



UDC 342.53:35.07(497.11)  
Manuscript received: 05.12.2016  
Accepted for publishing: 20.12.2016.  
Review article

Serbian Political Thought  
No. 2/2016,  
Year VIII, Vol. 14  
pp. 141-166

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## Parliamentary control of public administration integrity: Post-industrial polyarchies and Serbia<sup>2</sup>

### Abstract

The paper examines the extent to which parliaments are capable of an effective monitoring the ethical dimension of public administration performance, and to encourage indirectly strict compliance with ethical standards. The author analyses the competences, powers and practices of parliaments with the aim to examine to what extent the legislative branch is an effective external control mechanism of the public servants' performance when it comes to the issue of ethics management. In addition, the author identifies the structural weaknesses of the parliamentary scrutiny mechanisms. The scope of the analysis is limited to a selected sample of post-industrial polyarchies with the parliamentary system of government, and Serbia as a sample of post-communist country in the process of setting up the ethical standards and practices in its public sector in the last decade. The research findings show that, in the period 2001–2015, the National Assembly has not used to the full extent its scrutiny powers to examine responsibility of cabinet ministers and public managers regarding the issue of improving the quality of ethics management in public administration. The author concludes that the effectiveness of scrutiny powers of the Serbian parliament has been oftentimes hampered by the political will to maintain fragile coalition governments at all costs, which means that the parliamentary majorities have had no real interest in a consistent oversight of (un)

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2 The paper was created within the project "Serbia in contemporary international relations: Strategic directions of development and firming the position of Serbia in international integrative processes – foreign affairs, international economic, legal and security aspects", supported by the Ministry of Education and Science of the Republic of Serbia (No. 179029) and realised by the Institute of International Politics and Economics in period 2011–2016.

ethical performance of the executive.

**Key words:** parliamentary oversight, public administration integrity, democratic control, accountability, post-industrial poliarchies, Serbia.

## Parliamentary Oversight over the Public Administration Integrity

The impact of the contemporary state and its public management on the growing complexity of social relations is pervasive in the early 21<sup>st</sup> century. Diverse aspects of human life—birth, child-care, education, work, retirement, and the moment of death—are regulated and supervised by the plethora of public institutions and their bureaucratic procedures (Lane 2009: 2–3). Since the delivery of public goods and services is at the core of public management, the citizens' perception of the success of public policies is rather based on the performance level of bureaucrats they face every day than on the quality of legislation. German historian Barthold Niebuhr noticed in the 19<sup>th</sup> century that freedom is much more dependent on the administration than on the constitution (Wilson 2007: 22–23). In other words, how citizens live and enjoy fundamental freedoms and rights is to a greater extent determined by the effectiveness of administrative mechanisms and procedures—i.e. by the outcome of policy implementation—than by sheer existence of the constitutional guarantees and laws. It is thus vital for public servants to perform entrusted public duties in the morally right way as to provide that the adopted regulations and policies are properly transferred into effective actions responsive to the needs of a society. Yet, delegation of executive powers is always inherently risky and it needs to be coupled with mechanisms of accountability, by which those with public responsibilities can be checked and controlled, and if necessary removed—if their behaviour or performance is unsatisfactory (Müller *et al.* 2006: 4).

The success of the implementation of public policies might be measured by the progress made in achieving particular policy goals which are aggregated in the public interest as a whole. The hierarchical model of democratic political system seems to provide a sound theoretical framework for the external scrutiny of elected government and to hold it accountable for the outcome of the implemented public policies (Drejmanis 2008: 155–207). Accountability is one of the tenets of democratic governance, both as a normative concept and as mechanism of control that is working on a daily basis within political system. Despite being a

much debated and contested notion, accountability can be understood as an obligation to explain and justify the ways of fulfilling specific responsibilities and the achieved results on the basis of the established relationship with a body of authority (Thomas 1998: 348–350; Muncey 2004: 2–3; Bovens 2007; Brandsma and Schillemans 2013: 954–957). In the wake of the etymological meaning of the term *accountability*, external scrutiny can be seen literally as reporting either on the decision making or on taking an action (Gregory 2009: 68). Thomas holds that an accountability relationship includes four components: 1) the assignment of responsibilities to perform a task; 2) an obligation to answer questions about how the task is being performed; 3) surveillance of performance to ensure compliance with directions given; and 4) possible sanctions for non-performance and rewards for successful performance (1998: 352).

The concept of democratic accountability includes the idea that the legislature embodied by parliament should oversee the functioning of the executive (besides the judiciary). Hence, parliaments are usually seen as a primary accountability mechanism where prime minister and cabinet ministers are questioned on their actions, their policies are debated, and in particular, their management of the implementation of public policies closely examined (Riggs 2009: 94–95). In democratic political system, relationship between the elected and appointed office holders is usually described by the principal–agent model (Peters 1999: 50–51). Principal–agent model typically focuses on two factors that are essential to democratic accountability: the extent to which the principal is informed about his agent’s behaviour and the positive or negative incentives the principal can impose on the agent (Brandsma and Schillemans 2013: 956–957; Justice & Miller 2007: 298–299). As Lupia puts it, “the ideal-typical delegation chain resembles a straight line and includes a link: that attaches voters to members of Parliament; a link that attaches members of Parliament to the government; a link that attaches the government to individual ministers; and a link that attaches ministers to civil servants” (2006: 36).

Public administration represents a “chain of delegation,” consisting of a myriad of relationships between those who delegate (the principals) and those to whom is delegated (the agents). This is why an approach to preserving and strengthening the public administration integrity should not be narrowed only to internal measures such as: a sound human resource management, the adoption and implementation of code

of ethics, the set up of internal control mechanisms, the enforcement of disciplinary policy and procedures, and the promotion of transparency. The internal measures and mechanisms are not sufficient to achieve the objectives of sound ethical behaviour; they have to be extended with the addition of an independent external control. Therefore, a well-designed integrity strategy and policy requires a system of public institutions which is to create a working environment conducive to a sound ethical decision-making on how to discharge the entrusted public duties and to perform daily assignments. The system of public institutions should implement anti-corruption measures in a coherent way as well as strengthen the compliance of public servants with ethical standards in their decision-making (OECD 2000: 66).

I hold that the notion of moral agency is substantial to how the public administration as a part of the executive is implementing government policies, because it is substantial for public trust to achieve good policy outcome in the ethically sound way. The idea of serving the common good emphasises that it is not important what is done at the end of the day, but how is it done—is it done in the morally right way (Wildavsky, 1989). The source of public administration's moral agency is its collective power to act, because all of its decisions, whether ethical or not, affect the society as a whole. Any policy goal attained in ways that override moral concerns can undermine public trust in the long run, even if the outcome benefits the majority of targeted group. A moral agent acts in a manner that expresses concern for moral values as final ends; to be a moral agent means to be capable of acting with reference to right and wrong—making ethical decisions and putting them into action (Garofalo & Geuras, 2006: 1–5). Although moral agency is in the metaphysical sense primarily attributed to human individuals, an organisation as the collective of individuals can also be the proper subject of moral responsibility attributions, and, thus, held responsible for the predictable results of its actions.<sup>3</sup>

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3 I do not intend to involve myself here in the long debate over whether organisation moral responsibility attributions are legitimate or not. I assume that the ability to intend an action, the ability to carry out an intentional action, and the ability to choose an intentional action autonomously are necessary conditions for moral agency. An organisation possesses certain necessary characteristics for moral agency in a manner that is distinct from its human members. This does not mean that the organisation can perform any actions without its members, but it does mean that the organisation can be morally responsible as a unit that is considered distinct from its members.

In this analysis I will explore the competences, powers and practices of parliaments comparatively with the aim to determine to what extent the legislative branch is an effective external control mechanism of the public servants' performance when it comes to the issue of ethics management. I maintain that the success of parliamentary scrutiny of public administration's compliance to ethical standards can be indicated by the ways of how MPs use control tools available to them, such as: regular reporting of the executive, parliamentary questions, interpellations, investigations, public hearings, motion of no confidence, etc. In addition, I intend to identify the structural weaknesses of the parliamentary control mechanisms. The analysis focuses on a selected sample of post-industrial polyarchies with the parliamentary system, and Serbia as a sample of post-communist country in the process of setting up the ethical standards and practices in its public sector.

## **Parliamentary Scrutiny of Policy Implementation**

Parliamentary oversight prerogative is aimed at scrutinising whether government follows the spirit of the constitution and adopted legislation, and whether implemented departmental policies, programmes, and action plans are in accordance with the laws and have the desired impact on society. On the other hand, parliament affects indirectly the public administration integrity by its legislative function as it shapes the normative landscape that favours the development of the good practice of compliance with high ethical standards. Whether a parliament will adopt laws and establish institutional mechanisms necessary for sound ethical climate in public administration depends largely on the political will of a parliamentary majority. Today, the international anti-corruption conventions and guidelines give an additional impetus to the legislative role of national parliaments in the case of the lack of political consensus on the creation of the working environment in public administration responsive to sound ethical decision-making.

Due to increased public awareness of the harmful effects of the deepening administrative deficit on the quality of life and exercising fundamental rights and freedoms, the national parliaments as the supreme legislative authorities in post-industrial polyarchies have increased the scrutiny over governments in the past decade hoping to balance the growing role of public administration in creation of the overwhelming

body of the secondary legislation (Peters 2009: 280). Although regulations are a necessary step towards the practical implementation of public policies goals—as they elaborate general provisions in details and thus enable their application to particular cases through administrative procedures—they can seamlessly deviate from the original goals of a public policy as adopted by the parliamentary majority. That is why, for example, the Joint Committee for the Scrutiny of Regulations of the Parliament of Canada has adopted an elaborate set of criteria for reviewing the matters of legality and the procedural aspects of regulations i.e. their compliance to the legislating power that Parliament delegated to public administration to adopt secondary legislation. Here are the criteria that are important for parliamentary scrutiny of secondary legislation in the context of public administration integrity:

- if for any reason infringe the rule of law;
- if trespasses unduly on rights and liberties;
- if makes the rights and liberties of the person unduly dependent on administrative discretion or is not consistent with the rules of natural justice;
- if makes some unusual or unexpected use of the powers conferred by the enabling legislation;
- if amounts to the exercise of a substantive legislative power properly the subject of direct parliamentary enactment (Marleau & Montpetit 2000).

The ministries and various organisational units of public administration are obliged by the law to submit periodic reports to the parliament (annually, semi-annually, quarterly, etc.) on the updated status of the implementation of laws, regulations, and policy programmes. These reports are to provide the basic information which constitute factual basis for numerous parliamentary committees to assess properly the appropriateness, effectiveness and efficiency of the performance of public managers and servants (Yamamoto 2007: 17–18). Parliamentarians study reports in detail throughout the year and compare the provided information and facts with the actual situation, either by obtaining information from diverse political and social actors (stakeholders) interested in monitoring sectoral policies or by the on-the-spot inspection of a policy implementation. For instance, the standing committees of the National Assembly of the Republic of France appoint one or several of its members to monitor and analyse the effects of the implementation of a particular law (Yamamoto 2007: 24).

The Riksdag (Swedish parliament) has significant powers regarding control of the implementation of departmental policies, which go beyond the typical characteristics of the concept of ministerial responsibility—understood as a cabinet minister’s ultimate responsibility for the actions of her/his ministry or department (Arter 2008). The Constitutional Committee of the Riksdag examines regularly whether the government implemented its policies in accordance with the constitution and laws, and delivers the report to parliament every spring, which serves as a basis for the annual debate on the government performance. The purpose of the annual report on the control of the government and public administration is to draw the attention of the Prime Minister and his cabinet where to reconsider the administrative procedures in order to avoid the omissions and maladministration in future. Although it has the power to undertake criminal proceedings before the Supreme Court against a member of the Government who has allegedly committed a criminal offense, the Constitutional Committee has not done so in the last few decades. Members of the Riksdag have the right to report improper conduct of ministers and senior public servants to the Constitutional Committee, which then examines the submitted reports and assesses whether there really was a violation of regulations and ethical standards (The Committee on the Constitution). In determining whether the allegations from a received report are founded, the Constitutional Committee has the right to access all documents in the possession of the executive branch—even the classified ones if necessary—and to hold a public hearing at which ministers and senior ranks of public administration appear and answer questions as a part of the inquiry. Another avenue of the Constitutional Committee’s control prerogative regarding the implementation of public policies is the analysis of the official documents of the Government Offices and around 250 government authorities—including even meeting minutes (The Committee on the Constitution).

Benton and Russell’s quantitative analysis (2013) showed that the UK government took up many select committee recommendations that had called for review of a policy or significant changes to policy—with the overall success rate of recommendations up to 50%. The seven select committees produce 50 reports of inquiries per year on average, and the most of them call for reviewing government progress, examining new government proposals or responding to perceived government failures (Benton & Russell 2013: 778). The real impact of oversight committees is in exposing the government’s decision-making to rigorous tests and

in encouraging more careful consideration of policy options by posing a threat of future evidence sessions and inquiries.

## Parliamentary Inquiry, Public Hearing and Questions

The most important legislators' powers in scrutinising the discretion of public administrators performance is examining the cases of serious breaches of ethical standards, in which violation or arbitrary interpretation and implementation of the constitutional provisions and laws might drastically jeopardize fundamental human and civil rights. This form of parliamentary scrutiny takes place in a range of simple questions to ask ministers during the regular session, through holding public hearings of responsible high-rank public servants, to launch extensive investigations by establishing special *ad hoc* parliamentary committees, or by appointing a special parliamentary investigator (Thomas 1998: 360–365; Peters 2009: 282). The televised public hearings of senior public servants before parliamentary committees have got more attention of the public in recent decades, and almost instant spread of information that marks the digital age will likely to prevent breaching the ethical standards in public service to some extent.

In some parliamentary systems, ministers are subjected to regular questioning—either for oral or written answers—about the implementation of departmental policies or the performance (results) of particular organisational units of the public administration for which they are responsible. For example, the Common House of the UK Parliament regularly cross-examines the Prime Minister once a week, and the members of his cabinet once a month (Parliamentary Questions 2013). Cabinet ministers are under a duty to give accurate and truthful information to Parliament supported by the facts, and to justify reasonably the decisions made or actions undertaken at any level of the administrative hierarchy under their responsibility. In Sweden, ministers have to publicly answer for their (in)actions on open committee hearings (Examine the work of the Government 2016). Even though ministers are not required to attend the Committee hearings or respond to particular questions, it has become the convention to do so; yet, they appear rarely as witnesses at public hearings of the other committees (Arter 2008: 142).

Rozenberg and Martin (2011) cast doubt on the role of parliamentary questions as an effective oversight tool. They argue that MPs use questions primarily to bring an issue to attention of ministers, col-



leagues, and the public, with having no naïve expectation that they will be provided with full and sincere answers by ministers and senior public servants. On the contrary, Pond (2008) suggests that parliamentary questions may reinforce the public's confidence in the integrity of the selection for high-profile administrators, which is in the long run substantial for maintaining or seeking sound public administration integrity. Pond analysed how the Ontario Legislature's Standing Committee on Government Agencies (Canada) uses its prerogative to question partisan appointees to public agencies at the provincial level to determine whether they are qualified for their positions. While the ruling party retains the discretion to make partisan appointments, it also does not hesitate to withdraw candidates exposed as inadequate which means that this practice at least encourage the government to meet a higher standard in performing public duties (Pond 2008: 69). Matthews and Flinders (2015) examined the role of the House of Commons and its select committees in scrutinising and controlling executive patronage i.e. a growing portfolio of ministerial appointments. Although the overwhelming majority of hearings supported the government's candidate, Matthews and Flinders conclude that select committees have become *de facto* veto players due to the impact a negative report would have on the credibility of the appointee and the appointing minister.

The practice of parliamentary questions as a tool for indirect monitoring the activities of public administrators is by no means a mere political ritual, and this is evidenced by the rules of procedure of the German Bundestag and of the Eduskunta (Finnish Parliament). In both cases, the rules of procedures stipulate that the questioning procedure may be concluded by holding the vote confidence in credibility of the answers given by minister (Parliament's rules of procedure 2000: 8). In all parliaments, the part of regular session dedicated to questioning the members of the government orally always gets the greatest attention of the media, and is usually broadcasted live on radio and television stations.

The written parliamentarians' questions addressed to the government are perhaps the most common and effective tool of parliamentary scrutiny. They are mostly aimed at providing a detailed explanation of an issue of public concern under the responsibility of the executive branch, which would be impractical to give in an oral answer or may include answers of several ministers. Ministers are required to respond within the prescribed time limit, which in various post-industrial pol-

yarchies ranges from seven to 60 days, although in practice it often happens that the response is delayed. For instance, ministries in the UK government are allowed to submit only a preliminary response within the statutory deadline of seven days, and later they can send the final version. Interpellations are especially important written parliamentary questions concerning to the requirements for more detailed information or further clarification of a segment of departmental policy, or a decision made or an action taken by an organisational unit of the public administration (Yamamoto 2007: 59–60). After the answer provided by a minister or the government as a whole, the debate can be followed by voting confidence in the minister or the entire government (censure motion); Otherwise, parliament can only hold a position on the received answer without calling to account the government. In the United Kingdom, the opposition can table the interpellation procedure during the regular session in order to express a lack of confidence in how the government as a whole or some of its cabinet ministers perform their tasks. In the case of a motion of no confidence, which is a statement that a person in a position of responsibility is no longer deemed fit to hold that position, the government is obliged to call new elections, or replace the responsible minister.

When it comes to the importance of regular and special reports on the activities of ministries and various parts of the public administration as useful tools of exercising the democratic control over their performance, parliamentary committees in addition may hold public hearings to get more detailed explanations of the information referred to in the reports or information about issues that are omitted in the reports or are inadequately dealt with. Using meeting to share information directly between a minister and the parliamentary committee provides a clearer insight into the implementation of the questioned segments of a departmental policy. The presence of either the minister or his representative at the hearing before a parliamentary committee reaffirms the constitutional responsibilities of the executive branch to be held accountable to the legislative branch. An interview with the minister can take place in an informal setting, which is sometimes labelled as “consultations”—a feature in the practice of the Dutch and Danish Parliament. Consultations may be related to the consideration of the status of a departmental policy implementation in general or can be focused on discussing specific topic—for example, a ministry document. While the consultation in the Netherlands are commonly organised without official minutes, in Denmark there is a possibility of make an audio recording at the request

of at least three members of the parliamentary committee (Rules of Procedure 1994: 7–8, 10–11; Standing Orders of the Danish Parliament 2012: 15–16). In the Netherlands, parliamentarians can hold consultations with public servants as well, but with the prior authorisation of the responsible minister.

Parliamentary committees may hold either a public hearing or informal consultations with selected independent experts and interested stakeholders with the aim to collect and delve into diverse opinions on an issue that has been already opened before the committee, and on which the relevant minister or any other public servant has given her/his statement (Yamamoto 2007: 31–32). While independent expertise can be vital due to the role of specialised professional knowledge, skills and experience in assessing the problem, the views of stakeholders affected by the problem under study provide parliamentarians the perspective of the users of public policies and programmes, since they represent a part of the population which is directly affected by the public administration performance.

The British House of Commons introduced the practice of setting up semi-standing committees composed of MPs from all parties represented in the Parliament, often led by an opposition MP (a shadow minister), with a mandate to investigate a particularly decisive area of Cabinet ministers' work or any controversial decision (Budge 2002: 33). This type of committee has the power to ask ministers and civil servants to testify. However, the real power of semi-standing parliamentary committees in investigating serious breaches of ethical standards is constrained for three reasons related to the number of seats secured by the ruling and opposition MPs respectively. Firstly, relative parity in number between the ruling and opposition MPs in a committee means that a burning issue is not likely to be tabled and become the matter of concern of a parliamentary inquiry, because oftentimes there is a deep gap in views about such issues between the opposing sides. In an effort to avoid the possible slowdown and even an obstruction, the committee chair deliberately selects the policy issues that are not substantial for the government of the day and interests of the ruling party (or coalition). Such a selective approach in setting the agenda seems to water down the role of parliamentary scrutiny in the long run. Secondly, a consensus between the ruling party (coalition) and the opposition is needed when it comes to producing the final report with conclusions on the conducted inquiry, which *per se* removes from the report any legitimate criticism

of the government or its policies whatsoever. Thirdly, the success of a parliamentary inquiry heavily depends on the willingness of public servants to testify about classified information, which often plays the role of key evidence for determining whether there is a violation of ethical rules. For example, British public servants are well known for their loyalty to the government of the day, and their professional behaviour is shaped by the administrative culture based on a pragmatic motto that one should be economical with the truth.

Conducting investigations initiated by the submitted petitions of citizens—as a bottom-up form of political participation—is another powerful mechanism of parliamentary scrutiny of how the public administration implement government policies and programmes (Escher & Riehm 2016). For instance, the Committee on Petitions of German Bundestag (*Deutscher Bundestag Petitionsausschuss*) receives complaints about the performance of public administration, and it has jurisdiction similar to ombudsperson in other post-industrial polyarchies. Complaint may be submitted in writing on the behalf of oneself, a third party or in the public interest, it may be submitted collectively and publicly, and it has to include a complaint about (in)action of public authorities or a proposal to amend law (Principles 2012: 12). The Committee on Petitions has the right to hear the petitioner, witnesses and experts, and to conduct an investigation based on access to documents and official premises of the organisational unit of the public administration on whose work the complaint refers to (Act 2012: 7). The Committee may propose to the petitioner to give up her/his complaint if there is a reasonable assumption that the procedure will not be completed successfully. The procedure ends with drafting a report that includes a recommendations for resolution of the petition and with forwarding the report to the Bundestag for adoption, which might be preceded with a debate but only if it is requested by at least one parliamentary group or five per cent of the total number of MPs (Provisions 2012: 10).

All parliamentary investigation committees share several common characteristics: 1) They can be established by a decision of the plenary session of Parliament; 2) They are temporary, which means they cease to exist after the investigation is concluded and the report is adopted by parliament; 3) They have a special investigative powers that are greater than those of the standing committees, but which can be applied only within the narrow limits of the assigned jurisdiction (Yamamoto 2007: 39–40). For example, an *ad hoc* committee of the Bundestag has provi-

sional prerogative to collect evidence under the rules of criminal procedure, while the courts and the law enforcement agencies are obliged to provide legal and logistical assistance to the committee.

Although parliamentary investigations in the United States are part of the eternal struggle for institutional power defined by the system of checks and balances, two basic tactics commonly used by the US congressmen when engaging in oversight of the executive branch might be useful for our analysis (McCubbins & Schwartz 1984). The first is “police patrol” oversight tactic which focuses on an active search for flaws in the work of public managers and servants that might fall into some of various categories of criminal activity. In contrast, “fire alarm” oversight tactic shifts control over bureaucracy on civil society organisations and interest groups, which spot violation of ethical standards and then address the competent congressional committee. Since the former monitoring tactic requires more time and resources, it is likely that far more congressmen use the latter tactic.

In some post-industrial polyarchies, there is a tradition of addressing a member of parliament from local constituency with the request for help in solving a problem that one has with the public administration, but in an informal fashion, without pursuing any official investigation. In France and Belgium, the possibility of performing more than one public duty simultaneously enables MPs elected for national parliaments to withhold the position that she/he has in the local government; it thus opens an avenue for solving the complaints of citizens by putting pressure on local public administrators. In Ireland, voters traditionally expected MPs to use their influence and reputation to help them in solving their major problems they face in communication with public servants.

## **The Case of Serbia**

The role of the National Assembly of the Republic of Serbia in overseeing the performance of the public administration is indirect, as well as in other parliamentary systems in post-industrial polyarchies, which means that it takes place primarily through the scrutiny of the government as the core institution of the executive branch. In controlling the work of either the government or any of cabinet ministers, the National Assembly uses tools such as examination of the government’s annual

reports, posing MPs' questions, submitting interpellation requests, the set up of an inquiry committee, and motion of a no confidence in either the government as a whole or any of its cabinet ministers (The Law of the National Assembly 2010: Art. 56). Serbian parliament via its standing committees monitors the implementation of government policy, the execution of laws and other acts, and considers work plans and reports of competent ministries and other public authorities, organisations and bodies (Rules of Procedure of the National Assembly 2014: Art. 44).

The review of the National Assembly's opinions on the reports of various public institutions and bodies, adopted in the period 2001–2014, shows that the parliamentary committees in the largest numbers of cases had no recommendations for the government with a view to improving the integrity of public administration performance. The only recommendations that tackle the creation of ethical climate in the public sector were made, at least in broad manner and indirectly, in support of the conclusions drawn in annual reports of the Commissioner for Information of Public Importance and Personal Data Protection, Ombudsman, and Anti-Corruption Agency (National Assembly 2016). More worrying is the lack of Assembly's recommendation after the government report on massive floods that hit Serbia in 2014. The report omitted to deal with the issue of responsibility of public authorities for failing grossly to help victims and thus ignored a considerable body of on-the-ground evidence of dysfunctional performance of the emergency system actors on all governance levels.

Post-industrial polyarchies alike, regular reporting by the government and other public institutions and organisations within the executive branch is a traditional form of parliamentary scrutiny in Serbia. The government submits a report to the Serbian parliament at least once a year or on the request of the National Assembly itself, if there is the proposal of the Committee to examine the work of the government. The government reports on its work, in particular on implementation of departmental policies, execution of laws and other acts, implementation of development and spatial plans, and execution of the budget (Ibid: Art. 228). The Serbian parliament may decide, acting on a proposal of a committee which considered the government report, that the report also be considered at a sitting. Every minister shall inform the competent committee of the National Assembly on the work of her/his ministry four times a year. At committee sittings, questions related to the information submitted by the Minister may be posed to the minister by members of the competent committee (Ibid: Art. 229). The committee

shall submit a report to the National Assembly on its conclusions relating to the information submitted. The public institutions, organisations, and bodies of the executive branch also regularly submit reports to the parliament, and a relevant committee may request additional information from their jurisdictions. The committee may call on the competent representative of a public institution, organisation, and body whose report is under consideration, after which the committee shall report to the National Assembly with a proposal for the conclusion and recommendations. The committee may propose to the National Assembly to: 1) accept the report, if it considers the report formally and substantially complete, and if the monitored (in)action was in accordance with the law; 2) oblige the government and other state bodies to undertake appropriate measures or activities within their jurisdiction; and 3) to request additional information to the report (Ibid: Art. 237–241).

Parliamentary committees can hold public hearings to obtain information or expert opinions for the sake of an effective monitoring of the implementation of laws and other acts (Ibid: Art. 83). However, none of public hearings have been conducted so far on the issue of systemic misconduct in any part of the public administration or the control of its (in)actions in terms of protection of the public interest.

The National Assembly may establish *ad hoc* inquiry committee with task to assess the situation in a departmental policy, and to determine the important facts on some events or aspects of policy or programme implementation. Although it is not entitled to perform investigative actions, the inquiry committee has the right to access any data, information, and documents held by public institutions and organisations, and to take statements from individuals; the officials of public institutions and organisations are obliged to provide truthful statements, data, information, and documents (Rules of Procedure of the National Assembly 2014: Art. 68). Inquiry Committee over the past decade is rarely used as a tool of control work and determining the responsibilities of the executive power for bad outcomes of public policies. The Serbian Radical Party submitted in 2004 a proposal for set up of a committee of inquiry with the aim to investigate whether the government and other responsible public bodies acted unlawfully in the privatisation procedure of Knjaz Miloš Company. In March 2005, after two months of work, the committee failed to adopt draft report on the issue, and this case has remained unsolved to this day (Aktivnosti 2005). In April 2014, a gross and systemic misuse of budget funds was established by a committee of inquiry after scrutinising the performance of ministries and other



public institutions and bodies responsible for implementation of the government policy in Kosovo and Metohija in the period 2000–2012. The committee recommended the government to initiate an exhaustive criminal investigation and a comprehensive audit of the unsound performance of the police, judiciary and public health centres in the southern province based on the evidence collected before the committee. The mandate of the then government had ended soon promptly followed by election campaign, and the recommendations gradually fell into oblivion. The next government has never acted on the recommendations with no criminal investigation has instigated so far.

The public was most interested in the work of the committee of inquiry established in July 2005 following the requests made to the Assembly by several hundreds of parents who complained they were unable to find information on their newborn children and voiced their concern their children might have been stolen from maternity hospitals across the country for the last four decades. During its inquiry, the Committee heard the parents' representatives and 38 officials from various parts of public administration were interviewed (health institutions, the Ministry of Interior, the Ministry of Health, the Ministry of Justice, local self-government managing bodies, public enterprises, social security institutions, public prosecution offices and courts). On the basis of the Inquiry Committee Report (2006), the National Assembly launched an initiative to amend the legislation regulating the collection and use of medical records. When it comes to the integrity control, the Inquiry Committee concluded that health institutions, Registry Offices and responsible ministries had made serious omissions that justifiably caused the parents to doubt the truthfulness of the facts of their children's death after birth or stillbirth as they were presented to them. The Inquiry Committee proposed the set up of a specialised police unit mandated to investigate in detail all cases where parents have raised suspicion about possible disappearance of their children from birth clinics; regular inspection of keeping medical documentation; and scrutiny of the work of Registry Offices on a regular basis.

Another tool of the control of public administration is parliamentary questions to prime minister or cabinet ministers. The questions can be posed once a month, either orally during an ongoing session or in writing between two sessions (Rules of Procedure of the National Assembly 2014: Art. 204–216). The minister or the Prime Minister may respond the oral questions immediately or in writing—if it is not pos-



sible to make an instant response due to complexity of the issue tackled by the question. MP has the right to comment back on the given answer or to ask a supplementary question, and upon hearing the reply to the supplementary question, the MP declares her/his opinion on the reply received. Parliamentary questions are the most common tool of overseeing the executive, and MPs often use the largest part of acquired information in daily work of the standing committees. Yet, in Serbia only one tenth of questions posed in the period 2009–2015 included, either directly or indirectly, issues pertaining integrity of public administration. MPs touched upon: the government's responsibility for the unsuccessful privatisation of state companies and for granting public infrastructure projects without using a public procurement procedure; the ubiquitous problem of politicisation of managerial positions in the public sector and partisan recruitment in public administration; the performance of public agencies, particularly Privatisation Agency (ceased to exist in January 2016); individual cases of unethical performance of the Ministry for environment, the police, public health services, and natural disaster emergency response system; the slowdown in the national anti-corruption policy implementation. A survey on parliamentary scrutiny in Serbia, created by "Open Parliament" coalition of NGOs in 2014, shows that almost two-thirds of MPs have used this control tool but only a half of them have been satisfied with the responses (Otvoreni parlament 2014: 15–21). The results of the survey suggest that parliamentary questions are considered primarily as a tool for giving directions to the government and for collecting of information, rather than to scrutinise the performance of the executive (ibid: 20).

At least 50 MPs may submit an interpellation as a formal question that usually covers issue of general political significance in the area of responsibility of the Government or a cabinet minister (Ibid: Art. 220–227). Interpellation is submitted to the Speaker of the National Assembly in writing, and has to provide a clear and concise question with a rationale why it demands to be considered. The Government or the government minister submits to the Speaker of the National Assembly response to the interpellation no later than 30 days from the date of receipt of interpellation. If the Serbian parliament votes not to accept the reply to the interpellation, then it proceeds with the vote of no confidence in the Government or a cabinet minister—unless they previously resign. This control tool has been used rarely: only three times in analysed period, but only once with a view to the integrity issue. In 2011,

the Serbian Radical Party submitted an interpellation claiming that the then minister of religion and Diaspora had embezzled budget funds appropriated for financing projects of cooperation between the Diaspora and the homeland during 2010 (Šesta posebna sednica 2011). In its response, the government rejected the allegations, and the parliamentary majority gave support to the work of the cabinet minister rejecting the opposition's demand for a vote of no confidence.

The power to table a motion of no confidence in the Government or a cabinet minister is an important supervisory tool in the hands of MPs. At least 60 MPs may submit a proposal for a vote of no confidence stating the reasons for tabling it (Ibid: Art. 217–219). The Serbian parliament debates in plenary a proposal for a vote of no confidence at the first subsequent sitting or no earlier than five days after the date of the submittal of the motion. Immediately on the conclusion of the debate on the issue of no confidence, the motion shall be put to vote. If the Serbian parliament passes a vote of confidence, the signatories of the motion may not table a new motion of no confidence before the expiry of a period of 180 days from the date of the vote on the motion. In the opposite case, the Speaker of the Serbian parliament immediately notifies the President of the Republic and the Prime Minister. In practice, this control prerogative has been used only twice since 2001, when the Serbian Radical Party and the Democratic Party in separate occasions tried unsuccessfully to table a motion of no confidence in the government and some of cabinet minister in 2005.

## **Obstacles to an Effective Parliamentary Oversight of Public Administration Ethical Performance**

The effectiveness of constitutional and legal tools available to national parliaments seems to suffer from a number of limitations when it comes to monitoring the performance of public administration, particularly in the context of compliance with ethical standards. The limitations primarily stem from the very constitutional design of the relationship between the executive and the legislative branches.

In Westminster systems, parliament can be considered rather as a political framework within which government operates than as its independent supervisor or an external counterweight to government's constitutional and real institutional power (Budge 2002: 31–32). The ma-

jority electoral system supported by a strict party discipline and loyalty of MPs to the party leadership—which usually holds top positions in a government—in practice makes it less likely, or even almost impossible, that the parliamentary majority demands the dismissal of a responsible minister or votes no confidence in the government as a whole for some gross morally wrong (in)action or chronic maladministration. The opposition can hardly imagine getting the majority of votes for any parliamentary decision against the government policy, since it cannot count on the cooperation even with individual MPs from the ruling majority due to strict party discipline. The weakness of the opposition is rooted in the fact that it acts as a “government in waiting room” focused on the sharp criticism of the ongoing government policy solely motivated by the desire to win public support for the upcoming elections, rather than to provide constructive proposals for the change in the actual policy aimed at improving ethical decision making in the public administration. In the circumstances where the voting for the government’s policy proposals goes “automatically”, the parliamentary debate has been reduced to a mere ritual for exercising influence on the public to opt for government policies, instead of being an useful deliberation that does serve as a mechanism for negotiating the best policy proposal possible (Budge 2002: 32).

Strøm maintains that in a Westminster parliamentary system *ex post* oversight tends to be weak and ineffectual because the effectiveness of *ex post* electoral accountability is hindered by the lack of institutional mechanisms for credible *ex post* oversight, the capacity to determine when sanctions are appropriate, and motivation of the parliamentary majority to sanction its agents (Strøm 2006: 71–73). Constrained parliamentary oversight of the compliance of public administration with ethical standards may deteriorate rapidly in a situation when the majority of MPs has no interest in uncovering and publicising corruption practice or other serious type of abuse of public office, as well as in determining the personal responsibility of the perpetrators and the minister in charge of department in which the misconduct occurred (Lambsdorff 2006: 12–13). When single party (coalition) prevails in both branches of government the oversight may be thwarted by either intra-coalition fighting for supremacy or by an intention to cover up systemic violations of ethical standards in public administration to prevent embarrassment in public of those responsible in the government. Russo and Wiberg (2010) stress that the frequent presence of coalition governments impedes the development of effective ways to extract information from the

government departments, organisations and bodies. However, there is still a slight chance of appearance of an honourable MP from the ruling majority, who will reveal to the opposition or to the public a secret deal of the majority to obstruct the investigation of abuse.

In the last decade and more, the coalition governments in Serbia have hampered the effective use of the parliamentary oversight as a mechanism of external control over ethical behaviour in the public administration. Due to strict distribution of government departments, defined in terms of feudal fiefdoms, over which they have absolute power, the members of the coalition had no real interest in dealing with ministerial responsibility even in the cases of suspicion of gross misconduct and biased decision making harmful to the public interest. Striving to maintain the fragile inter-party coalition balance, based on the complex of intertwined particular interests, has prevented the initiation of a motion of no confidence in the government or cabinet ministers, while parliamentary questions and interpellations have had a very limited effect. It is a structural obstacle embedded in the parliamentary system that is based on the fact that the parliamentary majority elects the government, and it logically prevents any scrutiny of the public administration as part of the executive branch that could undermine the position of the very same government. In October 2016, the National Assembly's majority rejected the proposal of an opposition party to establish an inquiry committee with the aim to investigate the case of allegedly unlawful demolition of several houses in Hercegovačka Street (Belgrade) and to determine whether the Belgrade city government is responsible for the secretive coordination of this act. It also happens that the succeeding parliamentary majority loses an interest in pursuing inquiry initiated during the previous government. For example, the conclusions of the inquiry committee on embezzlement of the state budget in Kosovo and Metohija became a dead letter due to the lack of will of the parliamentary majority to implement the recommendations. Similar happened to the inquiry committee that dealt with the privatisation procedure of Knjaz Miloš Company which ended its mandate without reaching consensus on the conclusions.

## Conclusion

I have examined comparatively the competences, powers and practices of parliaments in post-industrial democracies and Serbia as a transitional society with the aim to determine to what extent the legislative branch is an effective external control mechanism of the public servants' performance when it comes to the issue of ethics management. The analysed cases evidence that there is a correlation between the success of parliamentary scrutiny of public administration's compliance to ethical standards and the skills of MPs in using a variety of oversight tools available. Yet, the analysed normative framework and parliamentary oversight practices suggest there are structural weaknesses embedded in the parliamentary system of government that decrease the impact of MPs control over public administration integrity. The constitutional design and loyalty of majority MPs to the government of the day are main contributors in setting the relationship between the executive and the legislative branches in such a way so that parliamentary tools are rarely used in monitoring and investigating the unethical performance of public administration. While the opposition usually does not have enough votes to make a parliamentary decision that questions the failed government and/or minister responsibility for the serious misconduct of public administration, the majority of MPs may have no interest in uncovering and publicising corruption practice pursued by the government they support.

In the period 2001–2015, the National Assembly of the Republic of Serbia as one of the primary democratic accountability mechanisms in the political system have not used to the full extent its scrutiny powers to examine responsibility of cabinet ministers and public managers regarding the issue of improving the quality of ethics management in public administration. When it comes to opinions on the reports of public institutions and bodies, the analysed official documents and activities show that the National Assembly has had no recommendations for the government on the public administration integrity. The MPs stayed away from assessing the unethical performance of public officials even in the case of obviously failed management of the emergency system when massive floods hit Serbia in 2014. Public hearings have not been used so far on the issue of systemic misconduct in any part of the public administration or the control of its (in)actions in terms of protection

of the public interest. The parliamentary power to table a motion of no confidence in the government or a cabinet minister has been used only twice, while interpellation has been used only once – but both control tools with unsuccessful outcomes. Inquiry committee has been also rarely used as a tool of monitoring and determining the responsibilities of the executive power for bad outcomes of public policies over the past decade; even when it was used, this tool has not resulted in concrete decisions and actions taken by the government. Due to the lack of political will of the parliamentary majorities, inquiry committee failed to adopt a report on the case of allegedly unlawful privatisation of Knjaz Miloš Company, and in the case of systemic misuse of budget funds in Kosovo the subsequent governments have disregarded the parliament's recommendations. Only in the case of allegedly abducted babies from birth clinics the National Assembly and the government have made steps towards the implementation of the adopted recommendations. Parliamentary questions to prime minister or cabinet ministers have been used only sporadically as another tool of scrutinising the performance of the executive.

All things considered, the structural obstacles of an effective parliamentary scrutiny in Serbia, post-industrial polyarchies alike, result from the logic of parliamentary system of government itself. The obstacles provide tight room to holding to account effectively the government and its administration when they are being supported by the very same parliamentary majority. In Serbia, parliamentary scrutiny is more specific because of the political practice of treating government departments as feudal fiefdoms in reaching equilibrium for survival of the fragile coalition governments. None of coalition parties have real interest in dealing with ministerial responsibility but try to avoid the loss of a hardly reached equilibrium which chiefly benefits party leadership. The plausible avenues towards an effective parliamentary scrutiny of the public administration are, firstly, raising awareness among MPs of the substantial role that the parliament plays in good governance, and, secondly, strengthening of their integrity as top public officials.

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