is concentrated in the hands of a few, and decisions are made in arenas that are effectively shielded from transparency We examine the mechanisms which have been introduced in "our" 9 countries to prevent such practices and how effectively these function in the defence sector. We firstly look at different control and monitoring arrangements and provisions regarding transparency in the public administration. Secondly, we examine three areas in which there is a high risk of corruption: personnel management, procurements in the defence sector and military disposals.

Difi has identified approximately 60 international legislative acts and guidelines that cover all areas of integrity addressed in this report. The international framework does not only apply to combating corruption in a narrow sense, but also applies to the rule of law, democracy and the need for a professional public administration, i.e. good governance in general. The normative standards have the objective of promoting impartiality, transparency and professionalism in public administration. The intention of these standards is to ensure that public resources are used for the objectives that are determined by democratically elected/democratically appointed authorities, that division of responsibilities is adequately clarified, and that effective control and monitoring mechanisms are in place.

As a supplement to the future-oriented perspective which the international standards represent, we also use a retrospective approach whereby we examine the legal and administrative situation in the group of nine countries at the time communism or a subsequent authoritarian regime collapsed 15-25 years ago. All in all, the countries have a considerable normative distance to travel in order to achieve the international standards. While the standards emphasise transparency and distribution of power, the administrative tradition in Southeast European countries is almost the exact opposite, i.e. secrecy and concentration of power.

The review of the present legal framework demonstrates discontinuity and a historic breach. While there was "inadequate compliance" with the international

standards in almost all areas 15-25 years ago, today more than half of the areas of law studied, 61 percent, are "largely in compliance" with the standards.

Administrative practices reflect the standards to a far lesser degree than the regulations. There is therefore a clear lag when concerning the implementation of adopted rules. Administrative practices appear to be significantly characterised by inherited traditions. The present administrative practices have features common to the legal and administrative situation that prevailed 15-25 years ago. The deviations are greatest in areas where there have not been traditions for legal regulation, public procurements, disposals of equipment and assets and control of security and intelligence services. While the legal frameworks conveyed an impression of historical discontinuity, administrative practices are a sign of continuity across epochal regime changes. The overall impression is that the anti-corruption norms have only been institutionalised to a limited degree.

The type of administrative failure that we demonstrate can make it difficult for countries to fully comply with the obligations for NATO membership. This includes the ability to act predictably and instil trust, the ability to manage the complex security challenges the alliance faces and the willingness and ability to act in accordance with NATO's core values.

1 Introduction

1.1 Topic

The efforts to combat corruption in countries in Southeast Europe leave an ambiguous impression. On the one hand, the scale of the measures that have been initiated is remarkable. These have been implemented across a broad front and include the constitutional order of the state (for example, parliamentary control of the executive branch) as well as internal arrangements in the public administration (including system for procurements and personnel policy). A large number of anti-corruption bodies and ombudsman arrangements have been established and the growth in legislation intended to promote integrity in state administration has been almost explosive. On the other hand, and despite all the measures that have been implemented, the prevailing view is that there is still large-scale corruption and that this hinders economic and social development in the region. [1] For Bulgaria and Romania, the EU has introduced a special regime for monitoring the fight against corruption.[2] This regime remains in place, 8 years after these countries became members of the union.

In this report we will attempt to shed light on this seemingly contradictory situation. The objective is to determine the risk of corruption in the defence sector in 9 countries in Southeast Europe:

- Albania
- Bosnia and Herzegovina
- Bulgaria
- Croatia
- Kosovo
- Macedonia
- Montenegro
- Romania
- Serbia

Difi has prepared separate reports that highlight the risk of corruption in each of these countries. In addition, we have prepared a separate methodological document for the study entitled "Criteria for Good Governance in the Defence Sector". International Standards and Principles", Difi guidelines 2015:1. This report presents some of the main patterns we observed across countries and topics.

In order to be able to describe the risk of corruption, we must have something to assess our empirical observations in relation to, a standard or a normative basis that is assumed to represent, or contribute to, a low risk. We describe (Chapter 3) a normative standard based on requirements and instructions in a large

[1] UNDOC, *Corruption in the Western Balkans, Bribery as Experienced by the Population*, United Nations Office on Drugs and Crime (UNDOC), 2011, p. 7.

[2] Vachudova, M.A., and Spendzharova, "The EU's Cooperation and Verification Mechanism: Fighting Corruption in Bulgaria and Romania after EU Accession", *European Policy Analysis*, 2012:1.

number of international conventions and guidelines prepared by, first and foremost, the EU, OECD, Council of Europe, OSCE and UN.

The following three factors are the basis for our selection of assessment criteria:

- They represent well-defined, generally accepted standards.
- All countries in the study have explicitly and voluntarily adopted, or in some other manner, acknowledged these as political guidelines.
- It is possible to determine the extent to which a country has implemented the standards.

After we have described the content of the standards for each of the ten areas of integrity, we examine the extent to which they are reflected in legal frameworks and administrative practices in "our" 9 countries. We will then attempt to explain the degree of deviation between administrative practices on the one hand and standards and national laws on the other. We also discuss the extent to which the standards can be said to have been institutionalised. We distinguish between three levels of institutionalisation:

- *Regulations*: to what extent are the normative standards for each of the 10 integrity mechanisms expressed in the national regulations?
- *Public administration*: to what extent and how are the normative standards promoted by administrative factors, i.e. by the relevant public institutions' organisation, work forms and resources?
- *Internalisation*: to what extent are the normative standards known, understood and accepted among civil servants and other decision-makers?

The institutionalisation has maximum depth when a legal framework that fully reflects the standards is supported by an effective and competent public administration and corresponds with the attitudes of key decision-makers.

The study was conducted within the framework of NATO's "Building Integrity" programme. We will therefore also briefly discuss the implications our findings could have for NATO and the alliance's enlargement process.

Because we not only describe, but also attempt to interpret and explain the observed risk of corruption, we place emphasis on clarifying factors that highlight, however may not be seen to directly apply to, the present risk patterns in the 9 countries. We discuss:

- The content and origins of the international norms.
- Administrative traditions and administrative practices in the countries included in the study. To what extent can these counteract or facilitate institutionalisation of the international norms?

1.2 Methodology and data

As already mentioned, Difi has prepared a separate methodological document for the study. This document provides an in-depth description of the content of

the anti-corruption norms. It also includes a list of close to 300 questions that we use to identify the extent to which the 9 countries in the study have in fact institutionalised the norms. The document also provides a reason for why each of the norms must be said to be important for reducing the risk of corruption.

A national expert in each of the contributing countries has collected data in accordance with Difi's methodological document. Three principal types of data sources were used:

- Official documents/statutory texts.
- Interviews with relevant decision-makers and other local experts, as well as representatives for international organisations.
- Analyses and studies that are already available.

The national experts presented the results of the data collection in a separate report for each country. Each of the reports is 75-200 pages in size. The documentation was provided as a direct response to Difi's approximately 300 questions. A representative for Transparency International, Defence and Security Programme (TI) provided comments to the reports. These were further discussed at three meetings where all of the local experts participated together with representatives for TI, NATO, the Norwegian Ministry of Defence and Difi. Present at one of the meetings was an expert on the topic of corruption/good governance in the EU's expansion processes.

Based on the reports from the national experts, Difi has prepared, with considerable assistance from the EU expert on corruption/good governance, a briefer and more concise Difi Report for each country. These reports were sent for statements from the defence ministries in the countries in question. The comments that were received have largely been included in the final reports.

In the work with the legal issues that are part of the study, Difi sought assistance from the Institute of Comparative Law in Belgrade[3]. This institute made significant contributions with regard to: [4]

- Identifying and interpreting relevant international legislative acts and recommendations (see in particular, sections 3.2, 3.3 and 3.4 below).
- Assessing the degree of compliance between national regulations and the international standards (see in particular, chapter 5 below).
- Describing the legal situation and administrative practices in the Socialist Federal Republic of Yugoslavia (SFRY 1945-1992) within the topic areas of the study (see in particular, section 4.2 below).

This report describes the risk of corruption in the defence sector in 9 countries in Southeast Europe. The risk is assessed based on a set of

[3] Institut za uporedno pravo.

[4] The contribution was published as, Aleksandra Rabrenovic (ed.), *Legal mechanisms for prevention of corruption in southeast Europe with special focus on the defence sector*, Institute of Comparative Law, Beograd 2013.

international standards which the countries have approved. An important issue is the extent to which the standards are institutionalised in the countries' administrative systems. Institutionalisation has maximum depth when a legal framework that fully reflects the standards is supported by an effective and competent public administration and correlates with the attitudes of key decision-makers.

2 An institutional perspective

2.1 What is corruption?

In this study, we define the term corruption in a manner that is standard in international academic literature, i.e. "abuse of public authority to achieve private benefits for individuals or groups to the detriment of public interests". Corruption occurs in various *forms* (for example, bribes, extortion, abuse of authority and nepotism) and varying *degrees* (for example, state capture, and systematic corruption at the one extreme and isolated corruption at the other).

Even though the definition above is often used, it is not without problems. It can result in complex social phenomena being considered to fall into clearly separated and mutually exclusive categories, i.e. *public* versus *private interests*, *lawful use* as opposed to *abuse* of public authority, *corrupt* versus *non-corrupt* behaviour. However, the history of corruption shows that the limits between these and other terms are fluid. Where the line between public and private considerations must be drawn has been and continues to be a matter of dispute. Therefore, it is also difficult to clearly specify the line between legitimate and illegitimate use of public resources and therefore between corrupt and non-corrupt behaviour.

Corruption researchers believe that the corruption phenomenon should be viewed in light of other concepts and other and more general forms of social behaviour. "Micropolitics" is a concept that has been proposed.[5] Micropolitics covers all forms of behaviour that have the objective of influencing an organisation's goals and the division of power and influence in an organisation. Examples of such behaviour are more or less irregular services and reciprocal services or "horse trades" when concerning the assignment of, for example, positions, contracts and awards. No organisation can function without such forms of micropolitical behaviour. It is also not possible to achieve complex social and political objectives without clever use of micropolitical strategies.

Even if "micropolitics" is not synonymous with "corruption" (not all micropolitics is corruption and not all corrupt behaviour is micropolitical), the concept can assist us in understanding corruption as a social phenomenon. We would make particular mention of four factors:

- There is a gradual transition from practices that one may dislike, however that are not illegitimate, to those that are clearly corrupt and harmful. The line between corruption and non-corruption has been drawn at different places at different times. It is not least in the countries we have examined in this study, that definitions of corruption and abuse of authority have been introduced in the course of a short period of time

[5] Jens Ivo Engels, *Die Geschichte der Korruption. Von der frühen Neuzeit bis ins 20. Jahrhundert*, S. Fischer Verlag GmbH, Frankfurt am Main 2014., p. 31. The description in section 2.1 is largely based on Engels op. cit

that strongly conflict with the administrative practices that were standard and largely accepted, or at least tolerated, not that long ago.

- Micropolitics can serve both legitimate and illegitimate considerations. It is an uncomfortable truth that the same also applies to corruption. Despite the fact that in the past two to three decades corruption has been viewed an unconditional evil, there is no lack of examples of politicians having found it necessary to use corruption to promote respectable and even highly worthy objectives.[6]
- The fact that micropolitics is an inherent feature of all organisations means that all organised activities involve the risk of corruption. Corruption is therefore not something that is restricted to specific cultures, countries or special types of social activities.
- The close connection between micropolitics and conflicts of objectives and power struggles in organisations makes it unlikely that corruption will ever disappear entirely. This again means that "zero tolerance" of corruption, with full investigating and sanctioning of any instance of corruption, regardless of the scale, is unlikely to be possible or desirable as practical policy.[7]

In many countries, including countries that are included in this study, there have been anti-corruption campaigns directed at individuals and only individuals. This type of focus is important for detecting and responding to criminal behaviour. However, it is not sufficient for preventing corruption. It can result in the issue being depoliticised and one losing sight of structural and institutional causes. Identifying such risk factors is the objective of this report.

2.2 An overall approach

We do not only examine factors that are restricted to the defence sector's own institutions. We will look at these institutions, in the first instance, the defence ministries, as being integrated into and part of the national administrative systems. The report places emphasis on legal and institutional factors that cross the individual national systems and that apply to defence ministries to the same extent as other ministries and state institutions.

Such an approach is not obvious. Researchers have claimed that it is possible for societies to have effective institutions even if the overall picture of the state's public administration is discouraging, in other words, there can be

[6] A good example is the ratification of the 13th amendment to the American Constitution in 1865 which prohibited slavery. The Lincoln administration used every method available to secure a sufficient number of votes in Congress (including bribes and offers of employment in the federal administration). This made observers at the time claim that: “The greatest measure of the nineteenth century was passed by corruption”, David Herbert Donald, *Lincoln*, Simon & Schuster, NewYork 1996, p. 554.

[7] Chrisian Michelsen Institute, U4 brief, February 2014:2, “Donors and zero tolerance for corruption. "From principle to practice”, available at http://r4d.dfid.gov.uk/pdf/outputs/U4/B2014-02-donor-and-zero.pdf.

islands of quality in a sea of mediocrity.[8] For example, Great Britain had a powerful navy a century before the country reformed its inefficient and corrupt army, and 150 years before it professionalised the state administration.[9] This gives reason to ask whether defence institutions can be "pockets of good governance" and whether it is enough to direct reform measures at these alone without at the same time looking at general arrangements in the state administration.

Pockets of good governance do not occur by chance. Specific characteristics of a public institution and the institution's surroundings will determine whether it is one such pocket or not. Two factors appear to be important: that strong social groups set limits for the political leaderships' ability to act in the institution's area of responsibility and that the groups safeguard the interests of people whose welfare is totally dependent on the institution working effectively and professionally.[10]

In war, the value of professional armed forces is easily observable. This is not the case during peacetime. Many outside the defence policy establishment will therefore find it difficult to develop a well-founded opinion about many of the defence force's decisions. Professional military personnel can also disagree and be uncertain in their assessment of the measures that are necessary as preparations for a future war. It is not unusual for measures that are agreed on during peacetime to prove to be inadequate in times of war. An example of this is the many changes made to the military leadership after a war has broken out.

Military defence capability is an indivisible collective good that benefits all of society and not just parts of society. It is therefore difficult to imagine there are social groups that, out of pure self-interest, monitor the performance of the military during peacetime and, if necessary, put pressure on the military and political leadership to achieve efficiency and professionalism. In other areas, where public services are directed at individuals, for example, education or health, it is far more probable that such outside pressure will be a force for reform and better efficiency.

Defence ministers and senior officers preside over highly valued social assets, not least recruitments and the awarding of various types of contracts. Due to the scale of the defence sector and defence ministries, these contracts are higher in volume than in most other state sectors. In a number of countries, including countries in this study, the citizens have few opportunities to find private employment or derive benefit from contracts from private players. The state is

[8] Bersch, Katherine et al. (2013), "State Capacity and Bureaucratic Autonomy Within National States: "Mapping the Archipelago of Excellence in Brazil", Paper prepared for presentation at the Latin American Studies Association Conference Washington D.C. May 29-June 1, p. 6.

[9] Leonard, David K. (2010), «'Pockets of effective agencies in weak governance states: where are they likely and why does it matter?" *Public Administration and Development*, 30, pages 91-101, p. 92.

[10] Leonard op.cit, footnote 9.

the completely dominant social institution. This creates the risk of clientelism[11] and abuse of authority in the state administrative system. In the defence sector, the risk is reinforced by other features: access to classified information, access to data from intelligence and security services and long traditions for confidentiality and closed decision-making processes. [12]

All in all, it is not evident that defence institutions, due to their very nature and inherent conditions for action, will appear as "islands of quality". On the contrary, if they are left completely to their own devices, there is the risk that a narrow military or defence force-specific way of thinking will dominate. This can make it difficult to implement reforms that break away from inherited beliefs. At worst, the defence sector can become a dysfunctional state within the state.

The absence of outside pressure for reform - under the direction of social pressure groups - must be compensated for by control and monitoring mechanisms internally in the state. In principle, these mechanisms must be the same for the defence sector as for all other state sectors. For considerations regarding integrity and professionalism to permeate through the defence sector, these considerations must be rooted in the entire state administrative system and must, as a main rule, fully apply to the defence force institutions. In other words, defence ministries must be seen as an integrated part of, and not something separate from, the rest of the public administration.

We would add four more specific arguments to this general assertion.

Firstly, problems faced by the defence sector - particularly in the countries we have studied - are often due to circumstances outside the sector itself and concern general failures in governance. It is hardly possible to promote integrity and professionalism in the defence sector and the defence sector alone if state bodies in general are permeated by corruption and abuse of authority.[13] As we also will see, defence ministries are governed by the same general rules as other state institutions, including laws regarding personnel management and procurements. If these laws have weaknesses, it can be difficult to implement reforms in the defence ministries without also making more comprehensive statutory amendments.

Secondly, with the exception of Kosovo and Serbia, all countries in the study are NATO aspirants or NATO members. NATO is not only a defence alliance but also a community of values, obligated to promote democracy, individual

[11] Wikipedia defines clientelism as "the exchange of goods and services for political support, often involving an implicit or explicit quid-pro-quo." see https://en.wikipedia.org/wiki/Clientelism.

[12] According to Transparency International, the defence sector is a public sector in which many consider corruption to be widespread. A study conducted in 2011 ranked the defence sector as the 10th most corrupt of all 19 sectors. The study is available at: http://www.ey.com/Publication/vwLUAssets/EY-Transparency-International-Bribe-Payers-Index-2011/$FILE/EY-Transparency-International-Bribe-Payers-Index-2011.pdf.

[13] See for example, http://www.fbi.gov/about-us/investigate/corruption

freedom, the rule of law and human rights. These values must permeate through all administrative bodies in the alliance's member states.

Thirdly, an administrative system characterised by legal fragmentation, where there are few consistent rules, but many special rules for individual ministries, for example, the defence ministry, is a hazardous system. It creates uncertainty about the rules that actually apply and thereby undermines a key criterion for the rule of law, predictability of the system of authority. Strongly fragmented laws can also lead to thoughts of the state's civil servants serving special organisations and not the state as a whole, and thereby contributing to developing unfortunate subcultures such as "states within the state", which again weakens the overall administrative ability of the state.

Fourthly, the present security challenges cannot be attended to by one ministry or one state sector alone. The threat profile that is described in NATO's strategy document from 2010 concerns the majority of ministries in any modern European government. The cross-sectoral nature of the threats means that a narrow, sector-controlled approach is not enough. Overall, multi-sectoral measures are necessary. Integrity and professionalism must permeate through the entire state administration, not just isolated parts of this.

2.3 The importance of strong institutions

The risk of corruption and abuse of authority is particularly high when a great deal of power is concentrated in the hands of a few, and decisions are made in arenas that are effectively shielded from transparency This has long been normal state practice in the countries we have studied (more on this below). We will therefore examine the mechanisms that are introduced to prevent these types of practices and the effectiveness of these in defence ministries.

We firstly look at different control and monitoring arrangements, as well as provisions relating to transparency in the public administration:

- Parliamentary control.
- Control of intelligence and security services
- Provisions regarding competency and impartiality
- External and internal audits, inspection arrangements
- Ombudsman arrangements
- Anti-corruption bodies
- Rules concerning public access to official information

In addition, we examine rules that apply to:

- Personnel management in the defence ministry.
- The procurement system in the defence sector.
- Disposal of military assets and military equipment.

These are three areas in which there is a high risk of corruption.

In the following, we refer to these 10 arrangements/areas as "integrity-promoting mechanisms" or "areas of integrity"

A principal viewpoint in this study is that corruption, and systematic corruption in particular, is difficult to understand without applying an institutional perspective. If something can be learned from the two least corrupt countries in the world, Denmark and Sweden, and from how these countries were able, almost 150 years ago, to free themselves from entrenched, systematic corruption, it is the importance of well-functioning state institutions. Social scientists in both countries claim that the development of a Weberian bureaucracy, i.e. a qualification-based public administration, of which significant features were completed in the mid-1800s, largely explains the modest scale of corruption today.[14]

Experiences from Denmark and Sweden not only demonstrate the importance of institutions, but also the ability of political leaders to change them - if necessary from the ground up. It is within the scope of the national leadership to convert dysfunctional, corrupt, state bodies into well-functioning institutions based on expertise and integrity.[15]

A principal viewpoint in this report is that corruption, and systematic corruption in particular, cannot be understood without applying an institutional perspective. We look at defence ministries as an integrated part of, and not something separate from, the public administration. The risk of corruption and abuse of authority is particularly high when a great deal of power is concentrated in the hands of a few, and decisions are made in arenas that are effectively shielded from transparency. We examine the mechanisms which have been introduced in "our" 9 countries to prevent such practices and how effectively these function in the defence sector. We firstly look at different control and monitoring arrangements and provisions regarding transparency in the public administration. Secondly, we examine three areas in which there is a high risk of corruption: personnel management, procurements in the defence sector and military disposals.

[14] See Mette Frisk Jensen, "The question of how Denmark got to be Denmark – establishing rule of law and fighting corruption in the state of Denmark 1660-1900", working paper series 2014:06, the Quality of Government Institute, University of Gothenburg, and Jan Teorell and Bo Rothstein, "Getting to Sweden: Malfeasance and Bureaucratic reforms, 1720-1850", working paper series 2012:18, the Quality of Government Institute, University of Gothenburg.

[15] Teorell and Rothstein, op.cit, footnote 14, p. 4.

3 The normative standards: future-oriented perspective

3.1 The emergence of anti-corruption norms

Features of the manner in which the anti-corruption norms developed will assist us in better understanding challenges that arose when countries that were not part of, or only played a peripheral role in the creation process, were to introduce the norms into their own administrative systems.

Difi has identified approximately 60 international legislative acts and guidelines that cover the 10 areas of integrity referred to above. The international framework that we have selected as a benchmark not only applies to combating corruption in the narrow sense, but also rule of law, democracy and the need for a professional public administration, in other words, good governance in general. The articulated reason for this broad prospective is, as we have already indicated: The problem of corruption is not solved by combating corruption, but by building strong institutions.

The preoccupation with corruption has fluctuated considerably over time.[16] In many countries, there was major concern about the scale of corruption from the beginning of the 20th century until the outbreak of the Second World War. In the period following 1945, the topic disappeared from the public agenda, however it was given renewed and serious attention from the 1970s and beyond.[17] Most international, anti-corruption norms originate from the period after 1990, including the OECD Convention on Combating Bribery of Foreign Public Official in International Business Transactions (1997), the Council of Europe's Criminal Law Convention on Corruption (1999) and the United Nations Convention against Corruption (2005).

What explains this renewed preoccupation with corruption and, in connection with this, the need for good governance? Internal factors in western countries and in the international political system appear to have been decisive.

In the period after 1970 a "change in mentality" has occurred in western countries when concerning views about the role of the state and the relationship between the state and citizens.[18] The foremost duty of the state is no longer to exercise authority, but to provide services. The public are more aware of their rights and make greater demands on those who are in control. No longer can anyone take the citizens' trust of public bodies for granted. Trust must be acquired. Public authorities have therefore complied with increasingly more comprehensive demands for user involvement, more open political processes and better public access to official information.

[16] See Engels, op.cit. footnote 5.

[17] Ibid.

[18] Engels op.cit. footnote 5, p. 364.

In large European countries such as Italy, France, Germany and the United Kingdom, such demands have been made during massive corruption scandals.[19] In many places, the scandals shook the foundations of the political system. In western countries, trust in politicians reached a low point during the 1990s.[20] The USA experienced such a period 20 years prior to this in the wake of the Watergate scandal that resulted in President Nixon's resignation. A number of countries introduced laws and established new or strengthened existing bodies that would ensure acceptable standards of behaviour in public operations. The slogan "zero tolerance" for corruption gained support in many places.[21]

The most important *international* aspect in our situation is the conclusion of the Cold War and the collapse of the communist world. These two closely-related events meant that what has been called "the normative project of the West", with emphasis on representative democracy, division of power and rule of law, emerged undefeated and without any attractive or conceived alternatives.[22]

The countries of the world could now free themselves from the roles they had assumed during the confrontation between the superpowers of the USA and Soviet Union and fully concentrate on their political and social development.[23] The countries found guidance in the formulation of laws and institutions in what would later become the comprehensive international norms for good governance which reflected the West's normative dominance.[24] This process was most pronounced in Eastern Europe. [25] For former communist states to achieve EU membership, they had to document that they had left their past behind them and become democracies founded on the rule of law.

---

[19] In Germany: illegal party financing ("CDU-Parteispendenaffâre", 1999/200), United Kingdom: award of life peerages in exchange for financial support to the Labour party ("cash for honours", 2007), France: export of frigates to Taiwan (1991), illegal party support («l'affaire Bettencourt») 2010, Italy: "mani pulite" (clean hands) investigation by public prosecutors and judges that resulted in the radical restructuring of the party system in the 1990s.

[20] Jenny Fleming and Ian Holland, "The Case for Ministerial Ethics", in Jenny Fleming and Ian Holland (eds.) *Motivating Ministers to Morality,* Ashgate Publishing Company, Aldershot, 2001, p. 3.

[21] One example is Germany. In 2012, Christian Wulff had to resign as German president after allegations of having accepted bribes before he was elected president. The charge against him concerned an amount of €750. Wulff was acquitted in 2014.

[22] Heinrich August Winkler, *Geschichte des Westens. Vom Kalten Krieg zum Mauerfall,* C.H. Beck, München, 2014, p. 1119.

[23] Ibid.

[24] Another important factor that is not as relevant to our topic is that the fall of world communism resulted in large markets being opened up to western companies in, among other places, Eastern Europe. American authorities were concerned that the country's strict anti-corruption laws would weaken the ability of American companies to compete in former communist countries. On the initiative of the USA, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was therefore adopted in 1997. For more information concerning this see, among others, Jennifer L. McCoy and Heather Heckel, "The Emergence of the Global Anti-Corruption Norm", International *Politics*, 38: 65-90, 2001.

[25] See, among others, Steven Levitsky and Lucan A. Way, *Competitive Authoritarianism. Hybrid Regimes After the Cold War*, Cambridge University Press, Cambridge, 2010.

Also of importance was the fact that the political upheavals that were triggered by the collapse of world communism, coincided with the information and communications revolution. This revolution meant that ideas and knowledge could be exchanged faster, easier and on a much larger scale than before. At the same time, economic players and international organisations presented a more or less standard message and implemented uniform programmes in countries in all parts of the world, regardless of local traditions and other local conditions.[26] The message was largely, without exception, based on value standards and administrative norms in western countries. An example is Transparency International's "Corruption Perception Index" which includes most of the world's countries and is published annually. Corruption researchers claim that the index reflects Northern European beliefs regarding the need for moral purity in politics and economics.[27]

3.2 The entry of anti-corruption norms into Southeast Europe

Countries in the study have been extremely quick to accede to conventions and guidelines that are referred to above. Some examples:

- During a three year period, they signed the Council of Europe's Criminal Law Convention on Corruption that entered into force in 2003.
- A majority of the countries signed and ratified the United Nations Convention against Corruption in the period from 2003 to 2007.
- All of the countries, with the exception of Kosovo, are members of the Council of Europe and are therefore bound by all the Council's recommendations, including "The 20 Guiding Principles for the Fight against Corruption".
- All countries, with the exception of Kosovo, are also members of the Inter-Parliamentary Union and Geneva Centre for the Democratic Control of Armed Forces (DCAF). The countries are therefore obligated to follow the standards of these organisations when concerning parliamentary control.

For countries such as, for example, Montenegro, which is not a member of the OECD, membership in the Stability Pact for South-Eastern Europe means that they have committed to following, among other things, the OECD's recommendations and guidelines.[28]

---

[26] David P. Dolowitz and David Marsh, "Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making", *Governance*, pp. 5-23, 13(1), 2000.

[27] Engels, op.cit. footnote 5, pp. 365 and 366.

[28] Among other things, the countries must commit to "Take measures to apply the principles proposed in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the recommendations of the OECD [...]."

For all of the countries in the study, it is the EU's expansion process in particular that has been the engine for anti-corruption reforms. Of the countries we studied, three are member states: Bulgaria, Romania and Croatia. Montenegro and Serbia have commenced negotiations for membership. Albania and Macedonia are candidate countries, while Bosnia and Herzegovina and Kosovo are potential candidate countries.

The EU Commission has repeatedly stated that corruption is a major problem in all of Southeast Europe. It hinders the development of democracy and rule of law and is extremely detrimental to the economy and state finances.[29] Compared with the EU's previous practices, the present expansion strategy places much more emphasis on the rule of law and combating corruption.[30] Candidate countries not only have to implement "classic" reforms when concerning democracy and rule of law. They must also introduce measures that are particularly aimed at corruption. Corruption is therefore a topic in the EU Commission's annual progress reports concerning the expansion process. As already mentioned, the Commission has a separate programme for monitoring the anti-corruption work in two of the union's member countries, Bulgaria and Romania.[31]

The EU process includes all the areas of integrity we referred to above. Particularly strong attention is focussed on the areas covered by separate negotiation chapters: public procurements (chapter 5) and financial management which, among other things, includes external and internal audits (chapter 32). The EU's political criteria for membership, which were approved at the union's summit in Copenhagen in 1993, provide basic guidelines for all key legal and institutional reforms in the countries in the region.

3.3 Principal content in the normative standards

Briefly summarised, the normative standards have the objective of promoting impartiality, transparency and expertise in public administration. The intention of these standards is to ensure that public resources are used for the objectives that are determined by democratically elected/democratically appointed authorities, that division of responsibilities is satisfactorily clarified, and that effective control and monitoring mechanisms are in place.

In an extremely concentrated form below are a selection of key norms that apply to each of the 10 areas of integrity that we have studied.

---

[29] See, for example, European Commission, *Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011-2012*, Brussels, COM(2011) 666 final.

[30] Ibid.

[31] See, for example, European Commission, *Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism*, Brussels, 18/7/2012, COM (2012) 411 final.

Parliamentary control

The armed forces must be under the effective control of bodies equipped with democratic legitimacy. National parliaments have the final responsibility for approving expenses for defence and security objectives.

Text box 1: Normative sources regarding parliamentary control

- The Copenhagen criteria for EU accession, EU (1993);
- The OSCE Code of Conduct on Politico-Military Aspects of Security, OSCE (1994);
- The Inter-Parliamentary Union and the Geneva Centre for Democratic Control of the Armed Forces, Parliamentary oversight of the security sector: Principles, mechanisms and practices.

Control of security and intelligence services

Intelligence and security services must be subject to effective controls by all three branches of government: the legislative branch, executive branch and judicial branch. To avoid political abuse it is important that there is a distance between the government and the security agencies.

Text box 2: Normative sources regarding the control of intelligence and security services

- The Human development report, UNDP 2002;
- Code of Conduct on Politico-Military Aspects of Security, OSCE 1994
- Recommendation 1402, Parliamentary Assembly, Council of Europe
- Resolution 113, Western European Union Assembly 2002

Conflicts of interest

Arrangements must be in place that ensure that civil servants make decisions and act with consideration to public, and not private, interests. It is not only actual, but also possible or apparent conflicts of interest that must be avoided.

Text box 3: Normative sources regarding conflicts of interest

- The twenty guiding principles for the fight against corruption, Council of Europe, 1997;
- Recommendations of the Committee of Ministers to Member States on Codes of Conduct for Public Officials, Council of Europe;
- Convention against Corruption, UN 2003;
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, OECD 1997;
- Code of Conduct for Civil Servants, UN, 2012;
- Stability Pact Anti-Corruption Initiative for South Eastern Europe, 2012.

External and internal audits

External audits enable tax payers to assess how the government is using the allocated budget funds and to hold it accountable. External auditing bodies can only perform their duties objectively and effectively if they are independent of the bodies that are to be audited and are protected from outside pressures.

Systems for *internal audits* must include appropriate and transparent methods for ensuing that public funds are used efficiently for the objectives specified by the government and national assembly. Effective internal audits require a separation between political and administrative responsibility. Even if internal

auditing arrangements are governed by the leadership of the undertaking, it is important that they have a high degree of organisational and functional independence.

Text box 4: Normative sources regarding external and internal audits

- Guidelines for Internal Control Standards for the Public Sector (INTOSAI GOV 9100), the International Organization of Supreme Audit Institutions;
- Control and Management System Baselines for European Union Membership, SIGMA Baselines, 1999;
- International Standards of Supreme Audit Institutions -ISSAI framework;
- UN General Assembly Resolution A/66/209 – Promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening supreme audit institutions.

Ombudsman arrangements

The ombudsman institution should be ensured a high degree of independence and have its own budget that is sufficient to cover the institution's requirements. Among other things, the Ombudsman should have the right:

- To investigate the extent to which the government, and the public administration in general, including the defence ministry, act in accordance with laws and ethical standards.
- To provide recommendations to the government and/or the individual state institutions to reverse incorrect administrative decisions.
- To disclose the result of their work.
- To recommend that politically appointed civil servants be dismissed when it can be documented that they have engaged in illegal political or administrative practices.

Text box 5: Normative sources regarding ombudsman arrangements

Paris Principles, defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights (held in Paris1991), which were later adopted by the United Nations and the Council of Europe

Anti-corruption bodies

The normative framework lists some key principles that should apply for these types of bodies:

- *Legislation*: The bodies must have a clear mandate. Overlapping with other bodies must be avoided.
- *Independence*: The bodies must have an adequate degree of independence in order for them to perform their work without undue pressure.
- *Responsibility/reporting requirements/accountability*: Methods that promote independence must be balanced by mechanisms that ensure accountability.
- *Resources:* The bodies must have adequate resources, both material and human.

The recommendations that apply for anti-corruption bodies are not particularly detailed because it is acknowledged that the choice of model must be adapted to the legal and administrative system in each country.

Text box 6: Normative sources regarding anti-corruption bodies

- The twenty guiding principles for the fight against corruption, Council of Europe 1997;
- Criminal law convention, Council of Europe 1998;
- Convention against Corruption, UN 2003.

Rules regarding public access to official information

All citizens in a country must, without any form of discrimination, have access to official information. States can restrict access to official documents, however only in very specific instances. The exceptions must be stipulated by law, be precisely specified and necessary in a democratic society. They must not disproportionately safeguard the need to protect information.

Text box 7: Normative sources regarding access to official information

- Universal Declaration of Human Rights. General Assembly resolution 217 A (III), 1948;
- International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), 1966;
- European Convention for the Protection of Human Rights and Fundamental Freedoms;
- Recommendation of the Committee of Ministers to member states on access to official documents, the Council of Europe, 2002;
- Treaty Establishing the European Community, article 255, 1997
- Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents, 2001

Personnel management

The personnel system in public administration must be merit-based, i.e., there must be satisfactory requirements for the public advertising of positions and employment of the best qualified people after a competitive process. Merit-based personnel management is the opposite of a system in which positions in the public administration are achieved based on, for example, political loyalty or personal acquaintance and not professional qualifications.

Text box 8: Normative sources regarding personnel management

- Universal Declaration of Human Rights, 1948;
- Convention against Corruption, United Nations, 2003;
- International Covenant on Economic Social and Cultural Rights, 1966;
- Recommendation No. R (2006), the Council of Europe, 2006;
- Twenty Guiding Principles for the Fight against Corruption, the Council of Europe, 1997;
- SIGMA/OECD, Structural elements for improving public governance systems in EU candidate states: SIGMA baselines, 2009.

Military procurements and disposals

The system for procurements and disposals must be accessible and characterised by transparency. The awarding of contracts must take place after a competitive process and there must be efficient mechanisms that ensure control and accountability.

As a main rule, all non-sensitive military equipment should be procured in accordance with the rules in the state's general procurement laws. Exceptions can be made for sensitive equipment, however such exceptions must be clear and exhaustively defined.

Text box 9: Normative sources regarding military procurements and disposals

- Convention against Corruption, United Nations ;
- EU Directive 2004/18/EC relating to public procurement by companies in the public sector 2004;
- EU Directive 2004/17/EC relating to public procurement in the utility sector, 2004;
- Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts 2007;
- Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC 2009.

3.4 A comprehensive and demanding international legal order

As the overview above demonstrates, there is an extensive set of rules and recommendations that cover the 10 areas of integrity we have focussed on. Norms that apply for "public servants" also apply for people employed in the military.[32] Far from all sets of rules are legally binding. Only about one-quarter of the approximately 60 international frameworks have this effect and the majority provide a rather broad scope for national adjustments. However, even if norms are only guidelines, they can be assigned significant weight. For example, the EU Commission uses SIGMA's[33] guidelines when it assesses whether applicant countries are able to comply with obligations for membership.

At an *international* level, the institutionalisation of part of the norms has progressed relatively far. Specialist international bodies have been established that monitor and provide the countries with advice regarding implementation. These bodies are affiliated with the EU Commission, OECD and Council of Europe. In addition, there are private and semi-public organisations such as Transparency International. Specialist networks with representatives from international and national bodies work with analyses and the exchange of experiences. Work with, among other things, monitoring and advice have resulted in the specification of the content of the norms and the legal and institutional measures that the countries must or should initiate to be able to comply with instructions and recommendations.

[32] Among other things, this is stipulated in judgments by the European Court of Justice (Judgment of the European Court of Justice of 26 May 1982 (Case 149/79), Commission of the European Communities v Kingdom of Belgium), see also SIGMA 2014, *The Principles of Public Administration*, p. 42.

[33] SIGMA (Support for Improvement in Governance and Management) is a joint body for the OECD and the EU Commission. SIGMA assesses the candidate countries' administrative prerequisites for being able to comply with their obligations as future EU members.

The countries that have adopted the international conventions and approved the other guidelines have acceded to wide-reaching commitments when concerning the formulation of national laws and institutions. The scope of the regulations and guidelines provides a clear impression of the extent to which national administrative systems are interwoven in an international and transnational legal order. At present, this is a consideration we can explain by the number of norms which the countries have committed to follow. The impression that remains when we have examined the *implementation* of the regulations, is a completely different issue that we will return to.

It is notable that among the series of international guidelines there is nothing from NATO. However, there is a certain level of cooperation between the alliance's international staff, member states and partner countries when concerning measures that promote integrity. However, this cooperation is voluntary and is not systematically linked to NATO's enlargement process.

The choice of benchmark will influence our opinion on social phenomena. The more demanding the standard is, the more difficult it will be to live up to, and therefore the attention will easily be focussed on what is not achieved, and what remains to be done. The proverbial glass of water appears to be half-empty and not half-full.

In this study we have chosen very demanding to a certain extent "aspirational" standards. These describe future ideal conditions for complex state administrative functions. We cannot expect the standards to be fully realised in any country. As we have mentioned, they reflect on what we call western administrative values and western administrative traditions. The countries in the study have only shared these traditions to a limited degree. Before the collapse of international communism, none of these countries had significant experience with democratic control, or any such experience whatsoever. Other factors also complicated reforms. The majority of the countries in the former Yugoslavia were plagued by war and international embargo in the 1990s. Albania and Romania in particular were characterised by a high level of poverty and had a legacy of decades of uninterrupted Stalinist oppression.

With this in mind, we will, as a supplement to the future-oriented perspective above, also use a retrospective approach. For this, we assess the current situation in light of the legal and administrative situation in the countries at the time when communism or a subsequent authoritarian regime collapsed 15-25 years ago. This type of approach will highlight the extent of the changes that have actually taken place and not only those that have yet to be made. It will focus attention on the obstacles the countries have to overcome to fully comply with the anti-corruption norms. We will thereby be able to obtain a better understanding of what we can reasonably expect from profound institutional reforms.

Difi has identified approximately 60 international legislative acts and guidelines that cover all areas of integrity addressed in this report. The international framework does not only apply to combating corruption in a

narrow sense, but also rule of law, democracy and the need for a professional public administration, i.e. good governance in general. The normative standards have the objective of promoting impartiality, transparency and expertise in public administration. The intention of these standards is to ensure that public resources are used for the objectives that are determined by democratically elected/democratically appointed authorities, that division of responsibilities is satisfactorily clarified, and that effective control and monitoring mechanisms are in place. All countries in the study have accepted the standards as being a guide for their reform work.

4 The normative standards: the retrospective perspective

4.1 The socialist and pre-socialist legacy

While the standards we described in the previous chapter originated in the West, all countries in this study had communist, single-party rule from 1945 to about 1990.[34] Even if, in historical terms, communism was short-lived and, in many places, superficial compared with, for example, centuries of religious traditions, many researchers have noted that communist mind-sets and practices continue to influence the direction of reform and the behaviour of political leaders several years after the communist regimes collapsed. They also believe that the communist legacy may make it difficult to fully establish a legal culture founded on established, western beliefs.[35]

The characteristics of a former communist regime will most likely be of significance to the impact it will have after its collapse.[36] In several countries, communism was seen as an undesired form of control that was forced on them by a foreign occupier. This was the case in Czechoslovakia, Poland, Hungary and the Baltic countries. In these countries, the fall of communism was not only considered a political transformation but also as national liberation. The political leaders who took control after the fall of the Iron Curtain were imbued with a desire to make a radical break from the legacy of the previous regime. The point of orientation was Western Europe and the West more generally.[37]

The feeling of liberation and upheaval and the desire to move westward was most probably not as strong in countries in the Balkan region, i.e. in countries included in this study. There are somewhat different reasons for this. The Yugoslavian communist regime was home-grown and not the result of Soviet expansion. Like the regimes in Albania and Romania, it strongly pronounced its political independence from the Soviet Union. The situation in Bulgaria was different. In this country there was wide-spread sympathy for Russia's historical role as the liberator of the Slavic people.

While no strong disassociation from the Russian-dominated Soviet communism could be expected in Bulgaria, the other Balkan countries would not view communist rule as having been forced on them from the outside. Albania,

---

[34] In several countries, including Serbia and Croatia, communism was replaced for a 10 year period by a nationalistic, authoritarian regime.

[35] Klaus Goetz, "Making Sense of Post-Communist Central Administration: Modernization, Europeanization or Latinization?", 8(6) *Journal of European Public Policy* (2001), 1032-1051, p. 1034; and Andras Jakab and Miklos Hollan, "Die dogmatische Hinterlassenschaft des Sozialismus im heutigen Recht: Das Beispiel Ungarns", 46 *Jahrbuch für Ostrecht* (2005), 11-40, p. 11.

[36] Geoffrey Pridham, "Confining Conditions and Breaking with the Past: Historical Legacies and Political Learning in Transitions to Democracy", 7(2) *Democratization* (2000), 36-64, p. 42.

[37] Janine R. Wedel, *Collision and Collusion. The Strange Case of Western Aid to Eastern Europe* (Palgrave, New York, 2001), p. 16.

Yugoslavia and Romania were ruled by nationally-oriented autocrats (with Enver Hoxha, Josip Broz Tito and Nicolae Ceaucescu respectively as those who ruled the longest). After the fall of communism, it could be natural to attribute blame for the countries' problems on a discredited leadership and not so much the system it had spearheaded. Reforms would consist more of changes in personnel rather than institutional changes.

For Yugoslavia, and probably other countries in the region, some areas of communist rule did not constitute a clear break from the authoritarian regimes of the inter war period. This regime's beliefs concerning the public administration being an instrument of state power could be adapted to the communist idea of the proletariat as the new "ruling class", and this class' claim (i.e. in practice, the communist party) to the role of leader of the state. Legal experts have described this type of continuity in, among others, Yugoslavia.[38]

In other words, the communist regime moved into an administrative tradition that involved the concentration of political power in the hands of a few. In addition, the regime secured dominant power over the economy. This involved a risk of, or at least the potential for, corruption and abuse of power, and was at the heart of Milovan Djilas' dissent against the Tito regime in the 1950s. See Text box 10 below.

Text box 10: Criticism of corruption in Tito's Yugoslavia[39]

> "Careerism and love of power is inevitable and so is corruption. It is not a matter of the corruption of public servants for this may occur less frequently than in the state which preceded it. It is a special type of corruption caused by the fact that the government is in the hands of a single political group and is the source of all privileges. […] The fact that the government and its party is identical with the state, and practically with the holding of all property, causes the Communist state to be one which corrupts itself, in that it inevitably creates privileges and parasitic functions".

Historians and social scientists maintain that without knowledge of the past it can be difficult to understand the current scale of corruption in former communist countries.[40] We must assume that the strength of traditional beliefs regarding the power state and power concentration - beliefs that had survived regime changes which, when viewed from the outside, were profound - can make it difficult to make a fundamental break from mind-sets and institutional patterns that prevailed when world communism collapsed. In former Yugoslavian countries there are experts and politicians who consider inherited laws and state practices as an alternative to international norms for good governance to be a national legacy that can provide guidelines for the future.[41]

---

[38] Stevan Lilic, "Challenges of Government Reconstruction: Turbulence in Administrative Transition. From Administration as an Instrument of Government to Administration as a Public Service", 2(1) *Facta Universitatis* (1998), Belgrade, 183-193, p. 187.

[39] Milovan Djilas, *The new class. An analysis of the communist system.* Thames and Hudson, London 1957, pp. in 81 and 82.

[40] See, among others, Holm Sundhaussen, *Jugoslawien und seine Nachfolgestaaten 1943-2011*, Bõhlau Verlag, Wien, 2012,pp. 513, 514 and Alexander Kotchegura, "Reducing Corruption in Post Communist Countries", *International Public management Review*, (5)1, 138-156, p. 140

[41] See, among others, Aleksandra Rabrenovic and Tony Verheijen, *"Politicians and top civil servants in former Yugoslav states, back to discarded traditions?"*, undated text.

We ask the question: What is the normative distance that "our" 9 countries will have to travel to be able to comply with the standards we have described above and which they have accepted without reservations?

In order to be able to answer this question we have to look at the legal situation and administrative practices when communist rule collapsed 15-25 years ago. How were the 10 areas of integrity that are at the heart of this study regulated at that time? We will look at the situation in Yugoslavia, i.e. the Socialist Federal Republic of Yugoslavia (SFRY), that existed from 1945 until 1992. The SFRY included all of the countries in our study, except for Albania, Bulgaria and Romania. We will also briefly comment on how the situation in Yugoslavia differed from the main patterns in the former Eastern Bloc.

4.2 Integrity norms in the former Yugoslavia

Parliamentary control

Effective parliamentary control of the executive branch was hardly possible in the Yugoslavian one-party state or in any other one-party state. The belief of the communist party's leading role was a central element in the SFRY's constitutional order. All of the country's constitutions in the period from 1945 to 1992 gave the party responsibility for leading the conversion of society into a socialist democracy. In the 1960s and 1970s, the regime made attempts to strengthen the role of the party.

Like the other socialist countries, there was no division of power, but a system in which power was concentrated. In the constitution of 1953, this system was referred to as an "assembly system" in which all branches of government, the executive, judicial and legislative, were combined in the national assembly. The government was not an independent body, but the national assembly's "executive committee" The supreme executive bodies were not referred to as "ministries", but as "secretariats" for the executive committee. The administration of justice was delegated to bodies that were expected to act independently. However, there is doubt about the scope of this independence, particularly when concerning the ability to overrule decisions made by the state authorities. Unlike the other communist states, Yugoslavia had a constitutional court. However, the independence of this court was limited. It was part of the national assembly and the regime ensured that it did not hinder the work on "socialist progress".

The national assembly had a separate committee for defence and security matters, however the actual control of the military and other security agencies was limited.[42] The Yugoslavian military-industrial complex, army and munitions industry were almost states within the state.[43] The party organisation

---

[42] J. Đorđević, *Politički sistemi*, Savremena administracija, Beograd, 1988, p. 601.

[43] Sundhaussen, footnote 38, p. 199.

in the armed forces had the same rank as the party organisations in the country's 6 republics. The armed forces were referred to as the country's 7th republic and the head of the party organisation for the armed forces was, by virtue of this position, a member of the communist party presidium.[44]

Control of security and intelligence services

In the period from 1945 until 2002, there was practically no legal regulation of the security and intelligence services. Matters concerning the services' duties, authority, methods used and responsibilities were largely determined by the services themselves. This was done in internal documents that outside parties did not have access to. There was no judicial control of the legality of the measures that were initiated.

Conflicts of interest

According to communist theory, decisions by the state authority were made by representatives for the ruling class and thereby automatically represented the interests of this class. This thought was not expressed as dogmatically in Yugoslavia as in other communist countries. However, according to the Yugoslavian legal system, socialist societies had, in principle, no conflict between the public and private spheres of society. There were therefore no rules regarding issues of competency.

External and internal audits

External audits had long traditions in Yugoslavia. In the Kingdom of Yugoslavia (1918-1945), the state auditor performed most of the duties that are traditionally the role of these types of bodies. The state auditor was expected to work independently and decide on its own organisation and own work programme. After 1945, auditing duties were assigned to the so-called Social Auditing Service. This was also supposed to function independently. However, this had to occur with the restrictions that come with a one-party state. The audit included both the military and Yugoslavian munitions industry. The state auditor was an important institution in Yugoslavia. It was supposed to ensure that the country's leadership had control over and an overview of all important financial transactions.

While the external audit was relatively well-developed, the *internal audit* was unknown. In the defence secretariat (i.e. the defence ministry), there were a number of control and inspection arrangements, however these had little in common with the present systems for internal audits. The systems that were in use do not appear to have contributed much to irregularities being discovered or prevented.

Ombudsman arrangements

The idea that the party and state constitute one entity was not as dogmatic in Yugoslavia as in the Soviet Union. Yugoslavian leaders were concerned about the danger of administrative bodies being able to evade political control and taking on a life of their own and thereby representing a threat to the socialist

[44] Ibid.

society. State and bureaucracy were necessary evils that had to be kept under control. Yugoslavian lawyers developed the term "socialist legality". This entailed that state bodies also had to obey the law. A number of mechanisms were used to regulate the public administration's exercising of authority, one of which was the introduction of the Public Administration Act in 1956. This act largely followed an Austrian-inspired act from the inter-war period.[45]

The Yugoslavian constitution of 1963 gave the public expanded rights in relation to state authorities, including the right to appeal administrative decisions. However, no independent appeal or review body existed. In the 1960s and 1970s, Yugoslavian lawyers discussed the need for establishing an ombudsman arrangement. The result was an arrangement that applied to employment issues, i.e. issues relating to the special Yugoslavian system for "social self-management ". Conflicts between citizens and state authorities were outside the ombudsman's area of responsibility. The Yugoslavian solution therefore had a different and far more limited function than what is described in the international standard for ombudsman institutions.

Anti-corruption bodies

No separate anti-corruption body existed. Yugoslavian leaders gave little attention to measures for averting and preventing corruption. The regime was much more concerned with following a sanction-oriented line, i.e. cracking down on alleged instances of corruption - usually among political opponents. Sanctions in the form of spectacular police operations and court cases were politically attractive. They were highly visible and documented the power to act.

Public access to official information

According to Yugoslavian legal theory and administrative practices, the public had a collective right to be informed about official matters. Correspondingly, state bodies had a duty to provide information. This concerned indirect access to information. It was to be communicated to Yugoslavian citizens via public media. However, state guidelines for prioritising and disseminating information, prevented the media from operating freely. The authorities expected that journalists would practice self-censorship and that in their reports they would not deviate too much from the official line.

As individuals, Yugoslavian citizens did not have any right to official information. It is true that the Yugoslavian constitution of 1963 introduced the principle of transparency in the public administration, however this principle was restrictively practised. Administrative bodies could themselves, and rather arbitrarily, decide whether a request for information would be complied with or not.

[45] Andreas Bilinsky, "Das sowjetische Verwaltungsverfahren vor dem Hintergrund des Verwaltungsverfahrens in den übrigen osteuropäischen Staaten", 20(1) *Jahrbuch für Ostrecht* (1979), 425-458.

The principle of transparency was counteracted by a reverse consideration that was certainly much more strongly emphasised, i.e. the need to protect state secrets. There were hundreds of provisions regarding secrecy. The many definitions of "secret" were contradictory, often outdated, and were arbitrarily applied. It was not difficult for state bodies to find a reason or a pretext to classify information as secret if they wanted to do so.

Many issues were taboo and not items for public debate. If "forbidden" topics were be discussed, this occurred in behind closed doors and by the political elite. It appears that Yugoslavian citizens resigned themselves to this situation. They were reluctant to request access to information that was found with state authorities and were careful about overstepping explicit or implicit boundaries for public statements.

Personnel management

The system of personnel management underwent several changes during the period from 1945 to 1992. The SFRY differed from the other communist countries in that civil servants from the previous regime, the Kingdom of Yugoslavia (1918-1945), largely continued during the new regime. With regard to personnel management in general, the Tito regime also had fewer dogmatic features than countries in the Soviet bloc. This was particularly the case in the period from 1957 to 1978 when there was a separate law for civil servants. In other communist controlled countries, civil servants and employees in industry were governed by the same legal system.

The merit principle was introduced to a certain degree in Yugoslavian the public administration, including in provisions relating to positions being publicly advertised, and that employment and promotions had to occur after a competitive process and based on the applicants' qualifications. This system was changed significantly in 1978. Employment in the public administration were placed on an equal footing to employment in companies and other financial undertakings. The merit principle was abandoned in favour of a system in which decisions regarding, among other things, promotions and employment were completely left to the discretion of the public sector leaders.

The personnel system in the SFRY must be viewed based on the one-party nature of the country. It was difficult to reach high-level or sensitive positions without having close contacts to the political leadership. For the communist party, the authority to employ and appoint people to positions was an important means of consolidating political power.[46] Positions and honorary offices were exchanged in return for political loyalty, without much consideration to the qualifications of those who were placed in leading positions. Researchers claim that the communist party developed from being a revolutionary organisation into a clientelistic organisation.[47]

[46] Obradović, Marija (2013), "From Revolutionary to Clientelistic Party: The Communist party of Yugoslavia, 1945–1952", *East European Politics and Societies and culture*, 27(3).
[47] Ibid.

Public procurements

There was no legal framework for public procurements. The use of public funds for purchases was regulated by internal rules for the individual state bodies. These bodies made most of their procurements after negotiations. The closed and informal nature of the negotiations meant there were major opportunities for corruption and waste of public resources. One exception to this general pattern was large investment projects in which international financial institutions were involved. These institutions set requirements for procurements to take place in accordance with specific procedures. [48]

4.3 A difficult starting point for reforms

Further on in the memo, we will use three categories to determine the extent to which legal rules and administrative practices comply with the international standards:

- Largely in compliance
- Some compliance
- Inadequate compliance

In almost all areas of integrity referred to above, the legal situation and administrative practices in the SFRY demonstrated "inadequate compliance" with the standards. The only exception was external audits. For this, we can say that there was "some compliance". Because a one-party state sets limits for the auditing bodies' independence from the bodies that are subject to audits, it is difficult to see that the degree of compliance can be higher than this.

All in all, there is therefore a significant normative distance that the former Yugoslavian countries have to travel to realise the international standards. While these standards, in a nutshell, emphasise transparency and division of power, the Yugoslavian administrative tradition is almost the complete opposite, i.e. secrecy and concentration of power. In addition, we have to expect that modern beliefs regarding civil and democratic control of the armed forces can be difficult to realise in countries where these forces were the symbol of national unity and were strongly represented in important political bodies.

Even though the historical legacy is problematic, it is not unequivocal. Yugoslavia was not just a "power state". The idea of the state being bound by law was established in a number of institutional and legal arrangements. To a certain extent, the same also applied to the notion that the public administration must be built on qualifications.

The starting point for reforms in the non-Yugoslavian countries in the study, i.e. Albania, Bulgaria and Romania, was probably even more problematic that what is described above. In many ways, Yugoslavia was an exception among the communist states. For our purpose, there are two differences that are of

[48] Lukić, A. i Stojanović, S., Komentar Zakona o javnim nabavkama, p. 9

importance: The country was less totalitarian and had better developed ideas regarding "socialist legality".[49]

To what extent is the past we have described above now a closed chapter? The next two chapters will provide an answer to this question.

As a supplement to the future-oriented perspective which the international standards represent, we also use a retrospective approach whereby we examine the legal and administrative situation in the group of nine countries at the time communism or a subsequent authoritarian regime collapsed 15-25 years ago. All in all, the countries will have to travel a considerable normative distance in order to achieve the internalisation standards. While the standards emphasise transparency and division of power, the administrative tradition in Southeast European countries is almost the exact opposite, i.e. secrecy and concentration of power.

[49] Ivo Lapenna, *State and Law: Soviet and Yugoslav Theory*, Yale University Press, New Haven, 1964.

5 National legislation: compliance with international standards

5.1 The overall picture

In this chapter we assess the extent to which the present national legal frameworks comply with the international standards.[50] We not only assess the material content of the norms, but also other features of the legislation. For national legislative acts to have administrative effect, it is important that they are of good quality. By "good quality" we mean, among other things, that:

- Provisions are stipulated at the correct level of the legal hierarchy.
- Concepts are clearly enough defined.
- There is normative consistency across different legislative acts.
- Secondary regulatory framework ("regulations") is adequately prepared.
- The regulatory framework demonstrates the necessary stability and predictability, i.e. not constantly being amended.

We have assessed a total of 106 areas of law. We assessed 12 areas of law for 7 countries and 11 areas of law for 2 countries. Table 1 below demonstrates the extent to which the national regulations comply with the international standards.

Table 1: Compliance between normative standards and national regulations - 9 countries

Absolute figures– percentages in brackets

Area of law		Largely in compliance	Some compliance	Inadequate compliance	Total
• Parliamentary control		7	2	0	9
• Control of security and intelligence services		5	3	1	9
• External audits		5	4	0	9
• Ombudsman		8	1	0	9
• Conflicts of interest	Civilian	7	2	0	9
	Military	0	7	0	7
• Access to official information		7	2	0	9
• Public procurements		5	1	3	9
• Disposal of assets		4	5	0	9
• Internal audits		6	3	0	9
• Civil service legislation		4	5	0	9
• Anti-corruption bodies		7	1	1	9
• Total		65 (61)	36 (34)	5 (5)	106 (100)

[50] The assessment is based on the review from the Institute of Comparative Law in Belgrade, see page 6 above, and footnote 4 and an assessment undertaken by the EU expert on corruption/good governance (see p. 6 above). For most countries in the study, the analysis is based on an assessment of the legal situation at the end of 2014. For the other countries, this concerns the situation at the end of 2013

The information in the table demonstrates discontinuity and a historic breach. The principal impression is that the legal frameworks in the countries have changed considerably in comparison with the situation 15-25 years ago. When the reforms commenced, there was, as we have mentioned, "inadequate compliance" in almost all areas. Now more than half of the areas of law studied, 61 percent, are "largely in compliance" with the standards.

However, the picture varies somewhat across areas of law and from country to country. The best regulated areas, i.e., those that show the greatest compliance with the standards are:

- Ombudsman arrangements ("largely in compliance" in 8 countries).
- Parliamentary control ("largely in compliance" in 7 countries).
- Conflicts of interest regulations for civilian officials ("largely in compliance" in 7 countries).
- Access to official information ("largely in compliance" in 7 countries).
- Anti-corruption bodies ("largely in compliance" in 7 countries).

The legal deviations are greatest in areas where the risk of corruption/abuse of authority is high:

- Disposal of assets ("some compliance" in 5 countries)
- Civil service legislation ("some compliance" in 5 countries).

It is worth noting that in three countries we consider the regulations for public procurements to have "inadequate compliance" with the international standards. The situation is also problematic when concerning rules regarding conflicts of interest for military personnel. We find "some compliance" with the standards in all of the countries we have studied. For civilian officials, these types of rules are clearly of better quality.

In five of the countries studied, more than half of the regulations were "largely in compliance" with the standards. In two countries, this applied to 10 of 11 areas of law and in one country, 10 of 12 areas of law. At the opposite end of the scale, there were countries where only 4 or 5 areas of law achieved this type of score.

5.2 Further details about individual areas

Parliamentary control

In two countries, the regulations demonstrate only limited compliance with the standards. This is due, among other things, to

- The public having limited opportunities to familiarise themselves with the work of the parliamentary committees that are responsible for defence and security matters.
- That, in important areas, the parliament has limited opportunities to amend proposals from the government.

Control of security and intelligence services

Even though this area is adequately regulated in the majority of countries, there are considerable deficiencies in three countries, including the following:

- There are rules that the intelligence services have to provide security clearance for members of the parliament's control committee. This means that those who should be controlled - the security services - have right of veto against those who should be implementing the control - the parliamentarians. Therefore, the principle of effective civil and democratic control is threatened.
- The rules regarding, among other things, employment in the security and intelligence services allow for the politicisation and party-political abuse of the services.

Conflicts of interest

With regard to *civilian* officials, the legislation in the majority of countries is largely in compliance with the standards. In two countries, the situation is more problematic. This is due to inconsistent and unclear regulations that, among other things, make it possible for civil servants to hold positions etc. that can raise doubt about their impartiality.

As mentioned, none of the countries have satisfactory rules for military personnel. The rules are often unclear and involve, among other things, military staff not being subject to the same reporting obligations regarding income and asset circumstances as civilian officials.

External audits

In five countries, the regulations largely follow the international standards. In four countries there is "some compliance". All deviations apply to independence of audits. In part, there is doubt about whether the constitution provides adequate guarantees for independence. There is also suspicion that provisions in the audit law have been amended to make it possible to recruit a leader whose personal independence has been called into question.

Internal audits

The overall impression is that the national regulations follow the standard. However, the situation in three of the countries is problematic. This is primarily due to the fact that the regulations do not clearly enough describe the different functions and roles in the financial control system.

Ombudsman arrangements

All countries in the study have established ombudsman institutions. In Bosnia and Herzegovina there is also a military ombudsman. In all countries, the constitution and a special law regulate this institution. With the exception of one country, the legal regulation is largely in compliance with the international standards. In countries with the least compliance, there is doubt about whether the legislation sufficiently ensures the financial independence of the ombudsman.

Anti-corruption bodies

7 countries have regulations that are largely in accordance with the standard. The two other countries give an impression that is more problematic. In part, there is no legislation for these bodies, or possibly only rules at regulation level, and the legislation also sets no effective barriers against political appointments.

Rules relating to public access to official information

In all but two of the countries we studied, the constitution guarantees public access to official information. In addition to the provisions in the constitution, there are special laws that regulate the public's rights in this area in more detail. All legislation dates from the period after 2000. This means that the regulations are largely based on the relevant international standards.

However, in some of the countries it is a problem that the regulations have not been adequately prepared and that provisions regarding confidentiality and protection of information are not harmonised with the rules regarding access to information.

Civil service legislation

In almost all of the countries, the civil service law applies for the vast majority of civil servants in the defence ministries.[51] In four countries, the civil service legislation is largely in compliance with the standards. There was "some compliance" in the other five countries. It is in this latter group of countries in particular that we find, among other things, the following weaknesses:

- Frequent, and in some places almost continual, statutory amendments that reduce the predictability of the personnel system and therefore also the rule of law in this area.
- Inadequate protection of the principle that the best qualified people must be employed in state positions.
- Lack of transparency and clarity regarding salary and bonus arrangements.

In none of the countries are there adequate rules regarding whistleblowers.

Military procurements and disposals

Five countries have procurement regulations that are largely in compliance with the international standards. We find "inadequate compliance" in three countries. A major problem in the latter-mentioned countries is that the legal framework makes broad and flexible exceptions for military procurements. This entails the risk of inadequate transparency, arbitrariness and corruption.

The situation is also problematic when concerning the disposal of military equipment and military assets. The major problems are:

- There are no provisions, or only vague provisions, regarding parliamentary control.

[51] Military personnel come under the law relating to the armed forces or similar.

- The regulations contain loopholes that can foster detrimental practices.
- There are few or no provisions regarding official information.

After having examined the extent to which the national legal systems reflect the international standards, we will now examine whether we can find the standards in the countries' administrative practices.

The review of the present legal frameworks demonstrates discontinuity and a historic breach. While there was "inadequate compliance" with the international standards in almost all areas 15-25 years ago, today more than half of the areas of law studied, 61 percent, are "largely in compliance" with the standards.

6 National administrative practices: degree of compliance with international standards

6.1 Administrative practices: an overview

We will assess administrative practices in the same manner as the regulations and classify practices as "largely in compliance", "some compliance" or "inadequate compliance" with the international standards.[52] Difi's methodological document contains a number of questions regarding administrative practices. Of particular importance are the information and assessments provided by:

- People who work with the relevant case area in the public administration, particularly in the defence ministries.
- People who are employed in bodies that have the task of monitoring the implementation of laws that are inspired by the international standards. This refers to employees in ombudsman institutions, state control and appeals bodies, auditing authorities and the specialist administration of, among other things, public procurements, personnel management and state information activities.
- Independent experts and journalists.

Table 2 below summarises the results. It shows a clear difference between regulations and administrative practices. Administrative practices reflect the standards to a far lesser degree than the regulations. Consequently, there is a lag when concerning the implementation of the adopted rules. While 61 percent of the regulations were "largely in compliance" with the standards, the corresponding figure for administrative practices was 24 percent. Administrative practices show "inadequate compliance" with the standards in 20 percent of the areas of law, while the figure was 6 percent for the regulations.

It is a question of interpretation as to whether the figure of 24 percent for "largely in compliance" is high or low. Another, perhaps even more relevant question, is how comprehensive are the changes that are possible to achieve during a period of 15-25 years, especially in view of the difficult starting conditions. Experience from several countries indicates that radical restructuring and renewal processes that are attempted to be implemented in a short period of time, are associated with major difficulties and often fail. Step-by-step reforms that are adjusted in light of experiences appear to be a more

[52] Determining the *degree of compliance* between standards and administrative practices is achieved in the following manner: three people have had close involvement with the collection and processing of data in each country: the local expert, the EU expert on corruption/good governance and Difi's project manager. These people have, independently of one another, rated administrative practices in each topic area in each country using a five point scale. The extremities of the scale are "full compliance with administrative practices and standards" and "very inadequate compliance". In each area, a score was given that is the average of the assessments made by the three individuals. In the final representation, the five categories were combined into three: "largely in compliance", "some compliance", "inadequate compliance".

promising approach. Based on this, the result we describe is perhaps what can reasonably be expected.

Table 2: Compliance between normative standards and national administrative practices - 9 countries

Number of countries and regulatory areas - absolute figures - percentage distribution in brackets

Area of law	Largely in compliance	Some compliance	Inadequate compliance	Total
• Parliamentary control	1	6	2	9
• Control of security and intelligence services	0	7	2	9
• External audits	5	4	0	9
• Ombudsman	4	3	2	9
• Conflicts of interest, civilians	2	4	3	9
• Access to official information	3	6	0	9
• Public procurements	1	4	4	9
• Disposal of equipment and assets	1	5	3	9
• Internal audits	3	5	1	9
• Civil service legislation	2	5	2	9
• Anti-corruption bodies	2	6	1	9
• Total	24 (24)	55 (56)	20 (20)	99 (100)

The area that positively stands out is external audits. For this area, the practices in a majority of the countries were "largely in compliance" with the standards, and there were no instances of "inadequate compliance". There were also no instances of "inadequate compliance" when concerning access to official information. Three countries have practices that "largely" follow the standards in this area.

Administrative practices are problematic in, among other things, three areas where there is a major risk of corruption and abuse of authority:

- Public procurements (4 countries demonstrated "inadequate" compliance and only one country was "largely in compliance").
- Disposal of equipment and assets (3 countries demonstrated "inadequate compliance, and one was "largely in compliance")
- Controls of security and intelligence services. (Two countries have "inadequate compliance". No countries were "largely in compliance")

There are major differences between the countries. The country that performs best, demonstrates a strong ability to implement measures, i.e. "largely in compliance" in all areas of integrity. This country, together with a few others, has undertaken fundamental reforms of its administrative systems in what in our context can be said to be a short period of time. At the other end of the scale, we find countries in which administrative practices were not "largely in compliance" for any of the areas or for only a minority of the areas. Two countries demonstrate "inadequate compliance" in five areas.

6.2 Problem areas

Even if there are positive features, it is the deficiencies that are most prominent when we assess administrative practices in relation to the ideal situation as this is described in international legislative acts and guidelines. How does the inadequate administrative practice manifest itself?
We will briefly provide some examples that are typical for several countries.

Parliamentary control and control of intelligence and security services

- The parliamentarians are reluctant to use the authority they are assigned by law.
- The government provides incomplete information to the parliament and does not effectively respond to inquiries from parliamentarians.

Conflicts of interest

- The prosecuting authority and courts only follow up, to a limited extent, notices of serious breaches of the rules pertaining to conflicts of interest.
- Enforcement bodies are subjected to political pressure to not pursue cases that concern breaches of conflicts of interest provisions.

External audits

Despite the fact that this is the best functioning area of integrity, there are still problems in several countries:

- Ministries, including defence ministries, are delayed in reacting to audit reports.

Internal audits

- A consistent problem in several countries is that authority in the ministries is not delegated, despite the fact that the legal framework makes such delegation possible. All decisions regarding the use of funds are made by the minister personally. Without a system with delegated authority, it is not possible to have financial control that complies with the international standards.

Ombudsman arrangements

- The ombudsman is restrained in using its authority.
- The ombudsman's recommendations and instructions are ignored by administrative bodies.

Anti-corruption bodies

- The body is passive due to actual or anticipated political pressure.

Public access to official information

- Requests for access to information are either not responded to or are only responded to after an extended period of time.
- Information is routinely exempt from public access.

Personnel management

- The principles regarding qualification-based employment and promotions are bypassed to find room for candidates who have support from political parties and the political leadership.

Public procurements and disposals

- A large number of purchases are made after negotiations with only one supplier. The competition principle is therefore circumvented.
- Purchased equipment is of low quality or is unusable.
- Sales of assets and equipment are carried out with little transparency and give rise to claims that public funds end up in private pockets.

Deviations that are described above, have features common to the legal and administrative situation that was commonplace 15-25 years ago, for example, the tendency towards secrecy, attempts to circumvent conflicts of interest provisions and recruitment that is not in compliance with the qualification principle. The deviations are greatest in areas where there have not been traditions for statutory regulation and where the international standards represent an administrative ideal that was almost unknown 15-25 years ago. This includes parliamentary control, public procurements, disposals of equipment and assets and control of security and intelligence services.

In addition, it is interesting to note that the deviations are lowest in the area in which, at least in the countries of the former Yugoslavia, there is a long, specialist-based tradition, i.e. external audits. In other words, while the legal frameworks convey an impression of historical *discontinuity*, administrative practices in several countries are more a sign of *continuity* across what may be seen as epochal regime changes.

6.3 Explanations of deviations

We shall attempt to explain two sets of related deviations, between administrative practices and the international standards and between administrative practices and the national legal frameworks. As we have seen, the scope and content of the deviations vary from country to country. The explanatory factors therefore do not apply to the same extent for all countries. The description below, particularly sections 6.3.2 and 6.3.3, primarily applies to the countries that have the most and greatest deviations.

In order to explain the deviations, we will look at the three factors that we also use to determine how well the standards are institutionalised: legal framework,

public administration and internalisation. When we have completed this analysis, we will also have a picture of how effectively the standards are institutionalised.

6.3.1 Legal framework

The main purpose of enacting laws is to influence people's behaviour. In our situation, we have already established that there is a gap between legal frameworks and decision-making behaviour. The table below sheds more light on this topic. The table shows the connection between legislation and administrative practices.

Table 3: Connection between legislation and administrative practices
Areas of law - absolute figures - percentage distribution in brackets

		Compliance between standard and national *legal frameworks*			
		Largely in compliance	Some compliance	Inadequate compliance	Total
Compliance between standard and *national administrative practices*	Largely in compliance	22	2	0	24 (24)
	Some compliance	37	17	1	55 (55)
	Inadequate compliance	6	10	4	20 (20)
		65 (66)	29 (29)	5 (5)	99 (100)

The table provides an ambiguous picture of the importance of formal regulations. On the one hand, we almost always find good practices ("largely in compliance") in areas with good regulations (22 areas in total). On the other hand, as we have already noted, there is a noticeable distance between practices and regulations. In a majority of the 99 areas (53 in total), practices were weaker than what the regulations would indicate. Practices were better in three areas, and in 43 areas the regulations and practices were at about the same level. Practices showed a lag in 43 of the 65 areas where the regulations were best. In these 43 areas, practices showed either "some" (37) or "inadequate" (6) compliance with the standards.

In summary, a good regulatory framework appears to be a necessary, albeit insufficient, requirement for good governance. A good regulatory framework must be effectively administered and must be understood and accepted to have the intended effect. These final points were considerably lacking in many of the countries we studied. We will take a look at this below.

The distance between legal frameworks and practices varies considerably from country to country. The three countries with the weakest ability to implement had slightly more than half all the problematic deviations (deviations in which practices are weaker than the regulations). There are not only many deviations in these countries, some of them are also major, i.e. while the regulations "largely" harmonise with the standard, administrative practices demonstrate "inadequate" compliance. In these instances (five in all), relatively good legal frameworks only exist on paper. The ability to implement is weakest when concerning parliamentary control and military disposals.

6.3.2 Public Administration

All countries exhibit deficiencies in the manner in which the anti-corruption norms are administered. The weaknesses are often consistent weaknesses in the administrative apparatus and are associated with the upheavals after the fall of communism not having made much of a change to the inherited work methods in the administrative system. Here we will review some of the most important problem areas.

Inadequate capacity in key areas of the administrative system

Bodies that are responsible for enforcing integrity rules or that work in areas with a clear risk of corruption, often have limited capacity. They do not have enough staff with sufficient expertise (particularly for internal audits and public procurements). The bodies also have unsuitable work routines and inadequate budgets. Some ombudsman bodies and anti-corruption authorities also have a mandate that restricts their capacity to act. In one of the countries in the study, Difi carried out an in-depth analysis of the procurement work in the defence ministry. The principal conclusion, which appears in the text box below, demonstrates a number of problematic factors.

Text box 11: Administrative failures when concerning public procurements[53]

- The MoD's procurement department is not sufficiently staffed. […] Whatever the numbers, there is considerable doubt whether the efforts of those actually employed are used in the best possible way. In addition, MoD staff and members of MoD procurement committees do not always possess necessary expertise.
- Existing organizational arrangements suffer from lack of clarity. More attention should be paid to the need to put in place a proper division of responsibilities within the procurement system.
- Current planning arrangements are inadequate for a number of reasons, *e.g*. plans are not well synchronized; do not specify the deadline for initiation of the procurement process nor list the officials who will be in charge etc.).
- Technical specifications for most equipment and goods used by the Armed Forces have never been adequately developed. Technical requirements of procured goods and equipment are determined by the Armed Forces ad hoc on a case by case basis.
- The MoD has not yet set up a system for reliable and timely delivery/circulation of financial documentation. […]The arrangements currently in place are clearly dysfunctional not least because of the large volumes of invoices handled manually. Annually the MoD receives and pays 15 000-20 000 invoices originating at some 45 different locations throughout the country. All invoices are sent by regular post from the relevant army units to the ministry. Because of insecure transport arrangements a significant number of invoices are lost and impossible to retrieve. Consequently, the MoD is paying considerable amounts in penalty interests due to delayed payment.

The weaknesses described in the text box can also be found to varying degrees in several countries. They not only reduce the professional quality of the procurement work, they also involve a risk of corruption.

Lack of professional autonomy

It is a consistent pattern in several countries that the civil service staff have limited professional independence. In a ministry, it is only the minister who has the authority to make decisions. All matters, including the most trivial, are

[53] The text is taken from one of the country reports in this project.

presented to and decided by him or her personally. The civil servants are reluctant to act without first having obtained an explicit instruction from the minister. The belief that civil servants have, first and foremost, a duty to obey orders from their superiors is strong. Far less developed is the idea that the role of the civil servant also involves expressing disagreement with the political leadership when this is required.

The degree of centralisation involves the risk that political considerations trump professional and legal considerations. In instances in which, for example, there are strong party political interests, it would probably not be difficult for the minister to find civil servants who can assist in giving these a semblance of legality, including when concerning decisions that are legally questionable.

At the same time, bodies that are supposed to monitor and control the work in the public administration, i.e. appeals bodies and courts, are often weak and there is a view that they can bend to political pressure. Placed in context: politicians do not need to fear the consequences of providing questionable instructions, and civil servants do not feel urged to oppose these. However, it will also not be desirable for civil servants to be involved with unlawful decisions. This involves an incalculable risk that is best to avoid. They have therefore developed strategies for managing situations in which law and politics clearly move in opposite directions. However, these strategies provide no assurance that the law will, in the end, prevail (see the text box below).

Text box 12: Managing conflicts between legal requirements and political expectations[54]

A common experience is that ministers' wishes are incompatible with the procurement legislation. Seemingly, officials seek to solve this dilemma by following a certain procedure. At the same time as they prepare a decision whose conclusion is in conformity with the law, they intentionally make a number of formal errors in the allocation document, which will render the decision null and void if appealed. The unsuccessful bidder, supported by members of the political elite is then made aware of the fact that although the outcome of the case is not in his/her favour, the decision could be successfully challenged in front of the complaints body. As it seems, this suggestion is often followed; the result being an unmanageable number of complaints, which in turn blocks the system of public procurement to the detriment of all state authorities.

As we have already mentioned, in a system with absolute centralisation of decision-making authority it is not possible to carry out internal audits according to the standards we have described above. It is also not possible to have internal control arrangements for procurement work carried out by the administrative bodies. In some places, such arrangements are required in the procurement regulations. For controls to be effective, those who implement them must have a minimum level of professional independence.

Inadequate investigative and analytical capacity

In the decades following the Second World War, policy development and analysis became an important work area in ministries in Western European countries. The ministries were considered important bodies for planning and

[54] The text was taken from a report that Difi is presently preparing.

managing the strong growth in state involvement. This was not the case in the communist countries in East and Southeast Europe. For these countries, the party bodies were primarily responsible for policy development. [55] The ministries had purely executive functions. This is still the case in many places.

The lack of analytical capacity has consequences for the quality of the countries' laws. When a new law is to be prepared, the ministries like to start with the text of the individual sections, often without any form of prior assessment or analysis. There is therefore a considerable risk that the content in each provision will not be adequately considered, that there is a lack of compliance with other laws, and that key provisions cannot be implemented. Such factors result in the need for continual statutory amendments. The end result can often be an unclear legal situation that can provide a basis for abuse of authority and corruption.

In essence, laws are the only method of governance the public administration knows. Adopting a new law is often viewed as an adequate reaction to a social problem. State bodies often give little attention to the issue of implementation. Legal experts in the countries we studied claimed that laws often have a purely symbolic function. They are intended to divert people's attention from social problems and/or give the impression that the authorities are acting. There was a long tradition for this in Yugoslavia. Social problems were recognised in law, however no attempt was made to solve them.[56]

6.3.3 Internalisation

In this section we will examine the extent to which international standards are accepted, known and understood.

Lack of political acceptance and understanding of international standards

The overall impression is that leading members of the political elite in the countries included in this study have not promoted or have not fully accepted the international standards. There are a number of factors that give support to this view:

- The standards have almost exclusively been introduced on the initiative of foreign countries and often after foreign pressure, first and foremost from the EU. The political leadership in the candidate countries have often had little interest in issues regarding institutions and integrity. They have most probably accepted the series of institutional reforms as perhaps an undesired, but necessary price for obtaining access to the tangible, economic benefits membership brings. [57]

[55] Verheijen, Tony og Aleksandra Rabrenović (2001), "Review of the Theory on Politico-Administrative Relations", in Tony Verheijen (ed.) *Politico-Administrative Relations: Who Rules*, Bratislave: NISPAcee.

[56] John B. Allcock, *Explaining Yugoslavia*, Hurst and Company, London 2000, p. 425.

[57] See for example the statements from the Romanian prime minister Victor Ponta which were quoted in the Vienna newspaper "Der Standard", (Standard Korrespondent Blog), 23.5.2014, (Hätte man uns 2007 (im Jahr des EU-Beitritts Rumäniens, Anm.) gesagt, dass wir weder

- It is widely assumed that the political leadership has not been afraid to circumvent or breach the EU-inspired regulatory framework. The breaches appear to have been particularly frequent when concerning the rules regarding qualification-based employment.
- A number of countries have reversed, or proposed reversing, regulations that were introduced on the initiative of the EU. Such measures entail or will entail a weakening of the international standards. Some of these attempts, however not all, have been blocked on the initiative of the EU Commission.
- When regulations and other arrangements that promote integrity have been introduced due to outside initiatives or pressure, the political elite of the countries have sometimes attempted to comply with the requirements in a minimalistic manner. A few examples: To achieve visa liberalisation, countries have had to commit to establishing anti-corruption bodies. These types of bodies have been established, however in some cases they are almost completely toothless. It is difficult to believe that the intention has been for them to function effectively. There are also credible claims that politicians have consciously worked to make anti-corruption laws so deficient that they are impossible to enforce.[58]
- In conversations with Difi, leaders of bodies that are responsible for monitoring the enforcement of anti-corruption norms (ombudsmen, heads of appeals bodies etc.) revealed that they had faced harassment and, some cases, physical violence. It was suggested that such attacks could have been carried out on the instructions of politicians and others who have been dissatisfied with decisions the bodies have made. Reporting such matters to the police has not always resulted in any reaction.

In all of the countries in the study there is a view that members of the political elite themselves are involved in corruption and abuse of authority and that they therefore are not interested in measures that set strict limits on the political leadership's freedom of action. It is not possible to have precise knowledge about this, however information that has emerged in a number of court cases gives the impression that it is not unusual for political leaders to misuse state resources to favour party political and private interests. It is worth noting that the legal proceedings have not only involved individuals. In June 2014, the largest political party in Croatia, HDZ[59], which held government power for many years, was found guilty of corruption.

Straßen noch Spitäler, noch eine Landwirtschaft haben werden, aber uns die Integritätsbehörde und die Antikorruptionsstaatsanwaltschaft beschert werden, hätten wir es uns vielleicht genauer überlegt.)

[58] This includes, among other things, the Bulgarian law relating toconflicts of interest, see Johanne Lie Tærum, *EU Conditionality and Anti-Corruption*, master thesis in political science, University of Oslo 2014, p. 83.

[59] Hrvatska demokratska zejednica, The Croatian Democratic Union.

It is possible that the conviction of high-level government officials will have a deterrent effect and result in less political corruption. However, in several countries there is reason to believe that the anti-corruption agencies, prosecuting authorities and courts are still reluctant to act in cases that could implicate important government officials. Effective legal responses against the senior political leadership only or mostly appear to have been successful when national courts and control bodies have been actively supported by the EU. If left to themselves, it is likely that many national bodies would not consider themselves strong enough to take up the fight.

For its part, the political leadership may exhibit passiveness towards criticism from supervisory bodies and courts. This applies, for example, to a case Difi has studied in detail: A court found that long-standing and widespread practices in security agencies were a violation of the constitution and a breach of the European Convention on Human Rights. However, this ruling did not result in any attempt to clarify how the abuse was able to occur or in measures to prevent this from reoccurring in the future. It is also remarkable that the case also has not triggered any activity by the national assembly.

It is important to emphasise that the failure to support the international standards is due to a variety of factors. The lack of political will is one, but only one, explanation. Other problems are inadequate knowledge about and understanding of what the international norms for good governance involve. Politicians and civil servants in "our" 9 countries have, through education and professional practices, largely been socialised into a different world view. Some of them started their careers under a communist or authoritarian regime in which, as we have seen, state practices and legal norms were very different to the present Western administrative ideals.

There is also a risk that newly qualified decision-makers have not received adequate education in or have not had the opportunity to work critically with topics that relate to the present ideas regarding good governance and the normative "revolution" that their homelands have undergone and continue to undergo.

In many places, the classic state universities have failed to reform the teaching programmes in, among other things, law and social sciences, in the past decades. There is a lack of good textbooks in the national languages. Foreign language academic literature is not used to any large degree. This is due, among other things, to the fact that many of the oldest and leading university professors have inadequate language skills.

Some of the mechanisms that can reduce the professional independence of civil servants can have the same effect on the staff at the state universities. In some of the countries, academic institutions appear to be reluctant to provide teaching and conduct research that may involve a critical focus being directed at the country's authorities.

The many private universities that have emerged in the Balkan countries in the past decades will unlikely be able to compensate for the deficiencies at the state universities, perhaps the opposite in fact. Reliable observers claim that the absence of accreditation arrangements entail the risk of private places of learning awarding academic degrees to graduates who do not have the necessary qualifications. [60] For some civil servants, a (perhaps questionable) academic degree from a private university has made it possible for them to achieve or retain employment in the public administration after the merit principle was introduced.

Authoritarian traditions of governance

The cultivation of political leadership figures was not just a characteristic of nazism and fascism, but also of communism and was expressed through widespread support and loyalty to leaders such as Josip Broz Tito, Nicolae Ceausescu and Slobodan Milosevic.[61]

The dictators are gone, however their legacy still shows signs of life. For many, both political leaders and others, the idea of power *sharing* is still an alien concept. A great deal of power is concentrated in the hands of party and government leaders. These people have the ability to create and destroy careers in both politics and the state administrative system, including the courts. In several areas, the authorities have taken active steps to bring the courts under the control of the executive branch. Legal experts have noted that the "constitutional technology" that is used to achieve this is the same as that which was used by the communist leadership.[62]

The dominant position of the party leaders is most probably also part of the explanation for the ineffectiveness of parliamentary control of the public administration and security service. There are few in the parliamentary faction of the governing party that will risk their careers by criticising or becoming actively engaged in matters that are the domain of the government. This is even more the case when alternative career opportunities for parliamentarians and other political officeholders are extremely limited.

The fact that control bodies such as the ombudsman and anti-corruption bodies are reluctant to use their authority may also be due to the authoritarian nature of the state leadership, including that it apparently is not afraid to use violence and threats, or that this impression could have become established (see above). Difi has been informed that for some bodies that play an important role in

---

[60] See for example, "Privatni fakultet i niču kas alternativa jevnim" ("Private faculties flourish as alternatives to those run by the state"). The article is available from the website of the Center for Investigative Reporting in Sarajevo, http://www.cin.ba/privatni-fakulteti-nicu-kao-alternativa-javnim/, see also Neue Zürcher Zeitung 31 March 2014, "Mit Bestechung zum schnellen Universitätsabschluss".

[61] Balazs Apor *et al*., *The Leader Cult in Communist Dictatorship. Stalin and the Eastern Bloc* (Palgrave MacMillan, Basingstoke, 2004); Radu Cinpoes, "The Role of Authoritarianism and Totalitarianism in Romanian Post-Communist Nationalism", 30 *Southeastern Europe/L'Europe du Sud-Est* (2003), 39-52.

[62] Rakić-Vodinelić, Vesna et al. (2012), "Judicial reform in Serbia 2008–2012", Belgrade: Center for Advanced Legal Studies, pp. in 115 and 116.

combating corruption, such conditions make it difficult to recruit adequately qualified personnel.

Greater emphasis on loyalty than qualifications

There is a view that decisions by a country's state administration reflect social norms and traditions that, to a greater or lesser degree, correlate with the international standards regarding integrity that we have described above. Researchers use the distinction between universalist and particularist cultures to highlight this assertion.[63] In universalist cultures, which we primarily find in Northern and Western Europe, the consideration of impartiality and equal treatment determines how the authorities distribute benefits and burdens. Legal provisions and fixed practices control decisions made by the public administration. In particularist cultures that are common in Southern and Southeast Europe, political leaders have much greater scope to act in a manner that may be to the detriment of institutions that are bound by formal laws. People who have a close relationship to the state leaders will have their interests better safeguarded, for example, when concerning access to public employment or contracts, than people who do not have these types of connections.

Empirical studies also indicate that cultural factors such as those mentioned above, may explain the recruitment practices in the state administration that have long been standard in the former Yugoslavian countries. Opportunities for employment and careers can depend more on who people are, i.e. their group affiliation and assumed loyalties, rather than the extent to which they can document relevant expertise.[64] A study of the extent to which civil servants in the public administration in countries in the Western Balkans support the qualification principle shows some, but only some, support for this principle. In some countries, the support is not strong enough for it to be in compliance with international standards.[65]

6.4 Institutionalisation

As we have already seen, there can be different relationships between the three levels of institutionalisation which we have discussed in this report: legal

[63] See, among others, Janos, Andrew C. (2001), "From Eastern Empire to Western Hegemony: East and Central Europe under Two International Regimes", *East European Politics and Societies* 15(2), Mungiu-Pippidi, Alina (2006), " Corruption: Diagnosis and Treatment", *Journal of Democracy* 17(3), and ;Mungiu-Pippidi, Allina (2005), "Deconstructing Balkan Particularism: The Ambiguous Social Capital of Southeastern Europe", *South East European and Black Sea Studies* 5(1).

[64] For an overview of relevant literature, see, Bogičević, Biljana M. (2009), "The influence of culture on human resources management processes and practices: the propositions for Serbia", *Economic Annals*, pp. 93-118.

[65] Meyer-Sahling, Jan (2009), "Sustainability of Civil Service Reforms in Central and Eastern Europe Five Years after EU Accession", *SIGMA paper no. 44*, available at http://www.olis.oecd.org/olis/2009doc.nsf/linkto/gov-sigma(2009)1.

framework, public administration and internalisation.[66] They can support or counteract one another. The degree of conformity between them will determine the risk of corruption. The risk is lowest when the regulatory framework reflects the international standards, while at the same time being effectively administered and well-known and accepted by the defence sector and state institutions in general.

The situation is problematic if a set of rules that reflects the normative standards clearly deviates from the prevailing thought pattern in the institutions that are responsible for enforcing the rules. In this instance, it is probable that the standards only exist on paper and are not found in day-to-day administrative practices. The risk of corruption can therefore be considerable.

The picture that is painted in this report is not unambiguous. There are clear variations across countries and areas of integrity when concerning both legal frameworks and administrative practices. However, the overall impression is that the anti-corruption norms have only been institutionalised to a limited degree.

A satisfactory or almost satisfactory legal framework is in place in a number of countries and for most areas of integrity. The legal framework is supported by institutions, however these often suffer from a lack of resources and professional autonomy. But the biggest problem is that leading members of the political elite do not appear to have fully internalised or accepted the anti-corruption norms. The attitude of the elite is of particular importance in our group of countries where the exercising of state authority is largely centralised.

There is a link between the three levels of institutionalisation. Weaknesses in legal frameworks and public administration make it unlikely that breaches of the norms will be detected and punished. This can contribute to the norms not being fully taken seriously. The lack of acceptance and understanding of the standards result in legal frameworks and administrative bodies becoming weak. As we have alluded to, such weaknesses may be the intention of those who adopted the laws or established the institutions.

The fact that the anti-corruption work is only institutionalised to a limited degree, and particularly that the norms in some countries only appear to have superficial acceptance and understanding, creates doubt about whether this work has a stable foundation. As we have seen, the anti-corruption norms have been introduced after outside initiatives and pressure, particularly from the EU. As long as a country has a credible membership perspective and desire for membership in the union, the pace of reform will most probably be maintained. However, if these prerequisites are no longer in place, it is an open question as

[66] The description in this section was inspired by Meyer Sahling, footnote 65. Related arguments can also be found in other studies of the changes in the post-communist countries in Eastern Europe, see among others, Claus Offe, "Cultural Aspects of Consolidation: A Note on the Peculiarities of Postcommunist Transformations", 6(4) *The East European Constitutional Review* (1997), available at <http://www.law.nyu.edu/eecr/vol6no4/culturalaspects.html>; and Anna Savicka, *Postmaterialism and Globalisation,* Research Institute of Culture, Philosophy and Arts, Vilnius, 2004.

to whether the local support for the norms is strong enough to compensate for the absence of outside pressure and encouragement. Of decisive importance is how the balance of power will develop between domestic players that actively support the norms for good governance and players that are not particularly concerned with these, or perhaps want an alternative path of development.

The influence of the EU is particularly strong during the period when countries prepare for membership. The moment membership is a fact, the majority of the EU's potential rewards and punishments disappear, and with them most likely much of the countries' motivation for automatically submitting to Brussels, particularly in areas where the EU does not exert influence in the form of formal laws. In a number of countries that became members in 2004 and 2007, the reforms for better governance and combating corruption have halted or been reversed. The optimism that prevailed 10-15 years ago has been replaced by scepticism and, in part, pessimism.[67]

The experiences from the EU's expansion in 2004 and 2007 contain two important lessons:

- Firstly: the importance of norms for good governance being adequately institutionalised *before* membership becomes effective.
- Secondly: the inadequate ability to govern weakens the countries' ability to comply with the obligations for membership. Some of the consequences that are observed as a result of this are summarised in the text box below.

Text box 13: Consequences of inadequate ability to govern in the EU's new member countries[68]

[67]See, for example, Müller, Jan-Werner (2014), "Eastern Europe Goes South. Disappearing Democracy in the EU's Newest Members", *Foreign Affairs* 93(2), and Heinrich August Winkler, "Was wir aus der deutschen Geschichte lernen könnten", *Frankfurter Allgemeine Zeitung*, 26 June 2014.

[68] The information in the text box is based on the following sources:
(1) Interview with former EU Internal Affairs Commissioner for the EU Commission Viviane Reding in *Frankfurter Allgemeine Zeitung*, 9 March 2013, "Künftige EU-Erweiterungen gut abwägen",
(2) The European Commission "*Recommendation for a Council Recommendation on Romania's 2013 national reform programme and delivering a Council opinion on Romania's*

- Legal uncertainty: Failures in the member states' public administration can result in a major strain on national and European courts. Lack of trust in the professionalism and independence of national legal systems has created problems for the implementation of, among other things, the EU's system for a joint European arrest warrant (1)
- Weak ability to promote social and economic development: New member countries demonstrate a weak ability to prepare and initiate national development programmes (2)
- Transfer of burden from poorly functioning to well-functioning member countries: The clearest example is the Eurozone crisis (3), but there are also others, including the expansion of the Schengen area to countries that have a limited ability to control the outer borders of the area (4).
- Reduced trust in democracy: Inability to manage the social consequences of economic decline has resulted in reduced trust in democracy (5)

While there are a number of studies regarding the EU expansions and the administrative ability of member states to comply with EU requirements, there is little of this type of literature pertaining to NATO. Does this mean that issues regarding institutional and administrative aspects of NATO enlargement have been neglected? The fact that, as we have previously shown, many NATO aspirants do not have sufficiently well-functioning state institutions [69], makes it legitimate and necessary to ask to what extent they are capable of complying with future membership obligations.

The experiences from the EU's eastward expansion further highlight the importance of this issue. In the next chapter, we will attempt to suggest how NATO's functional capability and its credibility can be impacted by the type of national failure of governance that we described earlier in this report.

Administrative practices reflect the standards to a far lesser degree than the regulations. There is therefore a clear lag when concerning the implementing of adopted rules. Administrative practices appear to be significantly characterised by inherited traditions. Deviations described above have features common to the legal and administrative situation that prevailed 15-25 years ago. The deviations are greatest in areas where there have not been

---

convergence programme for 2012-2016." The paper is available at http://ec.europa.eu/europe2020/pdf/nd/csr2013_romania_en.pdf . On page 5 of the document it states, among other things, that "Poor administrative capacity is a core concern for Romania. The public administration is characterised by an inconsistent legal framework, frequent recourse to emergency ordinances, low levels of inter-ministerial cooperation and excessive bureaucracy. It is also undermined by a lack of skills, a lack of transparency in staff recruitment and high management turnover rates." See also "*Commission Staff Working Document Assessment of the 2013 national reform programme and stability programme for Slovakia*", available at http://ec.europa.eu/europe2020/pdf/nd/swd2013_slovakia_en.pdf. The document claims on page 30: "High staff turnover linked to the political cycle undermines [the public administration's] independence and weak analytical capacities impair the evaluation and implementation of public policies."

(3) Featherstone, Kevin (2011), "The Greek Sovereign Debt Crisis and EMU: A Failing State in a Skewed Regime", *Journal of Common Market Studies*, 49(2), pp. 195–196.

(4) This claim is based on information Difi has obtained from a member of the expert group that provided advice regarding Greece's involvement in the Schengen cooperation.

(5) The European Bank for Reconstruction and Development (2011), "Crisis and Transition: The People's Perspective", *Transition Report 2011*.

[69] The German historian Holm Sundhaussen claims that none of the former Yugoslavian states, with the possible exception of Slovenia, are able to meet the challenges of the 21st century on their own.

traditions for legal regulation, public procurements, disposals of equipment and assets and control of security and intelligence services. While the legal frameworks conveyed an impression of historical discontinuity, administrative practices are a sign of continuity across epochal regime changes. The overall impression is that the anti-corruption norms have only been institutionalised to a limited degree.

7 NATO's ability to perform and national failure of governance

7.1 The need for national institutions that build trust

To what extent is a good system of governance in NATO's member countries a requirement for protecting the values and interests of the alliance? We will look at four features of the alliance:

- NATO membership is a serious matter: it concerns issues regarding war and peace.
- NATO is required to manage complex challenges.
- NATO's performance is dependent on security institutions and administrative systems in the member countries.
- NATO is not only a military organisation, but also a community of values.

NATO membership is a serious matter

NATO countries are mutually dependent on one another when concerning matters of war and peace. This is clearly expressed in Article 5 of the North Atlantic Treaty which states that an armed attack on one member state shall be considered an attack on them all. All member states are obligated to implement measures that are necessary for assisting the ally that is attacked.

For a long period following the fall of the Iron Curtain in 1989/1990, NATO and NATO's member countries considered the probability of facing an armed attack to be rather low. This view changed abruptly after the Russian annexation of the Crimea and the outbreak of hostilities in East Ukraine in 2014. Experts now claim that a new security policy fault line has opened up in Europe. This creates the risk of instability and military conflict, not just in Ukraine, but also other former Soviet republics, including Moldova and Belarus.[70] Countries that are now seeking NATO membership are located in politically unstable areas in the Western Balkans and the Caucasus. The war following the break-up of the former Yugoslavia lasted for almost 10 years from 1991 to 1999. Following this there have also been periods, including in 2001 and 2015, in which there has been increased military tension.

A country's administrative systems and administrative practices determine the extent to which the country is a stable and reliable alliance partner, or the opposite, if it can succumb to risky behaviour. Such behaviour can consist of countries becoming involved in, or even consciously triggering conflicts [71], that they are not adequately able to carry out military operations or security policy measures or are unable to receive or make use of military assistance.

[70] See, among others, Robert Legvold, "Managing the New Cold War. What Moscow and Washington Can Learn From the Last One", *Foreign Affairs,* August 2014

[71] Such claims were suggested in quality western media when concerning the unrest in Kumanovo in Macedonia in May 2015, see, among others "Tödliches Ablenkungsmanöver?", *Frankfurter Allgemeine Zeitung,* 11 May 2015 and "Mazedoniens Regierung unter Druck", *Neue Zürcher Zeitung,* 13 May 2015.

Furthermore, countries that have weak and corrupt institutions can be an easier target for infiltration and other attempts at destabilisation from the outside than countries without robust administrative systems.

In this report, we have made note of factors that can possibly trigger or contribute to these types of situations:

- The tendency towards concentrating power among a small number of political leaders who are under limited, effective parliamentary or other control.
- Absence of effective control of security and intelligence services.
- Risk of politicising security bodies and other administrative bodies.

How institutional factors of the type we discuss in this report can impact on military performance is stated in, among other things, an analysis conducted by the United States Department of Defence of the war between Georgia and Russia. Among other things, the analysis asserts that the concentration of power and politicisation of security policy institutions in Georgia contributed to impulsive rather than deliberative decisions, something that again weakened the country's military capability (see text box below).

Text box 15: Politicisation and concentration of power weaken military performance[72]

A Pentagon study argues that the suboptimal performance of the Georgian military was due to widespread mismanagement, unqualified leadership and, more generally, the absence of a professional system of human resource management. Georgia's military establishment, the report says, is highly centralized, prone to impulsive rather than deliberative decision-making, undermined by unclear lines of command and led by senior officials who were selected on the basis of personal relationships rather than professional qualifications.

NATO is required to manage complex challenges.

NATO's strategic concept that was adopted in 2010 assumes a very broad concept of security. This not only includes military matters, but also political, economic, social and environmental issues. The complexity of the threat profile that is described means that the alliance and the alliance's member states are, perhaps more than ever, dependent on strong and professional national institutions. However, this requirement is far from satisfied in several of the countries we have studied. As we have mentioned, the countries' central administration suffers from two serious problems: politicising of personnel policy and the inadequate ability to investigate and analyse. Such problems also make their mark in the countries' security policy documents. Doubt has been expressed about whether these documents are of such quality that they are suitable for managing the countries' security policy decisions. The text box below repeats the conclusions from a study of this for countries in the Western Balkans.

[72] The contents of the text box was taken from, "Georgia Lags in Its Bid to Fix Army," *The New York Times*", 17 December 2008.

Text box 16: Inadequate quality of security policy documents [73]

> "One of the most important challenges in creating a strategic-doctrinal framework that the countries of the Western Balkans have not yet managed to deal with is the competence of those who are drafting them. [...] Another problem with trained and educated staff is that they are very often highly politicized [...]. None of the countries of the region have acquired the necessary level of understanding that drafting of the country's most important documents is not a matter of daily political (mis)understandings, but a work that goes beyond that. [...] it is doubtful whether the governments themselves are anywhere in the Balkans competent to decide on and implement the security policy or to change the pace or direction of security reforms."

NATO's performance is dependent on security institutions and administrative systems in the member countries.

As already mentioned, NATO does not have a separate apparatus for implementing decisions by the alliance. The armed forces of the member states and security policy agencies (in a broad sense) are NATO's executive bodies. The effectiveness of the alliance is therefore completely dependent on the efforts of the member states. Pursuant to Article 10 of North Atlantic Treaty, all member states must make a net contribution to and not just benefit from the security in the Euro-Atlantic area. In order to make effective contributions, as a first step, the countries must be able to procure the necessary resources. Among other things, the weaknesses we have noted in the military procurement system raise doubts about whether certain countries will be able to do this. The text box below illustrates some of the problems we have identified when working with this study. Even if the information in the text box only applies to one country, the types of problems mentioned are most likely not limited to this country alone.

Text box 17: Problems with procuring resources for military units[74]

- In 2012 the Parliamentary Commissioner for the Armed Forces reported that the boots of the country's soldiers participating in the ISAF mission were falling apart and that they had to borrow footwear from the Danish contingent.
- During the severe forest fires in 2012 the Armed Forces failed to respond to requests for assistance because military aircraft lacked fuel and spare parts.
- In 2012 the MoD bought de-mining equipment which soldiers refused to use because it was not adequately certified and considered a security risk.

Constant claims of the security services being used to consolidate the *private* interests of political leaders raise questions about their ability to safeguard the

[73]The content in the text box is taken from, Abusare, Adel (2010), "Comparative Analysis of the Strategic Documents of the Western Balkans" in Milorad Hadžić et al. *Security Policies in the Western Balkans*, Beograd: Center for Civil-Military Relations, pp 165–184, 172 and 173.

[74] The content in the text box is taken from one of Difi's country reports.

general interests of the state, the countries' constitutional order and the security of people who are not members of the elite.[75]

NATO is not only a military organisation, but also a community of values
NATO is not only a military organisation. The member states represent a community of values obligated by the principles of individual freedom, democracy, human rights and rule of law. The alliance places particular emphasis on the principle of adequate civil and democratic control of the armed forces. Even though NATO was originally as much an anti-Soviet and anti-communist alliance as a community of values, the core values of the alliance were confirmed and strengthened when the Eastern Bloc collapsed. Supporters of NATO enlargement claimed that expansion eastwards would contribute to consolidating democratic regimes in former communist states.[76] NATO documents make a direct link between the alliance's values and achieving security. The values are not only a moral obligation. They are also a means of security policy.[77]

The description above indicates that several of the values that NATO advocates, including democracy and rule of law, are not sufficiently institutionalised in a number of the countries that are included in this study. In a number of places, the civil and democratic control of intelligence and security agencies, as well as the armed forces[78], leave something to be desired. We often find weak institutions that only have a limited ability to enforce legal orders. The idea of power sharing, which is constitutionally prescribed everywhere, is not ensured in practice. The fact that the executive branch dominates both parliament and the courts is a problem in several countries.

7.2 NATO's enlargement process

To what extent will the considerations discussed in this study be effectively managed in NATO's enlargement process? Difi has no definitive answer to this question. However, we have examined how the work with one of the topics, personnel management in the defence ministries, has been handled in two of the countries that are seeking membership. In one of these countries, we have also looked in more detail at the personnel management in the military.

Difi's conclusions are rather clear. NATO's enlargement process does not devote much attention to the issue of the need for a qualification-based personnel policy in either the defence ministries or the armed forces. How the lack of expertise and professional institutions may impact on the ability of the

[75] See, among others, Hadžić op.cit. foot note 71 , p. 227.

[76] Reiter, Dan (2001), "Why NATO Enlargement Does Not Spread Democracy", *International Security* (25) 4, pp. 41-67.

[77] In "The Study on NATO Enlargement" (1993), it states, among other things, that, "By integrating more countries into the existing community of values and institutions, consistent with the objectives of the Washington Treaty and the London Declaration, NATO enlargement will safeguard the freedom and security of all its members in accordance with the principles of the UN Charter." http://www.nato.int/cps/en/natolive/official_texts_24733.htm

[78] The data was primarily collected in 2011 and 2012.

countries to comply with their obligations for NATO membership are not discussed. For the most part, NATO's attention is directed at purely military matters. This is remarkable when considering the importance NATO documents assign to effective arrangements for civil and democratic control of the armed forces.

The choice of measures for personnel policy appears random and can hardly be the result of particularly in-depth reflection. It is also doubtful whether the considerations NATO discusses can even be solved with the narrow approach to personnel issues that characterises the documents that are regularly prepared in connection with the enlargement process. The alliance places emphasis on purely technical and often economic considerations. This is not problematic in itself. However, the perspective is questionable if it remains the sole perspective. What is missing is an institutional approach emphasising the importance of civil service staff for consolidating fundamental considerations in the political system, i.e. democracy, rule of law, human rights and what can somewhat inaccurately be referred to as "society's general interests." This is particularly important in countries where there are no traditions for anything other than staff rather uncritically following orders from their political superiors.

That said, there are indications that NATO officials see the need to broaden the perspective of the NATO process to include issues related to the civilian staff of MoDs and more generally to the civil service. Two key members of the NATO Headquarters Sarajevo observe regarding defence reform in Bosnia and Herzegovina, "Although the discussion has focused on the military factor in the personnel equation, the civilian factor is of at least equal importance. Indeed, it could be argued that in a reform process the civilian factor is of greater importance, since an apolitical army – under civilian command, control and oversight – must necessarily operate within policies and procedures developed in large part by civilian personnel at the MoD level. This suggests the need to pay at least as much attention to the quality of civilian personnel. […] What BiH needed was a broad effort addressing the MoD in the context of the entire civil service. […].[79]

NATO's rather narrow approach can unintentionally give legitimacy to governments that only superficially support the principle of merit-based and professionally neutral defence and security institutions. There is a danger that NATO's lack of focus on problems that assert themselves in the personnel area and which are referred to above, may create the impression that more or less formulaic changes are sufficient for achieving membership in the alliance.

Conversations that Difi has had with NATO officials and others who are well-familiar with the enlargement process, provide reason to believe that NATO's management of other topics that we focus on in this study does not greatly differ from what we have described above. We have, for example, previously

[79] Maxwell, Rohan and John Andreas Olsen (2013), "Destination NATO, Defence Reform in Bosnia and Herzegovina, 2003–2013", *Whitehall Papers series*, Abingdon: Milton Park, p. 63.

stated that the rules regarding conflicts of interest that apply for the military officials in the countries studied are much weaker than those that apply for their civilian colleagues.

NATO is an organisation that is dependent on trust to be able to master its complex agenda. Because the alliance acts through the civilian and military institutions of the member countries, it is important that these appear reliable and credible in the eyes of all those who work within NATO. Reliability and credibility can only be ensured through respect for expertise and NATO's core values. It is a well-documented assertion that effective international cooperation is founded on well-functioning national institutions and that, conversely, dysfunctional national institutions make cooperation difficult. They spread distrust and suspicion about some benefiting from the efforts of others without contributing themselves.

If transnational trust is not achievable, then it is also not possible to attain result-oriented international cooperation of the type NATO represents. In the absence of effective, trust-based mechanisms, transnational challenges must be attempted to be managed through more flexible and less effective cooperative arrangements, and through non-binding appeals to recipients who are perhaps not prepared or able to act in unison.

The type of administrative failure that we have identified in this report can make it difficult for countries to fully comply with the obligations for NATO membership. This includes the ability to act predictably and instil trust, the ability to manage the complex security challenges the alliance faces and the willingness and ability to act in accordance with NATO's core values.

Difi's reference sheet

Title of memo:	Defence against corruption: The risk of corruption in the defence sector in 9 countries in Southeast Europe
Difi's memo number	2015:1
Author(s):	Svein Eriksen
External cooperative partners:	
Project number:	401903
Project name:	Corruption in Southeast Europe
Project Manager:	Svein Eriksen
Department in charge:	Management and Organisation (LEO)
Commissioned by:	The Norwegian Ministry of Defence and Ministry of Foreign Affairs