

NATIONAL INTEGRITY SYSTEM ASSESSMENT

SERBIA 2011



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I INTRODUCTORY INFORMATION

Transparency International (TI) is the global non-profit, non-governmental organization dedicated to fighting corruption. Through 100 chapters worldwide and an international secretariat in Berlin, TI works at both the national and international level to curb both the supply and demand of corruption. In the international arena, TI raises awareness about the damaging effects of corruption, advocates policy reform, works towards the implementation of multilateral conventions and subsequently monitors compliance by governments, corporations and banks.

Transparency Serbia (TS) is non-partisan, non-governmental and non-for profit voluntary organization established with the aim of curbing corruption in Serbia. The Organization promotes transparency and accountability of the public officials as well as curbing corruption defined as abusing of power for the private interest.

Transparency Serbia is national chapter and representative of Transparency International in Republic of Serbia.

Publisher:

Transparency Serbia
Lead Researcher and Author
Nemanja Nenadic, Transparency Serbia

Project Coordinator

Bojana Medenica, Transparency Serbia

Review and Quality Control

PhD Finn Heinrich & PhD Suzanne Mulcahy, Transparency International

Editing of English text:

Maja Sandic

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Advisory Group members

1. Mrs. Zagorka Golubovic, professor, Faculty of Political Science, University of Belgrade
2. Mr. Marko Paunovic, Executive Director, Center for Liberal-Democratic Studies
3. Mr. Srdjan Korac, Associate, Center for Security Studies
4. Mr. Cedomir Cupic, Board President, Anti-Corruption Agency
5. Mr. Slobodan Boskovic, Assistant Minister, Ministry of Justice
6. Mr. Veljko Odalovic, Secretary General, National Assembly
7. Mrs. Olgica Miloradovic, Deputy Prosecutor General, Prosecutor Office

8. Mr. Drazen Maravic, Head of the Bureau for International Cooperation and European Integration, Ministry of Interior
9. Mr. Sasa Jankovic, Ombudsman, Office of the State Ombudsman
10. Mr. Djordje Stanicic, Secretary General, Standing Conference of Towns and Municipalities
11. Mr. Zlatko Minic, Deputy Editoring Chief, Beta News Agency
12. Mr. Dejan Trifunovic, member, Serbian Chamber of Commerce
13. Mr. Rodoljub Sabic, Commissioner, Commissioner for Information of Public Importance and Personal Data Protection
14. Mrs. Mirjana Cvetkovic, Legal Adviser, Delegation of the European Union to the Republic of Serbia
15. Mrs. Gordana Arackic, Legal Adviser, Delegation of the European Union to the Republic of Serbia
16. Mrs. Nadia Cuk, Deputy Special Representative of the CoE Secretary General, Council of Europe Office in Belgrade
17. Mrs. Jadranka Jelinicic, Executive Director, Fund for an Open Society
18. Mrs. Svetlana Zorbic, National Legal Officer, OSCE Mission to Serbia
19. Mrs. Marijana Trifunovic, Independent Consultant
20. Mr. Velibor Popovic, Program Manager, UNDP Mission Serbia
21. Mrs. Maja Bobic, Secretary General, European Movement in Serbia
22. Mr. Miodrag Majic, Judge, Appeal Court Belgrade
23. Mrs. Dana Dzunic, Head of Finance, Democratic Party
24. Mrs. Tamara Trsic, Secretary, Democratic Party
25. Mr. Marko Milutinovic, Member of Board, Democratic Party of Serbia
26. Mrs. Zorana Mihajlovic, Serbian Progressive Party

List of interviewees

1. Georgije Maric, former secretary of the Parliament
2. Radojko Obradovic, MP
3. Cedomir Cupic, President of the ACA Board
4. Zlata Djordjevic, editor in Beta News Agency
5. Mirjana Radakovic, assistant general secretary of National Assembly
6. Jorgovanka Tabakovic, MP
7. Dejan Vuk Stankovic, political analyst
8. Zoran Stoiljkovic, political analyst
9. Miloš Todorovic, deputy secretary general of the Government of Serbia
10. Rodoljub Sabic, Commissioner for Information of Public Importance
11. Slobodan Homen, State Secretary in Ministry of Justice
12. Dragana Boljevic, President of Serbian Association of Judges
13. Vida Petrovic Skero, Judge of Supreme Court of Cassation
14. Vesna Dabic, Spokesman of Administrative Court
15. Milan Markovic, Minister of Public Administration
16. Njegos Potezica, President of the Union of Administration
17. Blaza Markovic, representative of the Independent Police Union
18. Goran Ilic, deputy Republic Public Prosecutor and the President of the Serbian Association of Prosecutors

19. Boza Prelevic, lawyer, former judge and minister of the police
20. Predrag Gagic, President of the REC
21. Veljko Odalovic, secretary of REC and secretary of the Parliament
22. Marko Blagojevic, representatives of non-governmental organizations specialized for monitoring of elections and election activities CESID
23. Djordje Vukovic, representatives of non-governmental organizations specialized for monitoring of elections and election activities CESID
24. Sasa Jankovic, Ombudsman
25. Ljubica Nedeljkovic, Vice-President of Council of SAI
26. Zlatko Minic, ACA Board member
27. Sasa Trifunovic, journalist
28. Zdenka Kovacevic, NGO Sretenje
29. Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector
30. Zoran Gavrilovic, NGO Birodi
31. Pavle Dimitrijevic, NGO Birodi
32. Dragoljub Rajic, representative of Employers' Union of Serbia
33. Milan Parivodic, former Minister of the Government of Serbia for foreign economy relations
34. Vojislav Stevanovic, editor in chief of Ekonomist Magazine
35. Miroslav Bojcic, investment advisor
36. Stanojla Mandic, Deputy FOI Commissioner
37. Djordje Stanicic, Secretary General of the Standing Conference of Towns and Municipalities
38. Mirjana Stankovic, Managing Director at Development Consulting Group
39. Milos Mojsilovic, Department for the Prevention, ACA
40. and many other who asked to remain anonymous.

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ACRONYMS AND ABBREVIATIONS

ACAS	Anticorruption Agency
ANEM	Association of Independent Broadcasters
APP	Association of Public Prosecutors
BEEPS	Business Environment and Enterprise Performance Survey
BIRN	Balkan Investigative Reporting Network
BRA	Serbian Business Registers' Agency
CCS	Chamber of Commerce of Serbia
CESID	Center for Free Elections and Democracy, civil society organization
CoE	Council of Europe
CPC	Criminal Procedure Code
CPI	Corruption Perception Index
CSO	civil society organization
DP	Democratic Party
EC	European Commission
EU	European Union
FOIA	Freedom of Information Act
GCB	Global Corruption Barometer
GNI	Gross national income
GRECO	Group of States against Corruption of the Council of Europe
HRMS	Human Resource Management Service
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards
IJAS	Independent Journalists' Association of Serbia
INTOSAI	International Organization of Supreme Audit Institutions
ISA	International Standards on Auditing
JAS	Journalists' Association of Serbia
LAF	Local Anti-corruption Forums
LSV	League of Social-democrats of Vojvodina
MP	Member of Parliament
NGO	Non-governmental organization
NIP	National Investment Plan
ODIHR	Office for Democratic Institutions and Human Rights of Organization for Security and Co-operation in Europe
OSCE	Organization for Security and Co-operation in Europe
PPO	Public Procurement Office
PTT	Public Enterprise of PTT Communications "Srbija" (POST)
REC	Republic Election Commission
RPP	Republic Public Prosecutor
RTS	Radio-Television of Serbia
SAI	State Audit Institution
SBA	Serbian Broadcasting Agency
SBPOK	Police Department in Charge of Fighting Organized Crime and Corruption
SCTM	Standing Conference of Towns and Municipalities

SEC	Independent Socioeconomic Council
SIA	Security Information Agency
SIGMA	Support for Improvement in Governance and Management, a joint initiative of the European Union and the OECD
SJC	Supreme Judiciary Council
SME	Small and Medium Companies and Entrepreneurs
SPC	State Prosecutors Council
SRS	Serbian Radical Party
TAIEX	Technical Assistance and Information Exchange instrument managed by the Directorate-General Enlargement of the European Commission
TI	Transparency International
TS	Transparency Serbia
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crime

II. ABOUT THE NIS ASSESSMENT

2.1. Introduction

Corruption is a serious problem in Serbia indicated by international factors, such as the EU's regular reports on Serbia's progress towards European integration, and Serbian officials – the fight against corruption is one of the proclaimed objectives in the speech of every Prime Minister in the last decade. Effects of such plans are an essential part of any political and especially pre-election controversy. In the political debate and effort to formally meet European standards, it is often neglected that institutions of society and their anti-corruption potential are the key to long-term, sustainable and lasting fight against corruption.

For this reason the NIS analysis is extremely important as an impartial expert assessment of the vulnerability of social institutions and their potential for combating corruption. The Project 'National Integrity System Assessment for Serbia' (NIS) was made possible by the support of the EU Delegation in Serbia and the Fund for an Open Society, Serbia.

2.2. The aim of the assessment

NIS assessment is not an evaluation of effectiveness of individual parts of the system or the level of corruption in them. However, if those parts of the system do not have the appropriate rules or regulations or if they are characterized by inappropriate behavior, corruption will develop more easily. Also, if the institutions do not have the capacity, appropriate programs and policies, they will not be able to fulfill their role in the fight against corruption. Therefore, the most common ultimate aim of conducting the NIS assessment is to gather data and evidence which can be used for specific advocacy and policy reform initiatives.

NIS has been developed by Transparency International as part of its holistic approach to the fight against corruption. NIS findings point to specific weaknesses in the integrity system, but they also indicate best practices. NIS assessment can be used as a monitoring tool to evaluate overall progress or regress of the entire integrity system as well as individual institutions.

In order to ensure an effective link between the assessment and policy reform, the NIS assessment embraces a participatory approach, providing opportunities for stakeholder input and engagement throughout the project.

2.3. Pillars, indicators and variables

The NIS assessment is an analysis based on combining research regulations and other documents, secondary sources (surveys, reports, publications, and press articles) and direct in-depth interviews with stakeholders and experts. For each pillar several interviews were conducted with representatives of the institution and with external experts. Analyses present replies to the scoring questions and are based on the guiding questions, which were developed by examining international best practices, existing assessment tools for the respective pillar, by the experience of the TS and TI movement and by seeking input from experts.

NIS consists of the analysis of 15 functional pillars of the integrity system. Some pillars include more institutions that have the same or similar role ("Law Enforcement Agencies" includes both

Public Prosecution and Police), while individual pillars have a huge number of individual institutions and / or organizations (CSOs and Local Self-Government).

In order to present contextual factors, the evaluation includes brief analysis of the overall political, social, economic and cultural conditions, the foundations, on which these pillars are based.

The defined pillars are:

1. Legislature
2. Executive
3. Judiciary
4. Public Sector
5. Law Enforcement Agencies
6. Electoral Management Body
7. Ombudsman
8. Supreme Audit Institution
9. Anti-Corruption Agencies
10. Political Parties
11. Media
12. Civil Society
13. Business
14. Commissioner for Information of Public Importance
15. Local Self-Government

The research evaluates key public institutions and non-state actors in a country's governance system with regard to (1) their capacity - effective institutional performance, (2) their governance systems and procedures, focusing on three basic elements, essential to prevent institutions from engaging in corruption - transparency, accountability and integrity and (3) their role in the overall integrity system – focusing on individual roles of each institution, such as corruption related investigative journalism for the Media pillar or AC policy engagement for the Business pillar.

Each variable is measured by a common set of indicators. The assessment in most cases examines both the legal framework and actual institutional practice, thereby highlighting discrepancies between the formal provisions and reality on the ground.

Variable	Indicators
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role	Between 1 and 3 indicators, specific to each pillar

2.4 Scoring system

NIS analysis is the qualitative assessment, but for each of the pillars, and for all indicators within each pillar, there are numerical scores to more easily comprehend the key weaknesses in the whole system and in each pillar. All the elements are first assigned scores from 1 to 5, in accordance with the methodology defined by TI, and then these scores were converted to a scale from 0 to 100, where the minimum score 1 is equivalent to 0, and maximum score of 5 is

equivalent to 100. In this way, all reviews within the system and within pillars are uniformed – by indicators in relation to regulations / practices, which enable a simple, straightforward and clear comparison. Thanks to this method of assessment an additional dimension is introduced – the space for building and strengthening the pillars, which presents the difference in current rating and the maximum score of 100.

2.5 Consultative approach and Validation of Findings

Consultative approach to work on NIS was conducted on two levels. TS has formed an Advisory Group whose members were senior representatives of institutions or other prominent experts in the surveyed fields and counted a total of 26 members. The role of the advisory committee was to:

- review NIS report and provide comments
- validate given scores
- attends NIS workshops and final conference and thus contribute to the promotion of results

The Committee met on September 27th, 2010, and March 18th, 2011. In its initial phase, the Committee pointed out the additional areas to be included in the NIS analysis. In addition to 13 NIS institutions, the study included the Commissioner for Information of Public Importance and Personal Data Protection and Local Government. The Committee also expressed the view of preliminary findings and suggestions regarding the recommendations of the final report.

The second level of consultative approach reflected in the fact that the representatives of all institutions were directly involved through interviews or had the opportunity to express their views which have become an integral part of the report. Also, the representatives of institutions covered by NIS investigation took part in the final conference and presentation of NIS reports and recommendations on September 13th, 2011.

The meeting helped to further refine the report, particularly by adding and prioritizing recommendations.

The full report was reviewed and endorsed by the TI Secretariat related to applied research methodology.

2.6 Concept, background and history of the NIS

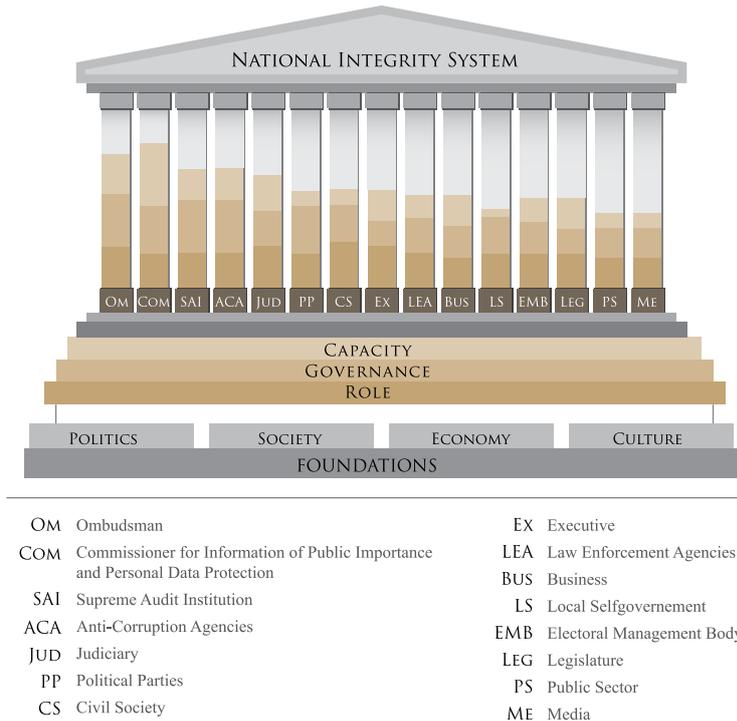
The concept of a “National Integrity System” originated within the TI movement in the 1990s as TI’s primary conceptual tool of how corruption could best be fought, and, ultimately, prevented. It made its first public appearance in the TI Sourcebook, which sought to draw together those actors and institutions which are crucial in fighting corruption, in a common analytical framework, called the “National Integrity System”. The initial approach suggested the use of ‘National Integrity Workshops’ to put this framework into practice. The focus on “integrity” signified the positive message that corruption can indeed be defeated if integrity reigns in all relevant aspects of public life. In the early 2000s, TI then developed a basic research methodology to study the main characteristics of current National Integrity Systems in countries around the world via a desk study, no longer using the National Integrity Workshop approach. In 2008, TI engaged in a major overhaul of the research methodology, adding two crucial elements – the scoring system as well as consultative elements of an advisory group and reinstating the National Integrity Workshop, which had been part of the original approach.

While the conceptual foundations of the NIS approach originate in the TI Sourcebook, they are also closely intertwined with the wider and growing body of academic and policy literature on institutional anti-corruption theory and practice. The NIS research approach is an integral component of TI’s overall portfolio of research tools which measure corruption and assess anti-corruption efforts.

By offering an in-depth country driven diagnosis of the main governance institutions, the NIS's main aim is to provide a solid evidence-base for country-level advocacy actions on improving the anti-corruption mechanisms and their performance. It is complemented by other TI tools, which are more geared towards raising public awareness of corruption and its consequences via global rankings (e.g. Corruption Perception Index, Bribe Payers Index) or via reporting the views and experiences of the public (e.g. Global Corruption Barometer). In addition, the NIS approach fills an important gap in the larger field of international governance assessments, which are dominated by cross-country rankings and ratings (e.g. Global Integrity Index, Bertelsmann Transformation Index), donor-driven assessments (which are rarely made public) or country-specific case studies, by offering an in-depth yet systematic assessment of the anti-corruption system, which is based on a highly consultative multi-stakeholder approach. This unique combination of being driven by an independent local civil society organization, involving consultations with all relevant stakeholders in-country, and being integrated into a global project architecture (which ensures effective technical assistance and quality control), makes the NIS approach a relevant tool to assess and, ultimately, further anti-corruption efforts in countries around the world.

III EXECUTIVE SUMMARY

The evaluation of the National Integrity System delivers an objective assessment of the legal basis and regulations, which are the ground of the pillars of integrity and assessment of their functioning in practice. NIS is not a score of corruption or efforts that some institutions have invested in the fight against corruption, but the pillars' potential to fulfill their role in the fight against corruption in the society and to resist corruption that could endanger themselves and which depends, among other things, on the available legal framework and capacity.



The pillars are rated in the political, economic, social and cultural environment, whose state was also estimated and whose weaknesses or potentials were particularly pointed out in the study. A special section is devoted to the estimation of corruption and the fight against corruption in Serbia. The assessment of NIS was concluded in the second half of 2011. The practice involves the period from 2008 to 2011, with rare and special references about condition or relevant events from the period leading up to 2008.

In 2008 Serbia held the elections which resulted in the formation of a government committed to the country's integration into the EU. The Prime Minister's speech said that one of the five priorities of this government was the fight against corruption. However, the government is composed of a large number of parties, as many as 16 of them are represented in the government or support the tight majority in the Parliament, which makes the government vulnerable to political blackmail. This is particularly alarming given the perception that the over-politicization of the public sector is one of the major corruption mechanisms. On the other hand, all parties are based on a strong leadership principle, which means that political power is in the hands of the small amount of party leaders. The influence of Parliament and its control role in practice are minimal. There is an open space for strong influence of business lobbies, especially in a situation of economic crisis, particularly felt by the media. The economy is still in crisis - after GDP growth of 3.8 percent in 2008, in 2009 we saw a drop of 3.5 percent, and in 2010 the modest growth of 1 percent. Net earnings had a real growth of less than 1 percent in 2009 and 2010, while the average income in EUR dropped from 400 in 2008 to 330 in 2010. At the same time the unemployment rate increased from 13.6 to 19.2 percent, and the number of employees from two million in 2008 was reduced to 1.75 million at the beginning of 2011.¹

¹ Data: The main macroeconomic indicator in the Republic of Serbia, the National Assembly Library

Research² show that two-thirds of the citizens believe that “things in Serbia are going the wrong direction” the biggest problems in society is unemployment and poverty, followed by corruption and low wages. However, research support the thesis that citizens, although complaining of corruption, are not willing to make reports (mostly due to a lack of confidence that the case would be investigated and prosecuted), and in most cases offer a bribe themselves.

According to the Corruption Perception Index of Transparency International, in 2010 and 2009 Serbia had a score of 3.5, and in 2008 and 2007 the score of 3.4, which is an indication of the lack of any progress in that field. According to the Global Corruption Barometer for 2010, the bodies that citizens of Serbia identified as very corrupt are - political parties (score 4.1 on a scale of 0 to 5), the judiciary (3.9) and civil servants (3.8). In the UNDP and Medium Gallup poll from October 2010, citizens identified political parties (74 percent), health care (73%), judges (68%) and prosecutors (67%) as particularly corrupted.

At the same time, the number of detected criminal offenses with elements of corruption is in constant rise in the last ten years (e.g. 3,970 in 2009, in comparison with 2,809 in 2006). It can be argued that these figures more probably suggest an increased activity of the authorities in the fight against corruption, than the increased presence of corruption. In the structure of these offenses, in the period between January 2006 and August 2010 “abuse of power” (about 6,500) prevails, forgery of official documents (about 4,000). Receiving or giving bribes was detected in more than 600 cases. It should be borne in mind that the police classifies as the offenses of corruption some actions that sometimes do not fall under that category (the abuse “official position” in private enterprises, the basic form of forging official documents), so the actual number is much smaller. Among the reported perpetrators of these crimes in the last five years, the majority are directors of various companies (36%) and employees of public companies (7%). About 13% of reported individuals are employed in government agencies and other authorities (police, health, education, customs, law, revenue administration and others) and 44% are those of other professions. In 2010, the prosecution received a total of 6,679 reports for corruption (abuse of official position, receiving and giving bribes, violation of the laws by judges). After investigations, 1,256 persons were accused and 506 judgments were passed, 220 of them were sentenced to jail and 209 got conditional sentence³.

On the normative and institutional level, the most important step is the adoption of the Law on the Anti-Corruption Agency (December 2008) and the formation of the Anti-Corruption Agency. The Agency has a preventive, educational and supervisory role and responsibilities in the area of conflict of interest, the control of financing parties and electoral campaigns, integrity plans and monitoring the implementation of the Anti-corruption strategy. In June 2011 the new Law on Financing Political Activities was adopted, which gives greater control facilities to the Agency. The amendments to the Law on the Anti-Corruption Agency allowed this body the jurisdiction for the protection of whistleblowers, which, however, are not accurate enough.

On the other hand, there are still serious obstacles for the systematic suppression of corruption, although some of the measures and recommendations for their removal were defined in the National Strategy for the Fight against Corruption, adopted in 2005. Those are obstacles related to the election system, the fact that Law on Lobbying has not been adopted, the process of judiciary reforms was not made in a satisfactory manner, the progress in implementing the Public Administration Reform Strategy is not fast enough, the process of privatization and public procurement procedures continue to cause concern about corruption. Also, there are shortcomings in the legal framework governing competition policy, state aid and concentration, the transparency of ownership over the media is insufficient, there is a significant economic influence of state institutions to the work of the media through different types of budgetary granting, and the participation of civil society in public consultations in legislative process is also insufficient⁴.

2 The Research of UNDP and Medium Gallup, October 2009, March 2010 and October 2010.

3 Data from responses to EU questionnaire and data of the Public Prosecution

4 Draft of National Strategy for Fighting Corruption 2012-2016

Pillars

Pillars	Score
1. Legislature	46
2. Executive	52
3. Judiciary	60
4. Public Sector	42
5. Law Enforcement Agencies	50
6. Electoral Management Body	48
7. Ombudsman	75
8. Supreme Audit Institution	69
9. Anti-Corruption Agencies	60
10. Political Parties	58
11. Media	42
12. Civil Society	53
13. Business	50
14. Commissioner for Information of Public Importance and Personal Data Protection	73
15. Local Self-government	50

Legislature in practice does not use independence and oversight mechanisms awarded by regulations, but operates almost exclusively on the initiative of the government. Reports of independent bodies are formally discussed and there is no monitoring over the implementation of their recommendations. A narrow ruling majority is represented by 16 parties, which makes the Parliament vulnerable to political blackmail.

The **Executive** is under the shadow of the President who is also the chairman of the party which is the backbone of the Government. The Government decision-making process is not transparent enough and depends on the agreement of the ruling party leaders. The Government is not effective in monitoring public companies under its jurisdiction.

Independence of the **Judiciary** is severely compromised by the non-transparent reappointment of judges which led to the termination of functions for more than 800 judges. Independence is also compromised by the changes in the law which ordered the review of decisions on unelected judges, but left the possibility to review functions of the judges elected in the previous process. Prosecution of corruption is extremely slow, and the system of accountability and work evaluation has not yet been established.

The public sector is politicized and under heavy political influence, although there are formal norms and regulations which should prevent that. Appointments, employment and promotions are often associated with party affiliation. There is no adequate protection of whistleblowers, public hearings on the regulations are the exception, and violations of the provisions of public procurement are very common.

The police, as part of the **law enforcement** pillar, has a separate department for fighting against corruption, but it does not have enough staff, given the extent of corruption. During the prosecution of corruption in sensitive cases there is a strong indication that the police is subject to political influence. An internal control system does exist, but with a number of shortcomings. The prosecution, just like the judiciary, has gone through re-election, which has affected its independence and further enhanced "self-censorship" in its work.

The **Electoral Management Body** is not an independent body, but a body that consists of parties' representatives. Despite that fact and due to inter-party control, this body ensures the maintenance of fair elections. The Electoral Management Body's work is mostly transparent.

The **Ombudsman** is independent from the government, works transparently, and is involved in the prevention of corruption through the promotion of good governance. The biggest problem is the lack of capacity and the unsolved problem of permanent accommodation.

After three years of work, **the State Audit Institution** has not solved the problem of permanent accommodation, does not have enough staff, and therefore has a limited scope of audits. Previous audits did not include the most important aspects of control - checking the appropriateness of spending money. Audit and annual reports of SAI do not include recommendations for improving the system of work in areas that SAI is dealing with.

The **Anticorruption Agency** began operating in 2010 and was immediately confronted with the obstruction and political resistance when it tried to implement provisions on conflict of interest. It was followed by a change in the law, which was canceled after one year by the Constitutional Court. In some areas the work of ACA has been slow due to lack of human resources. Number of cases where violation of the law is identified is still small.

Political parties have formal democratic structure, but in practice, all decisions are made by the President and a narrow circle of people around him. All parties violate the law on financing election campaigns, which remains unpunished, due to serious flaws of the legal framework for its control. The clientelistic approach and secret lobbying are a regular phenomenon.

The **media** is strongly influenced by political and economic power centers or advertisers who are, on the other hand, linked with political power centers. Investigative reporting is not developed and texts on corruption often arise as a result of political confrontation and not as the result of journalists' research.

Civil Society Organizations are extremely numerous and the procedure for registration is simple, but only a few organizations have adequate capacities and that are seriously and systematically engaged in the areas of policy reform and corruption. The system of CSO funding from public resources has not been fully regulated and leaves room for the influence of the government on the work of CSOs.

A **business** is easy to be registered and run, but there are problems with the judicial protection through enforcement proceedings and debt collection. The state is interfering in the functioning of the market and affects the competition through its measures. Anticorruption advocating of the business sector is extremely limited, companies agree to corruption in business, and cooperation with the civil sector in fight against corruption practically does not exist.

Despite the lack of resources, **the Commissioner for Information of Public Importance and Personal Data Protection** has substantially contributed to the right of access to information and the promotion of transparency in the work of state bodies.

Local Self-Government is strongly politicized and subject to the influence of political parties. There are no regulations on conflict of interest for local administration. Public hearings on the legislation are rare, even the cases of budget most often come down to formal public hearings and officials do not give reasons for their decisions.

For most pillars and in nearly all evaluated areas there is a noticeable gap between the law and practice. Scores for regulations are generally higher, which indicates the need for further work

on the implementation of legislation, supervision and control. Scores for action within the role are generally low (with few exceptions), which also indicates that the pillars do not recognize their anticorruption role, or it is not being fulfilled. The average score for the entire NIS is **55**.

Only two pillars scored more than 70 (the Ombudsman and the Commissioner), while eight are rated 50 and less. Typical for all eight of them is the connection with the activities of political parties, and their low marks are the result of direct or indirect involvement of political parties in the functioning of these pillars.

Therefore, NIS analysis recommends:

- curbing political corruption, particularly by increasing transparency of decision making in executive authorities, limiting discretion in handling public resources, by controlling the financing of political parties and election campaigns and limiting regulatory and financial interventions by the state
- depoliticization of the management in the public sector, particularly in public companies, public services and local administration
- strengthening the independence of the judiciary and creating conditions for the free and unselective operation of law enforcement authorities
- protection of whistleblowers and introduction of other measures aimed at increasing the number of reported cases of corruption; proactive investigation, based on previously detected cases or other available reports (such as audit reports)
- providing sufficient capacities and resources to independent bodies involved in the anticorruption struggle and the creation of mechanisms by which the Parliament will implement the recommendations of independent bodies and thus oversee the Government and other authorities.
- regulation of media ownership transparency and the release from the influence of business and politics to it and editorial policy

IV COUNTRY PROFILE – THE FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

4.1 Political-institutional foundations

To what extent are the political institutions in the country supportive to an effective national integrity system?

Score: 75

Serbia is an electoral democracy. The President, elected to a five-year term, should, according to law and Constitution, play a largely ceremonial role. The Parliament is unicameral, a 250-seat legislature, with deputies elected to four-year terms according to party lists. The prime minister is elected by the assembly. Both the presidential and parliamentary elections in 2008 were deemed free and fair by international monitoring groups⁵. The next general election is due in the spring of 2012.

In addition to the main political parties, numerous smaller parties compete for influence. These include factions representing Serbia's ethnic minorities, two of which belong to the current coalition government (in 2011). On the other hand, numerous parties, members of the ruling coalition which has a slim majority, occasionally contribute to political instability because every single party has the potential to demand fulfilling tasks from its own agenda instead of primary tasks set by the government and considers it to be in wider public interest.

The electoral system in Serbia is a purely proportional system, practiced in a single constituency with 250 seats and a 5% electoral threshold. By allowing parties to distribute arbitrarily mandates among the candidates on their lists after the election, the system gives political parties rather than citizens the power to decide which individuals are elected. This provision was intended to eliminate practices of vote buying and deals over changing of party caucus. International organizations, however, criticized it for blurring the transparency of the electoral process⁶. In 2011, Serbia took heed of that criticism. The Parliament endorsed and amended the Law on the election of deputies and changed the disputed legal provisions, introducing "closed lists." The same law has eliminated yet another controversial convention, the practice of blank resignations, which could formerly be handed by the elected members of Parliament to their respective parties. Blanc resignation letters were seen as another mechanism used by Serbia's parties to discipline their deputies as they could use them to strip disloyal deputies of their mandates. These changes were one of the preconditions for Serbia's potential candidate status for membership of the EU.

During 2009 and 2010, the government initiated major economic and political structural changes and continued the harmonization of its laws with European standards. Serbia's Parliament passed a number of long-awaited laws needed for the country's EU integration, including an anti-discrimination law, laws on associations, the status of the autonomous province of Vojvodina, and on the financing of political organizations. On the downside, the government's impotence in reforming its own bureaucracy and improving its capacity to implement new laws became more apparent. In addition, corruption, cronyism and nepotism remain significant problems in Serbia⁷.

According to the rating of Freedom House in 2011, Serbia is ranked as "free" with a score of 2.0 (on a scale of 1 to 7, where 1 is completely free). In the area of civil liberties and political rights the

5 <http://www.osce.org/odihr/elections/serbia/31837>

6 <http://www.bti-project.org/countryreports/ese/srb/>

7 <http://www.bti-project.org/countryreports/ese/srb/>

score is 2.0. Serbia has slightly improved the average score of democratic development in relation to the previous report, from 3.71 to 3.64, while the situation remained the same as last year in the areas of – the electoral process, independent media, democratic governance at the national and local level, as well as in the field of justice⁸.

According to the Worldwide Governance Indicators of the World Bank, the quality of governance is rated low in most areas, although there is minor improvement compared to the assessment from two years ago. Indices for 2010 are: in the field of combating corruption 49.3 (2008. was 48.1), the rule of law 43.1 (37.0), the quality of regulation 52.6 (45.1), government efficiency 51.7 (47.1), political stability, 31.1 (27.3) and accountability of government 55.9 (56.7), where the indices range from 0 (worst) to 100⁹.

4.2 Socio-political foundations

To what extent are the relationships among social groups and between social groups and the political system in the country supportive to an effective national integrity system?

Score: 75

It is difficult to say how stable and socially rooted the party system is. The main problem, threatening social cohesion is in socioeconomic disparities between the regions and growing poverty in the transition period, combined with the economic crises from 2008.

The Constitution guarantees freedom of religion, which is generally respected in practice. However, increases in ethnic tensions often take the form of religious intolerance. Critics claim that the 2006 Law on Churches and Religious Communities privileges seven “traditional” religious communities by giving them tax-exempt status and forcing other groups to go through cumbersome registration procedures¹⁰. The application of many aspects of the law is considered to be arbitrary. Relations between factions within the Islamic community in the Sandžak region, and between one of the factions and the Serbian government, have been deteriorating in recent years¹¹.

Citizens enjoy freedoms of assembly and association, though a 2009 law banned meetings of fascist organizations and the use of neo-Nazi symbols. The rights of the activists of Serbian lesbian, gay, bisexual and transgender (LGBT) groups to exercise openly their freedom of assembly, expression and association are denied, on the other hand, by the high level of homophobia and prejudices in Serbian society¹².

The Serbian civil society is well developed and vibrant, with a large number of organizations. There are around 15,500 registered NGOs which employ 4,200 staff along with 4,500 part-time employees and volunteers¹³. Civil society retains a traditional focus on social and community services and charitable activities. Advocacy for change in government policy and social attitudes with regard to the traditional areas of civil society activity – service provision, assistance in the community – is still the exception, and is mainly conducted by the small number of professional NGOs.

An October 2010 a gay pride parade in Belgrade was attacked by several thousand counter-demonstrators, but the police successfully protected the marchers. Foreign and domestic NGOs are generally free to operate without government interference, and the 2009 Law on Associations clarified their legal status. The laws and constitution allow workers to form or join unions, engage in

8 <http://www.freedomhouse.org/report/freedom-world/2011/serbia>

9 http://info.worldbank.org/governance/wgi/sc_chart.asp

10 Freedom house report on Serbia <http://www.freedomhouse.org/report/freedom-world/2010/serbia>

11 Freedom house report on Serbia <http://www.freedomhouse.org/report/freedom-world/2010/serbia>

12 <http://www.bti-project.org/countryreports/ese/srb/>

13 Reserch of the Civil Initiatives (www.gradjanske.org), Jun 2011

collective bargaining, and strike, but the International Confederation of Trade Unions has reported that organizing efforts and strikes are substantially restricted in practice.

Ethnic minorities have access to media in their own languages, their own political parties, and other types of associations. The government also took efforts to improve the share of national minorities in public administration, the judiciary and the police, particularly in ethnically mixed Vojvodina province and southern municipalities of Bujanovac, Presevo and Medveđa, where a large number of ethnic Albanians live. Parties of national minorities are exempted from thresholds to enter the national, provincial and municipal assemblies¹⁴. Nevertheless, they are underrepresented in the government.

Women make up about 22 percent of the Parliament, and five women currently serve as cabinet ministers. According to electoral regulations, women must account for at least 30 percent of a party's candidate list. Although women are legally entitled to equal pay for equal work, traditional attitudes often limit their roles in the economy, with single mothers, older women, and disabled women facing particular discrimination¹⁵. In December 2009, the Parliament adopted a new law on gender equality, which provides for a wide range of protection in the fields of employment, health, education, and politics. It also included measures aimed at eliminating gender-based discrimination and providing protection for persons subject to such discrimination. In May 2010, the Serbian Parliament, following the provisions of the Anti-discrimination Law, appointed its first independent and autonomous Commissioner for the protection of equal rights. Domestic violence remains a serious problem.

4.3 Socio-economic foundations

To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

Score: 50

With a gross national income of \$10,380¹⁶ (World Bank Indicators, 2010, or \$6,000, GNI Per Capita, Atlas method, 2009), Serbia kept its position among the upper-middle income countries of the world. Social exclusion is quantitatively and qualitatively on the increase and absolute poverty in Serbia, as it was indicated in the official data, showed a growing trend over 2008 – 2010. According to the Statistical Office of Serbia, in 2010, 9.2% of the total population (which reached 7.3 million in January 2010) is living below the absolute poverty level, because their consumption per consumption unit was on average under the poverty level of RSD 8,544 (\$123) per consumption unit.

The percentage of poor people grew from 6.9% in 2009 to 9.2% in 2010¹⁷.

Serbia's HDI value for 2010 is 0.735 (positioning the country at 60 out of 69 countries and areas characterized by high human development, HDI Report 2010)¹⁸. However, the consequences of the global economic crisis (economic growth decline) and government structural reforms, particularly in the public sector, strongly affected some of the other indicators of social exclusion in Serbia. In October 2010, the rate of unemployment reached 20% (around 730,000 unemployed individuals, more than half of them women). The number of employed persons in 2010 decreased by 4.9% on the previous year's total (Labor Force Survey)¹⁹. Many unemployed and even employed persons and dropouts from the official statistics work in the informal sector, which is estimated to employ

14 <http://www.bti-project.org/countryreports/ese/srb/>

15 Freedom house report on Serbia <http://www.freedomhouse.org/report/freedom-world/2010/serbia>

16 <http://data.worldbank.org/data-catalog/world-development-indicators/wdi-2010>

17 <http://webrzs.stat.gov.rs/>

18 <http://hdrstats.undp.org/en/countries/profiles/SRB.html>

19 <http://webrzs.stat.gov.rs/>

800,000 people (Serbian Association of Employers, June 2010 survey)²⁰. Due to the economic downturn experienced in 2009 and, to some extent, in 2010, regional disparities both in employment and unemployment rates that were already significant were further aggravated.

Serbia has an advanced and complex social assistance system rooted in pre-transition practice. Despite this, social assistance, pensions, unemployment and health insurance struggled to compensate for broad social disparities and were limited in scope and quality due to financial constrictions. An average pension in Serbia, in February 2010, was 61% of an average salary. Average salary was 330 EUR.

In the wake of the world economic crisis and dire local economic problems, unemployment and often unsuccessful privatizations, trade unions in Serbia emerged as the most outspoken, although not the most successful and influential interest group. Trade unions are also relatively weak and were often engaged in disputes with each other²¹. The number of strikes in Serbia during the first quarter of 2010 reached 107. The Independent Socioeconomic Council (SEC), comprised of government representatives, employers and trade unions was established as a facilitator of socioeconomic dialogue. SEC apparently failed to establish itself as a credible institution of interest mediation and economic policy coordination²².

Business interests are organized in a system of local, regional and national economic chambers that function as interest associations with voluntary memberships, introduced in 2009 by an amended Law on economic chambers. Serbia's Chamber of Commerce has, in the meantime, indicated its willingness to draft a new law, which would introduce compulsory membership.

In spite of that, a number of oligarchs and senior managers in some publicly owned companies wield extended, non-transparent influence in Serbia's domestic business sector, and apparently, its political environment. The links and connections between business tycoons and political parties are non-transparent²³.

4.4 Socio-cultural foundations

To what extent are the prevailing ethics, norms and values in society supportive to an effective national integrity system?

Score: 50

The social trust is underdeveloped in Serbia. Citizens do not trust other citizens and authorities²⁴.

Since the beginning of the economic crisis in 2008 citizens' dissatisfaction is on the rise. They assess their financial situation very poorly – out of 49% who evaluated the financial situation as “bad” or “intolerable” 2009, in 2010 that number reached 59²⁵. Dissatisfaction has been expressed in response to the question of whether things in Serbia are moving in the right or wrong direction - the percentage of those who consider the things to be moving in the wrong direction increased from 65 to 73 percent since 2009 to 2011. About a third of the people said that someone in their environment had contact with corruption, and between 11 and 15 percent admitted or claimed to have given a bribe in the previous three months.

20 <http://www.poslodavci.org.rs/>

21 <http://www.bti-project.org/countryreports/ese/srb/>

22 <http://www.bti-project.org/countryreports/ese/srb/>

23 <http://www.bti-project.org/countryreports/ese/srb/>

24 Research by Centar za istraživanje, transparentnost i odgovornost and Ipsos Strategic Marketing, 2011

25 UNDP Research <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=0E60B769-EB6D-662E-C949956889479FCD>

Of those citizens who have had indirect experience with corruption, 78 percent offered bribes themselves - 56 percent to obtain a service, and 22 percent to avoid problems with authorities, most often paying a fine or filing an application for an offence. This level of acceptance of corruption and encouraging corruption by citizens (who are also condemning it) is even more pronounced among those who had personal contact with corruption - 64 percent offered bribes for a service, 23 percent offered a bribe in order to “avoid problems” and in only 13 percent of the cases they were directly asked for a bribe.

Of particular concern is the fact that almost 90 percent of the citizens believe that corruption is routine in the country, about 50 percent that it is “expected to some extent,” and almost a third (32% of respondents in a survey in October 2010) believe that corruption is “acceptable on certain levels.”

The collapsed ethical norms of society, especially in regards to the fight against corruption, are also indicated by the findings that show that half of the citizens of Serbia believe that giving bribes is “the only way to overcome the extensive bureaucracy” or to “overcome unjust laws.²⁶” At the same time, only 20 percent of respondents as a factor that hinders the Prevention of Corruption recognized the passivity of citizens.

As those who should be leading the fight against corruption citizens recognize the government (50%), police (40%) and judges (32%).

26 <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=0E60B769-EB6D-662E-C949956889479FCD>

V CORRUPTION PROFILE

Corruption in Serbia is worryingly widespread and under-researched. Most data is available about petty corruption, of which ordinary citizens have direct knowledge. Thus, the results of the Global Corruption Barometer 'Transparency International' for 2010 show that 17% of the respondents who had contact with any of the listed institutions and sectors (education, justice, health, police, agencies that issue permits or registrations, tax administration, customs, public utilities) gave a bribe in the past year (at least once, either directly or through family members). Research of the UN Office on Drugs and Organized Crime in July 2011 shows that 13.7% of the Serbian population, aged 18 to 64, during the previous year had direct or indirect experience with bribery of public officials. In 52% of the cases money was given, although it was a case of petty corruption, the paid amounts are not at all trivial: on average it was 15,530 dinars, or 165 euros. According to the same survey, "for every three persons who pay bribes, one person refuses such a request". "On the other hand, a very small number of people paying bribes (less than 1%) reported their cases to the authorities."

The perception of corruption is higher than its actual extent. Although data on the number of citizens who gave bribes display a relatively large number (13.7% - 17%), it is still very low compared with the perceived corruption of institutions.

According to the Global Corruption Barometer (GCB) in 2010, the citizens estimated that the most corrupt bodies are political parties (score 4.1 on a scale of 0 to 5), the judiciary (3.9), civil servants (3.8), according to a survey by UNODC, "45% of Serbian citizens believe that corruption is on the rise in their country, 44% said that it remained the same, while 10% thought that declined."

According to the composite Index of perception of corruption 'Transparency International', in 2010 and 2009 Serbia had a score of 3.5, in 2008 and 2007 - 3.4 (on a scale of 0 to 10, where 10 denotes a society free of corruption), which represents a significant improvement from the score of 1.3 from 2000, but it is also an indicator of the absence of more significant progress that would be convincing enough both to foreign observers and analysts of our reality.

It is important to consider the possibility for corruption to occur in business transactions. The BEEPS survey, which was conducted in Serbia and many other countries in 2008, and whose results were published in January 2010, the respondents came from the business world, and the subject matter is, among other things, the corruption that occurs in their dealings with public institutions. According to the survey, 31% of company representatives argue that corruption is not the problem they face and 16% of respondents claim that bribery is frequent.

A public opinion survey on corruption from 2011 (UNDP and Medium Gallup) showed that nearly 40% of respondents or someone in their closest social environment gave bribes, while 11% reported their own involvement in corruption. In most cases, the bribe was given to doctors, police officers and then to officials in public administration. The average amount of money given as a bribe is 178 euros. Corruption was ranked as the third most important issue in society, behind unemployment and poverty.

The least amount of exact data can be found on the capture of institutions, political protection from prosecution for corruption and misuse of public funds for personal or group interests. The existence of such phenomena can be heard directly from sources, such as the start or completion of criminal proceedings, newspaper articles and mutual accusations of former political allies, as well as indirectly, based on the principle of *qui bono* in the analysis of the authorities' decisions, by hiding important information from the public and obstruction of the independent supervisory authority or neglect of their recommendations.

VI ANTI-CORRUPTION ACTIVITIES

Serbia has established the basic legal framework needed for fighting corruption. On the normative and institutional level, the most important step is the adoption of the Anti-Corruption Strategy (December 2008), the formation of the Anti-corruption Agency (ACA). The Agency has a preventive, educational and supervisory role and responsibilities in the area of conflict of interest, the control of financing parties and electoral campaigns, integrity plans, monitoring the implementation of the Anti-Corruption Strategy. Before the Agency, the prevention of conflicts of interest was under the jurisdiction of the Republic Committee for resolving conflicts of interest (founded in 2005), and its functions and employees were taken over by ACA. In June 2011, the new Law on Financing Political Activities was adopted, which gives greater control abilities to the Agency. The amendments to the Law on the Anti-Corruption Agency gave this body the responsibility for protection of whistleblowers, which, however, are not accurate enough. During the previous period, the State Audit Institution was established (2005), as well as the Ombudsman (2005) and the Commissioner for information and public interest (2005). In addition, the Law on Public Procurement was adopted (2008), as well as the Law on State Aid Control (2009), and the Law on Protection of Competition (Antimonopoly Law - 2009).

On the other hand, there are still serious obstacles to the systematic suppression of corruption, although some of the measures and recommendations for their removal were defined in the National Strategy for Fighting Against Corruption, adopted in 2005. Thus, for example, elements of direct election of deputies have not been introduced into the electoral system, the Law on Lobbying is not adopted, the reform of the judiciary has not been done in a satisfactory manner, there is still a backlog of court cases, particularly in the area of enforcement, there is a lack of rapid progress in the implementation of the Public Administration Reform Strategy, privatization and public procurement procedures continue to cause concern about corruption, there are delays in the adoption of subordinate legislation necessary to implement the law in the areas of economy, there are shortcomings in the legal framework governing competition policy, state aid and concentration, there is a lack of transparency of media ownership and the opportunities for illegal media concentration, there is a significant economic impact of state institutions on the media through various types of budget allocations, there is a lack of participation of civil society in public consultation in the legislative process²⁷.

The National Strategy for Fighting Against Corruption was adopted in 2005, and the related Action Plan in 2006, and none of these documents were altered or amended in the meantime. In the five years since the adoption of these documents numerous laws were adopted and a number of institutions were established, including the Anti-corruption Agency, which has led to changes of the context and framework within which the Strategy and Action Plan are implemented. The Anti-Corruption Agency made the first report on the implementation of the Strategy and Action Plan in 2011 and published it along with its annual work report for 2010²⁸.

It was concluded that the Anti-Corruption Strategy has not been fully accomplished. The action plan for its implementation did not adequately develop the recommendations of the Strategy. In the meanwhile the terms provided for completing the tasks have long expired. The means of adoption and responsible institutions were not regulated for sector action plans and they only exist in several authorities. The lack of legal and political consequences for failing to meet the obligations imposed by the strategic documents, in addition to the weakness of these acts, proved to be a major obstacle for their effective implementation.

In 2006 the government formed the Commission for the Implementation of the National Strategy for Fighting Against Corruption and the implementation of recommendations by the Group of

27 Draft of National Strategy for Fighting Corruption 2012-2016

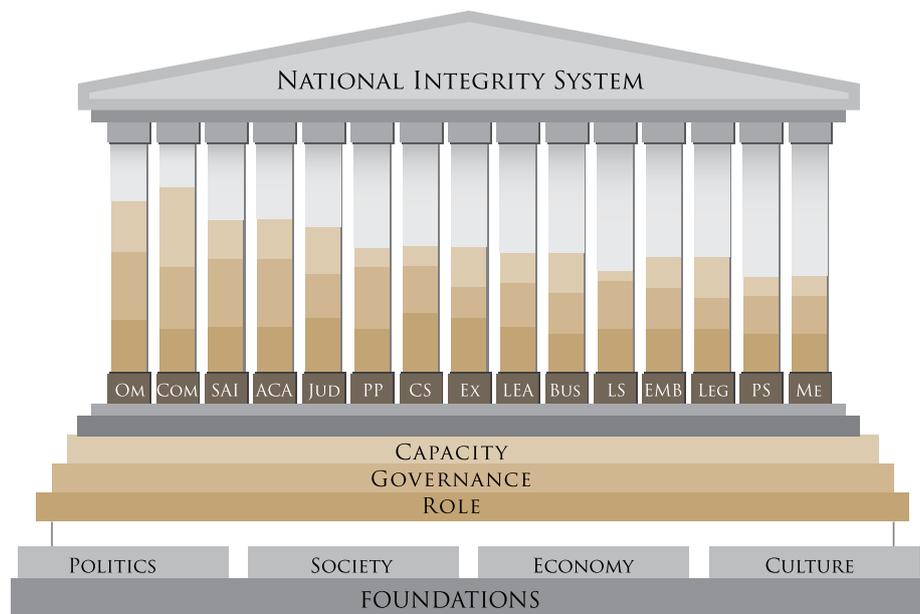
28 http://www.acas.rs/sr_cir/component/content/article/229.html

States against Corruption of the Council of Europe (GRECO). The Commission held irregular sessions, never received funds for work, and during the first few sessions adopted a proposal for the government to adopt the action plan. The Commission has never determined the method of monitoring the implementation of commitments in the Strategy and Action Plan, or the development of sector action plans. For this reason, monitoring the implementation of commitments that individual authorities have based on the strategy adopted by the Assembly was not organized on a systematic basis. The Commission was formally abolished in 2010, after the implementation of the Anti-Corruption Agency Law.

The Agency's report on the implementation of the Strategy indicated that of the 168 recommendations of the Strategy 25 were implemented, 99 were partially implemented, 24 have not been met, 15 have been continuously met as a permanent task and for 5 there is no data on the fulfillment.

The Agency proposed to revise the National Anti-Corruption Strategy and the Action Plan for its implementation. In June 2011 the Government decided to develop a new strategy for the period 2012-2016 and the Ministry of Justice established a working group to develop the Strategy which, in addition to representatives of the Ministry gathers the representatives of ACA, police, prosecution, judiciary, NGOs, the media, businesses and the Council for fighting against corruption.

VII THE NATIONAL INTEGRITY SYSTEM



OM	Ombudsman	EX	Executive
COM	Commissioner for Information of Public Importance and Personal Data Protection	LEA	Law Enforcement Agencies
SAI	Supreme Audit Institution	BUS	Business
ACA	Anti-Corruption Agencies	LS	Local Selfgovernment
JUD	Judiciary	EMB	Electoral Management Body
PP	Political Parties	LEG	Legislature
CS	Civil Society	PS	Public Sector
		ME	Media

LEGISLATURE

NATIONAL INTEGRITY SYSTEM

Summary: The Parliament of Serbia decides on its own budget, but its members usually implement a restrictive budget policy. The Parliament is, in legal terms, highly independent from other actors. The legal independence of the Parliament to set its own agenda is severely affected by actions of government. The proceedings of legislature and its committees are moderately accessible to the public. In general, the public can obtain plenty, but not all important information about the work of the Parliament.

The Parliament actively participates in some anti-corruption initiatives and has some of its own, including drafting the Code of Conduct for MPs. It is also one of the best responding institutions on the basis of free access to information requests.



LEGISLATURE			
Overall Pillar Score: 46			
	Indicator	Law	Practice
Capacity 56/100	Resources	50	50
	Independence	100	25
Governance 38/100	Transparency	50	50
	Accountability	25	50
	Integrity mechanisms	50	0
Role 50/100	Executive Oversight	50	
	Legal reforms	50	

Structure – The Parliament is the supreme representative body and holder of constitutional and legislative power in the Republic of Serbia¹. The Parliament, amongst other competencies, adopts and amends the Constitution, ratifies international contracts, enacts laws and other general acts within the competence of the Republic of Serbia, adopts the Budget and the financial statement of the Republic of Serbia.

Within its election rights, the Parliament also elects the Government, supervises its work and decides on the expiry of the term of office of the Government and ministers, appoints and dismisses judges of the Constitutional Court, appoints the President of the Supreme Court of Cassation, presidents of courts, Republic Public Prosecutor, public prosecutors, judges and deputy public prosecutors, in accordance with the Constitution, appoints and dismisses the Governor of the National Bank of Serbia and supervises his/her work, and appoints and dismisses the Civic Defender and supervises his/her work.

The Parliament consists of 250 deputies, who are elected by direct elections by secret ballot. In the Parliament, equality and representation of different genders and members of national minorities is provided, in accordance with the Law on Elections of Members of Parliament (MPs). A minimum of five MPs can establish a parliamentary group in the Parliament. Currently, there are 10 groups.

The Parliament adopts decisions by majority vote of deputies at the session at which a majority of deputies are present.

The Speaker of Parliament represents the Parliament, he/she convokes its sessions and determines the proposal of the agenda; chairs the Parliament sessions, convenes meetings of the Parliament Collegium and chairs the meetings. The Speaker has deputies. The number of deputies is specified by a decision made by the convocation of parliament.

The Collegium of the Parliament is a body of the Parliament. The Speaker of the Parliament convenes it to coordinate the work and perform consultations regarding the work of the Parliament. The Collegium is composed of the Speaker of Parliament, Deputy Speakers of the Parliament and heads of parliamentary groups in the Parliament. The Parliament has standing working bodies - committees, and it may establish ad hoc working bodies - inquiry committees and commissions. The committees take into consideration bills and other acts submitted to the Parliament; and carry out the review of policies pursued by the Government.

A committee also supervises the work of the Government and other bodies and institutions whose work is overseen by the Parliament, takes into consideration reports of the bodies, organizations and institutions which are submitted to the Parliament in accordance with the law.

The Secretary General of the Parliament is appointed by the Parliament upon a proposal of the Speaker of Parliament. Technical and other support for the Parliament is provided by the Parliament Service. The Service is managed by the Secretary General.

¹ Constitution of the Republic of Serbia, art. 98

ASSESSMENT

CAPACITY

Resources (Law)

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

Score: 50

The Parliament of Serbia, in terms of available financial, human and infrastructural resources is in a slightly better position than most public institutions in the country. The common problem for all of them is the fact that there is no direct link or legal mechanism to provide to the institutions those resources which are needed in order to fulfill their tasks. Instead of that, the level of available resources depends on various other factors, including political strength of institutions' leaders and the level of available funds for the current budget year.

The specificity of the position of the Serbian Parliament in that sense is the fact that there is a special regime on how the Parliamentary budget is defined. According to the recently adopted Law on the Parliament², the Parliament is given some special rights in the process of budget preparation. Namely, all budget beneficiaries submit (including the Parliament) their financial plans for the next budget year to the Ministry of Finance and cannot further influence the final budget and approval of their needs, while the Parliament is given the right to disagree with the Ministry of Finance and to negotiate its draft budget³. Furthermore, the government is not authorized to stop, delay or restrict budget allocations for the Parliament during the fiscal year, without prior consent of the Speaker of Parliament⁴. One should have in mind that members of Parliament were and are also entitled to propose budget changes during parliamentary debates and to increase the budget of their institution (and to decrease, for the same amount the budget of some other beneficiary)⁵.

The number of staff and their work description is defined by the Act on Work Organization of the Parliament Service⁶.

Resources (Practice)

To what extent does the legislature have adequate resources to carry out its duties in practice?

Score: 50

The Parliament, including committees and parliamentary groups, has enough financial resources to carry out its duties but not enough technical resources.

Although the Parliament decides on its own budget, its members usually implement a restrictive budget policy in order to prevent negative reactions from the public⁷. Namely, expenditures of the Parliament are often exposed, analyzed and criticized in Serbian media (travel costs, low prices in the Parliament restaurant, per diems)⁸.

2 Zakon o Narodnoj skupštini, Official Gazette of the Republic of Serbia, no 9/2010.

3 Law on National Assembly, art. 64, 65

4 Law on National Assembly, art. 64, 65

5 Law on National Assembly, art. 15, 40

6 <http://www.parlament.gov.rs/activities/information-booklet/information-booklet-%E2%80%93-contents.618.html>

7 <http://www.vesti.rs/Vesti/Skupstina-dobija-budzet.html>

8 <http://www.nadlanu.com/pocetna/info/Bezobrazluk.a-12973.43.html>

Application of new legislation, envisaged by the Law on the Parliament started in 2010. In previous years, the Parliament received a lower amount of money than it asked for (in 2009 for salaries of members of Parliament). The Parliament's budget was, however, increased in 2011, when the new law was applied, and although the Government proposed a RSD 1,7 bln (USD 21 million) budget, the Parliament increased it to RSD 1,8 bln (RSD 200 million more than in 2010), which was considered adequate for the legislature to carry out its duties effectively⁹.

In terms of staff, members of Parliament often claim that it is far from what Parliaments in comparable countries have¹⁰. However, the positions in the Service of the Serbian Parliament are mostly filled, according to the Work Organization Act. There was a total of 340 employees in September 2010, out of 392 identified, by parliamentary services, as provided for in the Act¹¹. The situation with working premises, which used to be rather problematic¹², is slightly improved after overtaking the former Federal Parliament building and comprises of 6.600 square meters of office space¹³.

Technical equipment is still far from adequate. Legislators themselves do not have their own premises or equipment, but rather use the one in the parliamentary groups' premises¹⁴. According to the official data, parliamentary groups use 109 PCs, 57 printers, 2 scanners and 29 faxes (total number of MPs is 250). The situation with equipment is better in the Parliamentary Service, where almost every employee uses one PC¹⁵.

The Parliament has its own library, with 60.000 titles¹⁶.

Independence (Law)

To what extent is the legislature independent and free from subordination to external actors by law?

Score: 100

The Parliament is, in legal terms, highly independent from other actors. It can be dissolved by the President of the Republic, upon the "elaborated proposal of the Government"¹⁷. The Government may not propose the dissolution of the Parliament, if the Parliament has raised the issue of confidence in the Government. The Parliament can also be dissolved by the President of the Republic only in the event that it fails to elect a Government within 90 days from the day of its constitution. The Parliament may not be dissolved during the state of war and emergency¹⁸. Simultaneously with the dissolution of the Parliament, the President of the Republic shall schedule elections for deputies, so that elections finish no later than 60 days from the day of their announcement.¹⁹

The Parliament is convened for two regular sessions per year. The Parliament is convened for extraordinary sessions upon the request of at least one third of the deputies or upon the request of the Government, with a previously determined agenda. The Agenda for extraordinary sessions can be rejected or accepted by the Parliament, but it cannot be altered or amended. The Parliament is free to determine its agenda for regular sessions and to elect the Speaker of the Parliament and presidents and members of its committees, as well as to hire its own staff.

9 <http://www.politika.rs/rubrike/Politika/Prvi-skupstinski-budzet-tezak-18-milijardi-dinara.lt.html>

10 Interview with Georgije Marić, former secretary of the parliament

11 <http://www.parlament.gov.rs/activities/information-booklet/information-booklet-%E2%80%93-contents.618.html>

12 Interview with Georgije Marić, former secretary of the parliament and Radojko Obradović, MP

13 <http://www.parlament.gov.rs/activities/information-booklet/information-booklet-%E2%80%93-contents.618.html>

14 Interview with Georgije Marić, former secretary of the parliament

15 <http://www.parlament.gov.rs/activities/information-booklet/information-booklet-%E2%80%93-contents.618.html>

16 <http://www.parlament.gov.rs/activities/information-booklet/information-booklet-%E2%80%93-contents.618.html>

17 Constitution, Article 109.

18 Constitution, Article 109.

19 Constitution, Article 109.

Members of Parliament are entitled to receive a salary, if they are not employed elsewhere, in which case they receive the difference between their salary and MP's salary²⁰.

MPs enjoy immunity, they may not accept criminal or other liability for their expressed opinion or casting a vote when performing the deputy's function. MPs who use his/her immunity may not be detained, nor may he or she be involved in criminal or other proceedings in which a prison sentence may be stated, without previous approval from the Parliament²¹.

A Deputy found in the act of committing any criminal offence for which a prison sentence longer than five years is envisaged, may be detained without previous approval by the Parliament²². There shall be no statute of limitations stipulated for criminal or other proceedings in which immunity is established. Even if a MP does not use his/her immunity, the Parliament has the right to establish his/her immunity and thus to prevent criminal proceeding against the MP²³.

Independence (Practice)

To what extent is the legislature free from subordination to external actors in practice?

Score: 25

The legal independence of the Parliament to set its own agenda is severely influenced by actions of the government. In practice, both the work of the Parliament and work of the government are partially determined in informal forums, such as meetings of political parties participating in the ruling coalition²⁴. Sometimes differences in views of the government and the Parliament come from slightly different compositions of those two, such as a "minority government" generally supported by one additional party in the Parliament, in the period 2004-2007, support was provided for the government by several smaller parties not participating in executive power since 2008. In some instances, the agenda of the Parliament, due to a "thin" majority of the ruling coalition depends also on individual interests of MPs.

However, it is safe to say that in most instances parliament acts are passed not only on the basis of governmental initiative, but even on the basis of governmental pressure. The vast majority of legislative work is done through an "urgent procedure" leaving sometimes only a few days for amendment drafting and less opportunity for discussion²⁵. In 2009 and 2010 only 5 laws out of 262 were adopted on the basis of proposals not coming from the executive power (1 from the National bank, four from parliament majority groups). In previous years, this figure was even smaller²⁶. On the other hand, legislative initiatives of opposition parties' MPs (even some proposed by some parties of the ruling coalition) and those supported by 30.000 or more citizens are never put on the agenda²⁷.

The Parliament clearly voting against the Government's will is similarly rare. There were only several instances where the Parliament changed some provisions of executive's bills without the Government's consent. In one of such cases, interests of external actors were suspected to cause change of one MP group's decision in the case of the Excise Law²⁸, while in the other case, changes of the Law on the Anti-corruption Agency, a parliamentary majority voted against the

20 Law on National Assembly, art. 42, 43

21 Constitution, Article 103

22 Constitution, Article 103.

23 Constitution, Article 103.

24 http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=09&dd=22&nav_category=206&nav_id=382652 http://www.danas.rs/danasrs/politika/tadic_dacic_i_dinkic_odlucuju_o_foteljasima.56.html?news_id=191672

25 DRaft data from the project "Open parliament" – "Kako poslanici donose zakone" – Analyzes of legislative proceedings in Serbian parliament <http://www.cra.rs/wp/sr/otvoreni-parlament/>

26 <http://www.parlament.gov.rs/akti/doneti-zakoni/u-sazivu-od-11-juna-2008.2008.1526.html>

27 <http://www.parlament.gov.rs/akti/zakoni-u-proceduri/u-sazivu-od-14-februara-2007.1038.html>

28 <http://www.politika.rs/rubrike/Politika/Ko-je-smestio-Vladi-Srbije-Peconi-ili-Filip-Moris.lt.html> http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=01&dd=28&nav_category=11&nav_id=341671

Government's consent and worsened the bill. In this other case ruling parties were suspected for hypocrisy – they pretended to accept suggestions made by the Anti-corruption Agency and the Government made a proposal approved by the Agency, but MP's were instructed to vote against the Government's consent ²⁹.

Even if, relatively high for Serbian circumstances, the potential salary of MPs is low in comparison with holders of other public functions, they were not changed in the last five years (some benefits are even cut) and several efforts to increase them failed due to fierce reactions of the public³⁰.

29 Interview with president of The ACA Board Cedomir Cupic, july 2011

30 http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=11&dd=10&nav_category=9&nav_id=471462

GOVERNANCE

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

Score: 50

The proceedings of legislature and its committees are moderately accessible to the public.

The publicity of work of the Parliament is ensured by: creating conditions for a television and internet broadcast of the sessions of the Parliament, press conferences, issuing official statements, enabling the following of the work of the Parliament by the representatives of the mass media, observers from domestic and international associations and organizations and interested citizens, access to stenographic transcripts and minutes of the Parliament sessions, a website of the Parliament and other means in accordance with the Law and the Rules of Procedure³¹.

There is no legal duty to publish voting records pro-actively, but it is possible to obtain them on the basis of free access to information requests³².

The publicity of work may be excluded by the decision of the Parliament in accordance with the Law and the Rules of Procedure³³. Journalists accredited to cover the work of the Parliament are allowed to attend the sessions of the Parliament and its working bodies and have access to draft laws and other acts debated by the Parliament, stenographic transcripts of the sessions, documents and archive of the Parliament³⁴.

The Law and Rules of Procedure of the Parliament make it mandatory for all parliamentary sessions to be recorded. It is also the case for several, but not all, parliamentary committees. These records must be transcribed, authorized (by wish), kept and available on request³⁵.

The Law and Rules of Procedure provide the possibility for citizens to follow the work of the Parliament directly, on the basis of individual or collective query that should be resolved by the Secretary of the Parliament. Article 258 of the Rules of Procedure provides such rights explicitly to the "representatives of domestic and foreign associations and organizations and citizens".

It is not mandatory for Legislature, nor for committees, MP groups or individual MPs to receive citizens' visits, but they are free to do this³⁶. Citizens are also free to submit petitions and suggestions to the Parliament, but this issue is not clearly regulated. Namely, according to Article 15 of Law on the Parliament parliamentary committees are entitled to consider petitions and suggestions of citizens, but no duty is set in regards to the further dealing with such writings.

All draft laws are required to be published on the web-page of the Parliament³⁷.

Assets declarations of MPs and other officials of the Parliament are published, in accordance with the Law on the Anti-corruption Agency, on the web-page of the Agency. The ACA Law stipulates that part of the declaration is available to the public³⁸.

- 31 The Law on the National Assembly, article 11
- 32 Rules of Procedure, article 126
- 33 The Law on the National Assembly, article 11
- 34 The Law on the National Assembly, article 11
- 35 The Law on the National Assembly, article 11, Rules of Procedure, article 126
- 36 The Law on the National Assembly, article 11
- 37 Rules of Procedures, article 260
- 38 Law on Anti-corruption Agency, article 47

According to the Rules of Procedure (Article 118), minutes of discussions of parliamentary sessions should also be produced and adopted on the next session. The Parliament should publish “according to rules”³⁹: Draft agenda and adopted agenda of the Parliament and committees; Adopted minutes of parliamentary and committee session; Bills and other draft acts; Adopted laws and other acts; Amendments submitted; Voting list; Collegium meetings and agenda; Information directory; Daily information on the work of Parliament and committees; Reports on work of committees.

While every MP may organize press-conferences in the Parliament, official statements of the Parliament may be prepared only by Information Service of the Parliament and approved by the Speaker⁴⁰.

Transparency (Practice)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

Score: 50

In general, the public can obtain plenty, but not all important information about the work of the Parliament. Some of this information, the public may obtain in a timely manner, due to the publishing of draft by-laws on the web-page, live broadcasting of parliamentary sessions and media reporting. Other information is available, but not always in a timely manner⁴¹ (e.g. voting lists, copies of amendments, which are available on request). Finally, there is important information which is not available at all (e.g. about lobbying).

Information about activities of the Parliament is accessible on the web-site of the Parliament. There is also an archive containing information about previous sessions of the Parliament and its committees⁴². Information refers to the session days, timetable, very brief descriptions of the discussions and a list of decisions adopted. It is common to publish a proposed agenda for the session of the Parliament a few days before the session, while there is no practice to publish an agenda of forthcoming sessions of committees⁴³.

The media generally does not have a problem to obtain information about the work of legislature and committees⁴⁴.

Bills are published on the parliamentary web-site as soon as they are submitted⁴⁵. In some instances this might be just before the Parliament session, not leaving enough time to study bills before the session, in particular when the government asks for urgent procedures of adoption which have almost become a regular occurrence, rather than an exception. Draft agendas of parliamentary sessions are published a few days in advance, it is generally not practice to publish agendas of committees in advance⁴⁶.

The Legislature budget is fully published, and the Information Directory of the Parliament is published on its web-page and also contains useful information about its usage such as money spent for salaries, equipment, business trips⁴⁷.

39 Rules of Procedures, article 260

40 Rules of Procedures, article 261

41 Research done for purposes of NIS

42 <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>

43 Research done for purposes of NIS, www.parlament.gov.rs

44 Interview with Zlata Đorđević, editor in Beta News Agency, april 2011

45 <http://www.parlament.gov.rs/akti/zakoni-u-proceduri/zakoni-u-proceduri.1037.html>

46 <http://www.parlament.gov.rs/narodna-skupstina-871.html>

47 Research done for purposes of NIS, www.parlament.gov.rs

The Parliament produces and keeps verbatim records and they are available on request⁴⁸. In a similar manner, voting results are available upon request within the time limit of 15 days⁴⁹.

There is no practice in the Parliament to ask the government to present annual reports about its performance, to publicize nor to discuss such reports. Parliamentary committees ask relevant ministries to produce reports about certain issues, but such reports are not published by the Parliament⁵⁰.

On the other hand, there is a practice for Parliament, even if there is no clear legal duty, to produce annual work reports of its committees and about foreign relations and cooperation that the Parliament established⁵¹.

MPs assets are partially made public. The vast majority of MPs respected duty to submit their assets declarations to the relevant body, since 2004, and it is also the case now⁵².

Members of the public may follow parliamentary debates (from the balcony) easily, but the interest is not big (only 50 such cases in 2009 and 2010, all queries granted)⁵³.

According to Parliamentary statistics, there is a huge problem in the functioning of the mechanism to deal with citizen's petitions and suggestions⁵⁴. Namely, during 2009 such a committee was not constituted at all. In the meantime, the Service of the Parliament received and dealt with 698 individual petitions, received 487 individual visits of citizens and provided information in 1200 other cases⁵⁵.

All accredited journalists are free to follow parliamentary sessions and work, but only one, the Public Broadcasting Service of Serbia, due to technical reasons, can record and broadcast the sessions live⁵⁶. This situation is not a consequence of regulation, but rather of long-term practice. The issue of broadcasting is not clearly regulated and was treated as a duty of Public Service in the past, while currently the Public TV insists to treat it as "service providing" to the Parliament and asks for payment in order to broadcast sessions.

Accountability (Law)

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

Score: 25

The Serbian Constitution recognizes several types of revision of legislative activities. It is possible for every central government body, body of the autonomous province and local government, 25 MPs or the Constitutional Court itself to move procedures for review of constitutionality of the law. Furthermore, everyone else may initiate such reviews, but the Constitutional Court upon such initiative does not have the duty to start a procedure.⁵⁷ The Constitutional Court may abandon certain provisions of the law or a whole act, but has no right to change it. The Constitutional Court may also prevent individual acts to be issued on the basis of a challenged law during the review

48 Interview with Zlata Đorđević, editor in Beta News Agency, april 2011

49 Interview with Zlata Đorđević, editor in Beta News Agency, april 2011

50 Interview with MP Radojko Obradović, May 2011

51 <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/izvestaji/2011/Izve%C5%A1taj%20o%20radu%20odboru%20u%202010.%20godini%20050411%20lat.pdf>

52 http://www.acas.rs/images/stories/Godisnji_izvestaj_o_radu_Agencije_-_25_mart_2011.pdf

53 <http://www.parlament.gov.rs/aktivnosti/informator/sadr%C5%BEaj-informatora.1023.html>

54 <http://www.parlament.gov.rs/aktivnosti/informator/sadr%C5%BEaj-informatora.1023.html>

55 <http://www.parlament.gov.rs/aktivnosti/informator/sadr%C5%BEaj-informatora.1023.html>

56 Interview with Zlata Đorđević, editor in Beta News Agency, april 2011

57 Constitution, article 168.

procedure. It is also possible to review laws which are adopted but not promulgated yet (article 169 of Constitution), and to review laws which are not in force any more (within the 6 months deadline).

Legal provisions about public consultations are not clear enough. Within the Parliament, there is a possibility to organize “public hearings” about topics of public interest and to invite experts to committee sessions, but it is not mandatory to do this and the procedure is not further regulated⁵⁸.

There are no special procedures for possible complaints against decisions of the Parliament or actions of individual MPs. MPs are protected with a wide scope of immunity from prosecution, covering not just their acts carried out within the scope of MP work (where it is absolute), but also any other punishable offence where a prison sentence may be passed (where it depends on the approval of the Parliament). They cannot be imprisoned even when found in the act of committing a “lighter” criminal act (below 5 years of imprisonment), without previous approval of the Parliament.

Accountability (Practice)

To what extent does the Legislature and its members report on and answer for their actions in practice?

Score: 50

Mechanisms aimed to ensure accountability of the Parliament and parliamentarians have not proved to be very effective in practice. The Constitutional Court did not function for several years and a number of initiatives and cases are overburdening its work⁵⁹. However, that mechanism is becoming the real control of parliament work since 2009, when missing judges were elected. In 2009 and 2010 the Constitutional Court addressed the Parliament 34 times because of various challenging pieces of legislation. In comparison, the Parliament adopted 47 laws in 2008, 265 in 2009 and 151 in the first 9 months of 2010⁶⁰.

The Parliament occasionally organizes public hearings about interesting topics, mostly with the support of international organizations such as UNDP and OSCE. There is no practice yet to organize such debates in regards to the bills⁶¹.

The Legislature is good in providing information to the other relevant bodies (e.g. the Commissioner, the Public Procurement Office) in accordance with provisions of relevant laws⁶². In communication with the Constitutional Court, the Parliament usually provides its opinion related to the ongoing procedures within 3-4 months, which is relatively slow⁶³.

The MPs immunity proved to be an obstacle for the protection of citizens against acts of politicians in several cases.⁶⁴ Generally, there is a practice of solidarity among MPs from various political parties to grant immunity to their peers in such cases⁶⁵.

58 <http://www.parlament.gov.rs/national-assembly/important-documents/rules-of-procedure/introductory-provision.1351.html>

59 <http://www.blic.rs/Vesti/Politika/8747/Ustavni-sud-u-blokadi-do-oktobra>

60 <http://www.parlament.gov.rs/akti/doneti-zakoni/u-sazivu-od-11-juna-2008.1526.html>

61 <http://www.parlament.gov.rs/aktivnosti/narodna-skup%C5%A1tina/radna-tela/javna-slu%C5%A1anja.990.html>

62 Interview with Mirjana Radaković, Assistant to the General Secretary of National Assembly, January 2011

63 Interview with Mirjana Radaković, Assistant to the General Secretary of National Assembly, January 2011

64 <http://www.mondo.rs/v2/tekst.php?vest=115951>

65 Interview with MP Radojko Obradović, May 2011

Integrity mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

Score: 50

There is no code of conduct for legislators as a self-standing document. Some provisions of that kind can be found in the Rules of Procedure of the Parliament – articles dealing with the behavior at sessions, not with integrity issues, while some integrity rules for MPs and other public officials are set by the Law on the Anti-corruption Agency⁶⁶.

This law forbids public officials to receive gifts and hospitalities “related to the performance of a public function” (aside from protocol related and occasional), requires to report such gifts and forbid to keep received gifts over a certain value (5% of the average salary in Serbia – around 17 EUR)⁶⁷.

There are restrictions related to the post-employment for public officials, but they are not applicable for legislators. No duty related to lobbying is set, unless there is some gift-giving related to the lobbying.

Conflict of interest rules are in force also for members of parliament, including the duty to report such conflicts and to excuse him/herself from the decision making process⁶⁸. However, there is no clear definition about what should be considered to be a conflict of interest of MPs.

According to ACA Law, only part of the assets and income declaration of MPs are published on AC Agency web – site (income from public sources, possession of real estate and vehicles, possession of shares in companies)⁶⁹.

The Code of Conduct for MPs is still in the draft phase – there is a working group, composed of parliamentary groups’ representatives, working on the Code text.

Integrity mechanisms (Practice)

To what extent is the integrity of legislators ensured in practice?

Score: 0

Integrity of MPs is still insufficiently ensured in practice.

The Anti-corruption Agency checked more than 500 assets declarations in 2011, amongst them MPs’ assets declarations⁷⁰. In January 2011 the ACA filled misdemeanor charges against two MPs for failing to submit data on transferring management rights in private enterprises⁷¹. There was one case during 2010 where some MPs claimed that two other MPs are in conflict of interest due to being shareholders in companies that directly benefited from the laws discussed in the Parliament⁷². However, that argument was ignored by the Parliament leadership and treated as part of a political debate.

66 Rules of Procedure, articles 283-288, Law on Anti-corruption Agency, articles 27-42

67 Law on Anti-corruption Agency, articles 27-42

68 Law on Anti-corruption Agency, articles 27-42

69 Law on Anti-corruption Agency, article 47

70 Interview with ACA Board president Cedomir Cupic, July 2011

71 Interview with ACA Board president Cedomir Cupic, July 2011

72 <http://www.ldap.rs/jovanovi%C4%87:-sukob-interesa-u-parlamentu.84.html?newsId=2687>

ROLE

Executive Oversight (law & practice)

To what extent does the legislature provide effective oversight of the executive?

Score: 50

The Parliament has a formal possibility to control the government, to supervise the work of elected independent bodies and to take care of the implementation of their recommendations, but in practice these responsibilities are used very restrictedly.

The Parliament has the authority to establish survey / investigative committees. This is defined by the Law on the Parliament and the Rules of Procedure⁷³. The Parliament has standing working bodies - committees, and it may establish ad hoc working bodies - inquiry committees and commissions. The ad hoc working body may be established for analyzing situations in a particular area and determining the facts of certain events and occurrences.

A board of inquiry / commission has no right to conduct investigations or other legal actions, but is entitled to seek data, documents and information from government agencies and organizations, or to interview individuals. Representatives of government agencies and organizations are obliged to answer inquiries of the committee / commission and to provide truthful statements, data, documents and information. After completing their work, the Board / Commission shall report to the Parliament of the proposed measures and shall stop working on the day when the Parliament decides on their report⁷⁴.

In practice, parliamentary inquiry committees have not achieved significant results. Since 2004 to date four boards of inquiry have been established⁷⁵.

The Parliament has the right to influence the budget only when it is determined by the government in the form of a proposal and submitted to Parliament⁷⁶. The law does not provide (and it never happens in practice) for the Parliament or parliamentary committees to be involved in the debate over budget planning. The Parliament has the possibility to modify the budget-making process, but the law⁷⁷ stipulates that the proposed budget deficit cannot be increased - for each increase of individual appropriation MPs have to propose a corresponding reduction, while the surplus cannot be used to increase spending.

The Parliament elects the Government by a majority of all deputies and can resolve it or vote no confidence – of the whole government or individual members of the government. Practice did not show any votes of no confidence in the government, but on one occasion in 2004, when it became clear that there was no majority support, the government resigned⁷⁸. A confidence vote was last discussed in 2008, but there was no voting – there was no majority of noconfidence vote, and the ruling coalition did not provide a quorum for the vote⁷⁹.

The Parliament elects the Ombudsman by a majority of the total number of deputies on the proposal of the Committee on Constitutional Affairs⁸⁰, and it elects the president and members of the State Audit Institution by a majority of votes of all deputies on the proposal of the parliamentary

73 Law on National Assembly, article 27, Rules of procedure, article 41

74 Rules of Procedure, article 68

75 Research done for purposes of NIS

76 The Law on Budget System, Article 28-31

77 The Law on Budget System, Article 44

78 <http://otvoreniiparlament.rs/2007/10/24/page/13/>

79 http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=12&dd=18&nav_category=11&nav_id=335017

80 The Law on Ombudsman, Article 4

committee⁸¹. The Parliament elects the members of the Republic Electoral Commission (RIC) upon the proposal of parliamentary groups⁸². In the past, the Parliament has effectively exercised these jurisdictions.

Independent bodies are accountable to the Parliament for their work and submit annual reports about it. Since 2010 the new rules introduced an obligation for the Parliament to take into consideration annual reports⁸³. Parliamentary committees consider annual reports, and based on recommendations from independent bodies formulate a recommendation for the Parliament to be adopted at the plenary session. In the practice of parliamentary committees, the specific recommendations of the independent bodies that relate to the work of the government and Parliament get translated into generalized recommendations that provide principal support for the work of independent bodies. The Parliament has not discussed the fulfillment or non-fulfillment of recommendations from previous annual reports⁸⁴.

The Parliament is responsible for the control of international agreements signed by the Government with regard to the Law on the Parliament that states its authority to ratify international treaties⁸⁵.

Although the Parliament has formal authority to control the work of the executive authorities, no annual report on the work of the government was ever been analyzed in practice. The government submits reports to the Parliament, but this report is never discussed⁸⁶. Parliamentary committees take into consideration regularly (annual or six-monthly) reports on relevant ministries and one day a week, during the regular sessions, is devoted to parliamentary questions for the government, while members of the government directly reply to deputies' questions at meetings organized once a month. In practice, the Parliament has encountered problems related to the supervision of the authorities that fall under the responsibility of government. Thus, the parliamentary committee had difficulty to obtain data from public companies (which were founded by the government) regarding the salaries of the heads of such bodies and had to appeal to the Commissioner for Information⁸⁷. The Parliament regularly carries out its responsibilities in the election of public officials and in accordance with special laws, such as the Governor of the Central Bank, judges of the Constitutional Court⁸⁸, the members of independent and regulatory bodies. In some cases, such as the appointment of judges of the Constitutional Court, mainly the Parliament opposition complained that resumes submitted with applications for elections did not provide enough information so that MPs could estimate whether a suitable candidate was nominated⁸⁹, while in the election of members of the Republic Commission for the Protection of Rights in Public Procurements, MPs were not submitted any evidence that candidates meet the legal requirements for selection.

Legal reforms (law and practice)

To what extent does the legislature prioritize anti-corruption and governance as a concern in the country?

Score: 50

To a large extent, Serbia has established the legal and institutional framework to fight corruption. A number of important laws were adopted and international conventions were ratified. In 2005 the Parliament adopted a national strategy for the fight against corruption.

81 The Law on SAI

82 The Law on Election of Deputies

83 Rules of Procedure, articles 238

84 Research done for purposes of NIS, www.parlament.gov.rs

85 Law on the National Assembly, article 15

86 Interview with MP Radojko Obradović, MP Jorgovanka Tabaković, May 2011, research done for purposes of NIS, www.parlament.gov.rs

87 <http://www.pressonline.rs/info/politika/20953/odbor-se-obraza-povereniku-za-informacije-o-platama.html>

88 <http://www.rts.rs/page/stories/sr/story/9/Srbija/731148/Skup%C5%A1tina+o+sudijama+Ustavnog+suda.html>

89 The Assembly elects five judges from a list of 10 proposed by the President of the Republic, the President appoints five from a list of 10 proposed by the Assembly

Among other ratified documents are: the United Nations Convention against Corruption, the UN Convention against Transnational Organized Crime and the Protocols, the Council of Europe Criminal Law Convention on Corruption, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Council of Europe Civil Law Convention on Corruption, as well as the Additional Protocol to the Criminal Law Convention on Corruption of the Council of Europe⁹⁰.

In recent years the Parliament has adopted the Law on the Anti-Corruption Agency, which established this Agency as an autonomous and independent state authority; the new Law on Financing of Political Parties and the Law on Public Procurement; The Law on State Audit Institution, The Competition Law and the Law on Amendments to the Law on Free Access to Public Information.

Although some improvements were made, these statutory provisions were not always of adequate quality, and sometimes weakened the legal framework for the fight against corruption. For example, in July 2010, the Parliament adopted amendments to the Law on the Anti-corruption Agency, which enabled some officials to retain multiple functions until the end of the term⁹¹. One year later, the Constitutional Court declared this provision unconstitutional⁹².

In the process of law drafting the impact of the Law on Anti-corruption Agency and corruption practices is not estimated, and discussion on this subject in the Parliament depends on the expertise of MPs and their willingness to adopt the observations of public experts. The parliamentary majority usually does not even accept any suggestions from the opposition regarding legal solutions. During the adoption of the Law on Financing of Political Activities the amendments of the SNS opposition were not accepted and even though the professional community marked them as helpful, the government refused them without explanation.

The lack of public debates was pointed out in the EC report on Serbia's progress in the European integration process in 2010⁹³: There was also an objection that there is no effective enforcement and monitoring of adopted laws. The progress report notes that progress has been made in adopting laws that comply with the "acquis communautaire", but there is still a big problem of under effective implementation of the laws."

In the European Commission's Opinion on Serbia's application for membership to the European Union from 2011, it was pointed out that "the Strategy (of Anti-corruption) and the Action Plan were implemented slowly and need to be updated". Work on the new Strategy began in June 2011 and it received the same estimate as the previous year - "the lack of law enforcement."

Despite the fact that a series of important laws for fighting corruption were adopted, Serbia still lacks some very important legislation, such as the law on the protection of whistleblowers, the legislation to regulate lobbying and provide the organization of public hearings, public ownership of the media and other influences on impartiality of media reporting.

90 <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>

91 <http://www.rts.rs/page/stories/sr/story/9/Srbija/756018/Zakon+o+Agenciji+pred+Ustavnim+sudom.html>

92 <http://www.blic.rs/Vesti/Politika/264675/Ustavni-sud-Vise-javnih-funkcija--neustavno>

93 <http://www.seio.gov.rs/dokumenta/eu-dokumenta.211.html>

LEGISLATURE

Key findings and recommendations

Legislature in practice does not use independence and oversight mechanisms awarded by regulations, but operates almost exclusively on the initiative of the government. Reports of independent bodies are formally discussed and there is no monitoring over the implementation of their recommendations. A narrow ruling majority is represented by 16 parties, which makes the Parliament vulnerable to political blackmail.

1. The Parliament should actively monitor the compliance of draft legislation with the Constitution and the rest of the legal system and with the strategic documents adopted by the Parliament, especially anticipated effects of proposed solutions to corruption and anti-corruption;
2. To improve legislative drafting and the adoption process: to consider whether laws could be implemented with envisaged funds, whether there was a public debate, to discuss legislative proposals of the opposition and citizens;
3. To ensure full implementation of the provisions of the Rules regarding the provision of information and disclosure of documents through the web-site (e.g., submitted amendments, discussion transcripts, biographies of the candidates elected to Parliament functions and some reports the Parliament may debate);
4. Amending the Constitution to exclude the applicability of immunity from prosecution for violations of anti-corruption regulations while retaining the concept that detention is not possible without the approval of the Parliament;
5. To amend the Rules of Procedure in order to ensure the inclusion of representatives of the interested public in the debates before parliamentary committees (at least the possibility of making proposals regarding matters under consideration at the meeting of the committee, with the guarantee that committee members will be acquainted with the proposals);
6. To regulate lobbying (influence or attempt to influence decision-making) in connection with the adoption of laws and other decisions by the Parliament;
7. The Law on the Parliament and the Rules on Procedure to regulate more precisely the issue of parliamentarians' conflict of interest;
8. Adopt a Code of Ethics for Members of Parliament;
9. Improve the practice of considering the report of the independent state institutions before the Parliament within the relevant committees and the plenum of the Parliament. When the Parliament accepts the report that indicates the need to make or change regulations, to initiate proceedings necessary to amend the legislation. When reports indicate a failure of Government or other executive bodies, to request corrective measures and to initiate the process for accountability of managers who failed to comply (e.g. ministers).



EXECUTIVE NATIONAL INTEGRITY SYSTEM

Summary: The executive authority, that is, the Government of Serbia, according to the Constitution and laws, is an independent authority. It is supervised by the Parliament and cooperates with the President. In practice, its work strongly reflects interparty relations and especially the fact that the President of the Republic is the president of the largest party in the ruling coalition as well. The Government publishes all documents obligated by law, although often in a way that is not properly available or unclear to most of the citizens. Members of the Government abide to provisions on preventing conflict of interest, but the matter of lobbying is not legally resolved and there is a strong belief in the public that the Government is under the influence of powerful individuals. There are detailed rules of good quality for public sector management, but the public sector is politicized. Public declarative advocacy from the highest levels for fighting corruption is undisputable, but advocating its implementation is often missing.

EXECUTIVE Overall Pillar Score: 52			
	Indicator	Law	Practice
Capacity 58/100	Resources	/	50
	Independence	75	50
Governance 54/100	Transparency	75	50
	Accountability	75	50
	Integrity	50	25
Role 38/100	Public Sector Management	50	
	Legal system	25	

Structure – The executive authority is represented by the Government of Serbia, as a collective body made up of the Prime Minister, deputy Prime Ministers and ministers. The Government disposes with the property of Serbia, establishes administration bodies in public enterprises, and establishes agencies. Professional services are performed by the Secretary General of the Government.

The President of the Republic of Serbia proposes a candidate to be the Prime Minister and the Parliament elects the Prime Minister and the cabinet, selected by the Prime Minister, by a majority of deputies. The Parliament dismisses the Government by a majority of deputies.

The Government is the carrier of executive authority in Serbia, and it is accountable to the Parliament, for the politics of Serbia, for the implementation of the laws and work of administration bodies¹. The Government proposes to the Parliament laws and other general acts and gives its opinion on them, when they are submitted by other proposers. The Government also passes regulations and other general acts for the implementation of laws². The Parliament supervises the Government's work and decides on the termination of the Government's and Ministers' mandates³.

1 The Constitution of Serbia, article 122 and 124
 2 Constitution of Serbia, article 123
 3 Constitution of Serbia, article 99

ASSESSMENT

CAPACITY

Resources (Practice)

To what extent does the executive have adequate resources to effectively carry out its duties?

Score: 50

Personnel selection and functioning of state authorities are almost completely under the control of political parties and criteria based on their narrow political interest. Domination of parties exists at all levels of operation of the state. The executive part of the authority and state administration are not professional and are appointed by loyalty criteria and not by their competency⁴.

Only in exceptional cases, party criteria is not decisive, but rather criteria of expertise, competencies and experience⁵.

The Government of Serbia (in 2011) had 27 members – a Prime Minister, Deputy Prime Minister which was at the same time the Minister of Internal Affairs, two Deputy Prime Ministers that are at the same time ministers, one Deputy-Prime Minister without a ministry and 22 more ministers. Since the establishment of the current Government, in July 2008, the consensus of political experts is that the Government has too many departments as a consequence of a large number of parties that make up the ruling coalition⁶. That standpoint is confirmed by statements of ministers, members of the Government that stated that 15 ministries would be an optimal number for Serbia⁷.

Apart from the ministers, state secretaries are politically appointed, while assistant ministers are appointed as state servants. Ministers have the right to hire a total of 62 special advisors. The Prime Minister has a special five member economic council, and also has the right to establish a council for state bodies and public services⁸.

The Secretary General, which supervises and harmonizes the work of ministries, in 2010 had 80 employees, that is 90 with offices of the services segregated in two cities in Serbia, out of which a large part of the Sector for Preparation and Processing the sessions of Government and working bodies⁹. The increase of employees by 18 is planned in 2011¹⁰. Although the office of the Deputy Secretary General would not comment on whether the human resources were at an appropriate level, it is clear that both do not manage to keep permanent staff and deficiencies in training provisions hamper the effectiveness of the executive authority¹¹.

4 Interview with political analyst Dejan Vuk Stanković and Zoran Stoiljković, January 2011

5 Interview with political analyst Dejan Vuk Stanković and Zoran Stoiljković, January 2011

6 <http://www.dw-world.de/dw/article/0..6318878.00.html> http://www.danas.rs/vesti/politika/ljajic_glomazna_Government_nepotrebnost.56.html?news_id=157118 <http://www.naslovi.net/tema/105518>

7 <http://www.dw-world.de/dw/article/0..6318878.00.html> http://www.danas.rs/vesti/politika/ljajic_glomazna_Government_nepotrebnost.56.html?news_id=157118 <http://www.naslovi.net/tema/105518>

8 Law on Government, article 28

9 Directory on the Work of the Government for 2010

10 Data from 2011 budget proposal

11 Interview with Deputy Secretary General of the Government of Serbia Miloš Todorović, January 2011. In e-mail response he stated that "state administration meets the problem of personnel walkout... motivated with higher incomes" and that "state sector also needs permanent education of employees. Such education performs Human Resource Management Service, but also other organs of state administration and nongovernmental organizations".

The budget of the Secretary General of the Government for 2011 was RSD 362 million (USD 4,5 million), which is 13 percent more than in 2010¹². The budget of the Government in a wider sense (including cabinets of the Prime Minister and Deputy Prime Minister, Government's Office, special service, listed in footnote 1) is RSD 2,5 billion (USD 31 million) and is increased by 43 percent in regards to 2010.

The Government has not revealed to the public the matter of adequacy of the accommodation and space. For administrating and maintaining state authority bodies, including the Government, the Administration for Joint Services of the Republic Bodies is in charge of, as a special body, common activities for all state institutions. The Administration has a total budget of RSD 2,7 billion (USD 37 million) for 2011 but it is impossible to separate the part intended for the executive authority and other state bodies.

The Secretary General cites IT integration as a problem, which could be improved by a "better computer network for connecting bodies of the same level and central bodies with local units, like the tax administration, geodetic institute and the police"¹³.

Independence (Law)

To what extent is the executive independent by law?

Score: 75

The executive authority is largely independent according to the law and relations between the President of the Republic and of the Government are based on the cooperation and rights and duties determined by the Constitution, law and other general regulations¹⁴. According to the Constitution, the President proposes to the Parliament a Prime Minister that would subsequently choose the Government¹⁵, and the Government cooperates with the President of the Republic on matters under his jurisdiction¹⁶.

The legislature does have some means to limit the independence of the executive authority. The Constitution of Serbia envisages the possibility of interpellation, i.e. the formal right of the Parliament to submit formal questions to the Government, when at least 50 deputies can pose certain questions to the Government or some other member, which they must answer within 30 days. The Parliament then discusses and votes on the answer that the Government or one of its members gave. If the Parliament does not accept the answer of the Government or one of its members, it votes on the confidence in the Government or one of its members¹⁷.

Also, at least 60 (out of 250) deputies can submit a vote of no confidence in the Government. For a vote of no confidence in the Government, it is necessary that the majority of deputies should vote for that proposal (at least 126 from total of 250).

¹² Increase is bigger then average increase of other budget beneficiaries

¹³ In the answer whether Government disposes with appropriate technical resources, Secretary General assesed that it is „too wide matter that would be resolved by interviewing all state organs“ and stated quoted example...

¹⁴ Law on Government, article 40

¹⁵ Constitution of Serbia, article 112

¹⁶ Rules on Procedure of the Government, article 81

¹⁷ Constitution of Serbia, article 129

Independence (Practice)

To what extent is the executive independent in practice?

Score: 50

The executive authority is independent from unjustified interference and other formal authorities, but the real problem is the direct influence of political parties on the executive authority and problems in the establishment of internal balance of the executive authority, i.e. between the president, executive authority and legislature.

According to the Law on the Government, the relation between the Government and the President is merely “cooperation in areas entrusted to both parties”¹⁸. The Government is also, according to the law, obliged to deliver to the President notices, explanations and data that he requests. The scope of cooperation and relation of the Government and the President in practice depends on whether the President and the Government are from the same party or coalition¹⁹. The existing situation in which the Prime minister is a non-party person and the President is from the main party of the Government affords maximum of practical power to the President²⁰.

The President is seen in public as a person in power that participates in the processes that represents the jurisdiction of the Government, through special bodies with representatives of the Government, like the National Security Council²¹ or National Council for Infrastructure²², through appearances that announce measures within the Government’s jurisdiction²³, or through the fact that ministers from his party submit work reports²⁴.

Party relations can influence the degree of independence that the Government has in relation to decision-making. Many of the Government’s decisions are politically opportunistic or essentially made to keep a good media image of coalition partners. They are not made on the basis of good management or expert estimation, but because of party considerations and media ratings²⁵.

Formally, and largely also in practice, there is independence, but in the real Government policy implementation, it is relevantly mediated by short term political-media interests of members of the ruling coalition²⁶.

The Government, also, can withdraw certain bills from the Parliament under the pressure of powerful external factors, like the church and unions²⁷, but such cases cannot be treated as influence to independence, but more like pressure to reopen public debates, since in such cases new compromising solutions for disputed provisions have been found²⁸.

The executive authority, according to the analyst, is under strong influence of informal centers of power like important businessmen and “key players” in the international community, while other institutional “players” like legislature and the judicial authority have no possibility to interfere in the process of decision-making by the executive authority²⁹.

18 Law on the Government, article 40

19 From 2004 to 2007 President of Serbia was the leader of opposition party, from 2007 party that President is a member of, participates in the government and since 2008 represents outline of the Government of Serbia

20 Estimation of analyst Zoran Stojiljković, interview January 2011

21 <https://www.vesti-online.com/Vesti/Srbija/90314/Tadic-Mi-odredujemo-sudbinu-kriminalaca-ne-oni-nasu>

22 <http://www.vesti.rs/Politika/Odbacen-ugovor-o-koncesiji-za-autoput-Horgos-Pozega.html> <http://www.rts.rs/page/stories/sr/story/13/Ekonomija/28424/Osniva+se+preduze%C4%87e+%E2%80%9CKoridor+10%E2%80%9D.html>

23 <http://www.vreme.com/cms/view.php?id=861154>

24 <http://www.emportal.rs/vesti/srbija/98117.html>

25 „Izborna obećanja i postizborna realnost: javne politike u izbornoj ponudi u Srbiji“, Zoran Stojiljković, Fakultet političkih nauka

26 Estimation of analyst Dejan Vuk Stanković, interview January 2011

27 <http://www.politika.rs/rubrike/Politika/Government-povukla-Predlog-zakona-protiv-diskriminacije.lt.html> <http://www.blic.rs/Vesti/Politika/213273/Government-povukla-Zakon-o-PIO>

28 <http://www.politika.rs/rubrike/Politika/Vlada-povukla-Predlog-zakona-protiv-diskriminacije.lt.html> http://www.alo.rs/stari-alo/vlada_vratila_zakon_Sijakovic_i_SPC_ljuti/13100

29 Estimation of analyst Zoran Stojiljković, interview January 2011

GOVERNANCE

Transparency (Law)

To what extent are there regulations in place to ensure the transparency in relevant activities of the executive?

Score: 75

The Law on Government³⁰ obliges the Government to be generally transparent in work and enables insight into its work according to the Law on Free Access to Information. The Law on Free Access to Information³¹ however anticipates that a refusal of the Government of Serbia to deliver information cannot be appealed to the Commissioner for Free Access to Information, but a dispute can be initiated before the court against such decisions or because of non-proceeding of the Government administration.

The Government is obliged to publish certain categories of decisions (regulations, decisions, rules on procedure, memo on the budget) in the Official Gazette, while others (declarations, strategies, conclusions) can, but do not have to be published.³² This assessment points out to a specific problem that the Government does not publish its conclusions although the Government occasionally uses conclusions to regulate matters that should be regulated with acts that are supposed to be public³³. The list of conclusions adopted by the Government and description of the matter they refer to are available only in the annual work report of the Government delivered to the Parliament.

Minutes of the sessions of Government, deemed information of public importance, are available to the public. Journalists and other representatives of the public “normally” are not allowed to attend the sessions³⁴.

The Rules on Procedure³⁵ envisage transparency of the Government’s activities with press conferences, presentations of the Government and its other bodies on websites, press releases and “in other ways”, which are not described.

The Government’s Media Office deals with the transparency of the Government’s work and state administration bodies³⁶.

The State budget, or the Budget Law³⁷ is public. According to the Budget System Law, the Government adopts a Memo on the budget by the 15th of May, that is a public document, and the Minister of Finance delivers to the Government a Draft Budget Law by the 15th of October. The Government adopts a Proposal of the Budget by the 1st of November and delivers it to the Parliament that makes the budget transparent.

Public officials, including the highest executive authority (Prime Minister, Deputy Prime Ministers and Ministers) as well as the Secretary General of the Government and Deputy Secretary General of the Government are obliged to report property and income to the Anti-corruption Agency 30 days from the day of being elected to the position³⁸. Also, they are obligated to report changes in

30 Law on Government, article 9

31 FOI, article 22 <http://www.poverenik.org.rs/index.php/en/doc/laws/881-2010-03-09-09-00-36.html>

32 Law on Government, article 46

33 Estimation of the Commissioner for Information of Public Importance Rodoljub Šabić, interview with the author of the report, January 2011

34 Rules on Procedure of the Government, article 64 i 96

35 Rules on Procedure of the Government, article 96

36 Rules on Procedure of the Government, article 96

37 http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?id=1043&t=Z

38 Law on Anticorruption Agency, article 43 i 44

the value of the property higher than the average salary in Serbia. Law prescribes that data from the register of the property and incomes are public, on the web-site of the Agency³⁹. Those are the incomes from public sources, data on real estate, vehicles, savings and data that are to be public according to other regulations, like ownership stakes in enterprises and owning of stocks⁴⁰.

The Anti-corruption Agency has the possibility and obligation to check reports on property of officials – their accuracy and completeness. The Agency has competencies to ask from authorities' data from financial organizations, business associations and other legal entities for checking the reports of a certain number of officials, determined by an annual plan of validation⁴¹.

Transparency (Practice)

To what extent is there transparency in relevant activities of the executive in practice?

Score: 50

The Government fulfills basic formal obligations of the law and other regulations with concern publishing of the acts and decisions, but in practice a significant part of the Government's activities is insufficiently transparent.

Laws that the Government proposes and the Parliament adopts often leave lots of unclear provisions at such a level that politics in practice are conducted by the Government's by-laws⁴².

According to an analyst, there is general public awareness on propositions and decisions of the Government, which is not to the credit of the Government and its activities, but more due to information obtained by the representatives of the media, nongovernmental organizations, regulatory bodies or the Anti-corruption Agency and the Commissioner for Information of Public Importance⁴³. Also, a wider system of authority that involves Government's agencies and public enterprises is insufficiently transparent⁴⁴.

Minutes from the Government's sessions, should be available to the public according to the Law on Free Access to Information, but they normally are not⁴⁵.

The annual work report that the Government delivers to the Parliament is not debated by deputies but merely presented for information and it is not available on the website of the Government, as well as on the website of the Parliament.

According to the Open Budget Index,⁴⁶ Serbia is in a category of states that "provide some information on the budget, but at an insufficient level to understand it completely and to subject the executive authority to necessary verifications"⁴⁷. The State budget is public, a memo on the Budget is published on the website of the Ministry of Finance, and the Bill on the Budget is published on the web site of the Ministry of Finance and the Government's web-site, after being adopted by the Government and forwarded to the Parliament for adoption. Documents on budget realization are usually unavailable to the public in practice⁴⁸. In the final budget account there is no detailed elaboration of expenses or detailed data and explanations on unspent assets. In practice details

39 <http://acas.rs/en/aktuelnosti/114.html>

40 Law on Anticorruption Agency, article 47

41 Law on Anticorruption Agency, article 48

42 Estimation of analyst Zoran Stoilković

43 Estimation of political analyst Dejan Vuk Stanković, January 2011

44 http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=11&dd=07&nav_id=327621 and analyst Zoran Stoilković in the interview with the author of the report, January 2011

45 Commissioner for Information of Public Importance Rodoljub Šabić, interview 2011

46 <http://www.internationalbudget.org/what-we-do/open-budget-survey/?fa=Rankings>

47 <http://www.biznisnovine.com/cms/item/stories/sr.html?view=story&id=51344§ionId=2>

48 Interview with Commissioner for Information of Public Importance Rodoljub Šabić

on budget implementation could be obtained upon request for free access to information, possible with the appeal to Commissioner.

According to data on the Anti-corruption Agency all of the highest executive officials reported their property and income. Part of this data, in accordance with the Law⁴⁹, is available on the public web-site of the Agency⁵⁰. In the second half of 2010 the Agency verified reports on property and by the beginning of 2011 filed misdemeanor charges against a Minister that had not delivered evidence on the transfer of managerial rights in the enterprise he owns⁵¹.

The Government or Secretary General, according to the data from the Information Directory⁵², in the first seven months in 2010 received 30 requests for access to information of public importance and answered 29 of the requests. One request was withdrawn. Republic state bodies under the Government's jurisdiction, being a founder or supervisor, fulfilled their obligations based on the Law on Freedom of Information (FOI) in a lower amount, because more than 1.000 complaints were submitted to the Commissioner for Information of Public Importance during 2010 for ignoring or refusing requests for free access to information⁵³.

The method by which the Government presents regulations and procedures does not allow citizens to understand its activities and influence regulations in everyday life of ordinary citizens⁵⁴. The Government does not publicly announce nor explain decisions that could have negative influence to political ranking. Thus, the Government declared information on giving one million dollars for compensation to a family of a US citizen that was injured in a fight with a citizen of Serbia that afterwards escaped the USA with the help of representatives of the Serbian Consulate⁵⁵ to be confidential data. In many cases the ability of clear presentation of regulations is directly related to the quality of the regulations. With confused or incomplete or modified legal solutions, the Government most often has inadequate public addressing⁵⁶.

Accountability (Law)

To what extent are there provisions in place to ensure that members of the executive authority have to report and be accountable for their actions?

Score: 75

The Constitution of Serbia prescribes that the Parliament, who elects the Government, supervises the work of the Government and decides on the termination of the mandate of the Government and Ministers⁵⁷. The Law on Government⁵⁸ additionally specifies that the Government is accountable to the Parliament for policy making, for implementing laws and other general acts of the Parliament, for the situation in all areas of the Government's jurisdiction and work of administration bodies. The Constitution or laws that establish institutions⁵⁹ provide the Constitutional Court and State Audit Institution with powers to monitor the Government's work, decisions or acts passed by the Government. In the areas under the jurisdiction of the Anti-corruption Agency, like resolving conflict of interest, multiple functions, gifts and hospitality, integrity plans, execution of the Anti-corruption Action Plan, the Government and its members are subject to control of the Anti-corruption Agency⁶⁰.

49 Law on the Anti-corruption Agency, article 47

50 http://www.acas.rs/sr_cir/aktuelnosti/114.html

51 http://www.acas.rs/sr_cir/aktuelnosti/209-saopstenje-djelic.html

52 http://www.srbija.gov.rs/extfile/sr/140942/informator_o_radu_vlade_za_2010_cyr.zip

53 Data from the interview with Commissioner, January 2011

54 Estimation of the analyst Dejan Vuk Stanković, January 2011

55 http://www.slobodnaevropa.org/content/miladin_kovacevic/1496805.html

56 Estimation of the analyst Dejan Vuk Stanković, January 2011

57 Constituion of Serbia, article 99

58 article 7

59 Constituion of Serbia, article 167; Constituion of Serbia, article 96 and Law on SAI, article 9 and 10;

60 <http://www.acas.rs/en/zakoni-i-drugi-propisi/the-mayor/law-on-agency.html>

The Commissioner for Information of Public Importance and Ombudsman have no jurisdiction over the Government, but they have over the work of the Ministries and state bodies under the Government's competencies⁶¹.

As part of a constitutional obligation of the Government to respond to the Parliament, the Law on Government prescribes⁶² that the Government of Serbia submits to the Parliament work reports for the previous year no later than 60 days before submitting a proposal of the final account of the budget. Also, upon the request of the Parliament, the Government and each of its members are obligated to submit a report on its work.

The Rules on Procedure of the Government, however, prescribe that the Government submits to the Parliament a work report by the 1st of March in the current year for the previous year⁶³. Work reports describe activities undertaken as envisaged by the annual program of work and especially indicated and described activities that were undertaken, but were not envisaged with the annual program of activities.

The annual program of activities that the Government is supposed to adopt by the end of December of the current year for the following year, the Government determines its main activities, as well as proposals of the laws and acts that will be submitted to the Parliament, with explanations why such acts are needed.

Work reports that the Government delivers to the Parliament are directed to deputies "for the purpose of informing". The Parliament can decide, upon the proposal of the Committee that discussed the report of the Government, that there should also be a discussion at the session of the Parliament"⁶⁴.

Members of the Government are not obliged to elaborate their personal decisions during voting in sessions of the Government, their voting is considered as officially confidential⁶⁵, and members of the Government are obliged to publicly advocate for the decision of the Government even though they voted against or refrained from voting⁶⁶.

Acts of the Government must contain explanations.⁶⁷ As an annex to draft laws, there have to be analysis of the effects of the law.⁶⁸

In preparation of the law that significantly changes the organization of a certain matter "which is of special interest to the public", the obligation of the proposer is to organize a public debate⁶⁹. The form of the public debate or its duration is not specially regulated with any act.

Representatives of the executive authority enjoy the same immunity as deputies, which is prescribed by the Constitution of Serbia⁷⁰ and Law on Parliament⁷¹. Regardless of the immunity of the Prime Minister and members of the Government, they can be suspended by the Government's decision⁷².

The Law⁷³ anticipates a solution that provides withholding of deadlines in criminal procedures, if immunity is called for, but it does not prolong a deadline for absolute obsolescence which means that statute of limitations for criminal prosecution can happen⁷⁴.

61 Constituion of Serbia, article 138; FOI, article 22
62 Law on Government, article 36
63 Rules on Procedure of the Government, član 78
64 Rules on Procedure of the National Assembly, article 228
65 Rules on Procedure of the Government, article 59
66 Rules on Procedure of the Government, article 95
67 Rules on Procedure of the Government, article 39
68 Rules on Procedure of the Government, article 40
69 Rules on Procedure of the Government, article 41
70 Consitution of Serbia, article 134
71 article 38
72 Constituion of Serbia, article 134
73 Law on National Assembly, article 38
74 Criminal Code, article 103-107

Accountability (Practice)

To what extent is there effective oversight of executive activities in practice?

Score: 50

There is not enough control of the work and efficient supervision over the executive authority in practice⁷⁵. The executive authority regularly violates regulations considering deadlines for delivering of the budget or final budget account; for a long time the executive authority refused to implement decisions of the Commissioner for Information of Public Importance; Recommendations of independent state bodies were ignored⁷⁶

The Government delivers to the Parliament an annual activities' report. The Law stipulates that this report should be delivered at least 60 days before the final account of the budget. The report for 2009 was delivered on the 17th of May 2010, and final budget account for 2009 was delivered in December 2010. The annual report on the Government's activities was not discussed in the Parliament. At the sessions of certain Parliamentary Committees, Ministers submitted periodical reports on the work of Ministries.

Reports submitted by the Government and Ministries never served for initiating the procedure for determining possible accountability for irregularities or mistakes⁷⁷.

The executive authority, or final budget account of the Republic of Serbia is subject to audit of the State Audit Institution. So far, two audits were conducted – of the final account for 2008 and for 2009. There was no interference reported while the State Audit Institution was completing the audit. After the first audit, 19 misdemeanor charges were filed, out of that 11 against former ministers that were in charge at that time. The President of SAI Council announced⁷⁸ that by the beginning of 2011 misdemeanors and possibly criminal charges will be filed on the basis of the findings of the audit of the final budget account for 2011.

Reports on audit were submitted to the Parliament. Reports were not comprehensive enough but they did contribute, in a small scale, to the oversight of executive activities in practice. The first report was submitted in November 2009 and was discussed by the Parliamentary Committee in December 2009 and then at the session of the Parliament in March 2010 representatives of the Government and SAI answered to questions of the deputies. Considering the second report, submitted in December 2010, it is in the process of preparation⁷⁹.

The obligation to hold public consultations on regulations that change significantly most often are deemed unsatisfactory⁸⁰. Expert associations and certain state bodies⁸¹ protested on several occasions because they were not included in the public debate on new legal solutions or due to the fact that almost none of the objections stated in the public debate were taken into account. It is often stated in the analysis of the effects of the law that were delivered to the Parliament by the Government that "stakeholders" stated their opinion without naming them, or that the law is in the process of creation "delivered to authorized Ministries"⁸². Also, the European Commission in its annual progress report of Serbia indicated that "public debate on draft laws is still insufficient"⁸³.

75 Joined estimation from separate interviews with analysts Zoran Stoilković and Dejan Vuk Stanković and Commissioner for Information of Public Importance Rodoljub Šabić

76 http://www.ombudsman.rs/index.php/lang-sr_YU/aktivnosti/saopstenja/569-2009-08-12-11-36-42 <http://www.blic.rs/Vesti/Politika/201435/Vladu-bas-briga--sto-krsi-zakone>

77 Research for purposes of NIS, www.parlament.gov.rs

78 <http://www.blic.rs/Vesti/Drustvo/229331/DRI-Moguće-i-krivicne-prijave-zbog-budzeta>

79 http://www.rtv.rs/sr_lat/politika/završeno-odgovaranje-na-pitanja-o-izvestaju-dri_180465.html

80 Estimation of the Commissioner for information of public information Rodoljub Šabić

81 <http://www.sudije.rs/sr/aktuelnosti/vesti/aktuelnosti-u-vezi-sa-pravosudnim-zakonima> <http://www.politika.rs/rubrike/Politika/Povucen-zakon-o-agenciji-za-borbu-protiv-korupcije.lt.html> <http://www.pressonline.rs/info/politika/72882/bradic-predstavio-amadmane-na-izmene-zakona-o-informisanju.html>

82 Research done for purposes of NIS, www.parlament.gov.rs

83 http://www.seio.gov.rs/upload/documents/Izvestaji/serbia_2010_progress_report.pdf chapter 2.1

Sanctions or implementation of enforcement mechanisms towards members of the executive authority represent a rare exception. One misdemeanor charge was initiated against a Minister for a violation of the Anti-corruption Agency Law, for not providing the document which proves he transferred managing rights⁸⁴.

Integrity (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

Score: 50

There are some, but not sufficient, mechanisms which are supposed to ensure the integrity of members of the executive authority. There is no special Ethical Code for the members of the Government⁸⁵.

According to the Constitution, members of the government cannot become deputies of the Parliament, deputies in the Provincial Assembly or deputies in Municipality Assemblies, as well as members of provincial or local executive authorities⁸⁶. Members of the Government are obliged to completely obey regulations for conflict of interest, prescribed by the Law on the Anti-corruption Agency, when performing public functions⁸⁷.

Officials whose function requests permanent engagement or full time engagement, like members of the Government cannot perform other jobs or activities⁸⁸.

Like public officials, members of the Government, are obliged to transfer managing rights within a 30 days' deadline and to inform the Agency on this matter. A Minister is obliged to disclose where he/she has more than 20 percent ownership in a legal entity. He/she is obligated to report on every contract signed with budget users or other legal entities whose establisher is the state. Members of the Government are forbidden during performing of functions to establish enterprises⁸⁹.

Two years after the termination of the function as officials, members of the Government, must not take employment or establish business cooperation with a legal entity, entrepreneur or international organization engaged in activities relating to the office the official held, except under approval of the Agency⁹⁰.

There are neither special limitations nor obligations of recording meetings with representatives of legal entities that could have the interest to engage a member of the Government after the termination of their function. There is no law that specially organizes lobbying, nor provisions of other regulations that could organize this area⁹¹.

The Anti-corruption Agency Law regulates gifts (including goods and services). According to these provisions, which apply to all public officials, including Government members, officials cannot accept gifts related to performing their function, apart from protocol or appropriate ones, but not even then, if it is money and stocks. All gifts must be recorded and the state body is obligated to deliver a copy of the records once a year to ACA that publishes it on the web-site. Officials must not keep the gift of 5 percent value from an average salary (app USD 20) in Serbia⁹².

84 According to data of Anti-corruption Agency

85 Information from Secretary General of the Government

86 Constitution of Serbia, article 126

87 Law on Government, article 11

88 Law on Anti-corruption Agency, article 28

89 Law on ACA, articles 33-36

90 Law on ACA, article 38

91 Representatives of lobbyist association but also certain parties publicly stated the idea on the adoption of a Law on Lobbying <http://www.srbijanet.rs/vesti/vesti-iz-zemlje/37802-miletic-srbiji-neophodan-zakon-o-lobiranju.html> <http://www.politika.rs/rubrike/Politika/Potreban-zakon-o-lobiranju.lt.html>

92 Law on ACA, articles 39-42

There is no special law in Serbia on the protection of whistleblowers nor are there special codified rules that are implemented in the Government of Serbia. Provisions on the protection of whistleblowers are contained in the Law on Preventing Mobbing, on Free Access to Information of Public Importance and Anticorruption Agency Law.

Integrity (Practice)

To what extent is the integrity of members of the executive ensured in practice?

Score: 25

Regarding the unorganized matter of lobbying, there is a strong belief in the public, even stated by the Government's Anti-corruption Council, a body that is formally part of the Government, but which the Government regularly ignores, that the Government, Ministers, often work in the interest of centers of power outside the Government, most often tycoons⁹³. The public is unaware of what kind of contacts Ministers had with influential businessmen and there are no prescribed procedures of communication in such cases. On the other hand there are accusations that certain decisions passed are favorable exclusively to individual interests. The Government's regulation of subsidies for artificial fertilizers resulted in public accusations⁹⁴ that it was drafted in order to benefit just one fertilizer producer. State subsidies for bank loans for real estate purchases and for buying commercial goods were represented as a stimulus to domestic economy, but some media pointed out⁹⁵ that they were stimulus to individual financial interests, tycoons that controlled the real estate market and had large shares in commercial goods trade.

During the first year of the implementation of the Anti-corruption Agency Law there were no examples of members of the Government in conflict of interest. Misdemeanor charges were initiated against one Minister for not providing evidence on the transfer of managerial rights in an enterprise that he owns 100 percent, and a procedure for determining whether he transferred managerial rights is ongoing during the preparation of this report⁹⁶.

The ACA Law has been in force since the beginning of 2010 and in 2011 for the first time state bodies will have the obligation to deliver a copy of the records on accepted gifts and ACA the obligation to publish the catalogue of received gifts. According to regulations in force (Law on Preventing of Conflict of Interest) the Government⁹⁷ kept the gifts in a "gift room" in the Government's building and made records of them.

Pantouflage or revolving door is news for the public and officials in Serbia. Before that area was regulated (ACA Act, that has been in force since 1 January 2010) there were several characteristic examples that hadn't produced greater attention of the media⁹⁸. The executive authority did not have a case of whistle blowing.

93 <http://www.naslovi.net/2010-08-16/blic/verica-barac-politiku-kroje-tajkuni-i-kriminalci/1917946>

94 http://www.alo.rs/vesti/32333/Dragin_stvara_kartel_dubrava

95 http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=03&dd=25&nav_category=120&nav_id=501687

96 Data from the ACA, January 2011.

97 Data received from the Secretary General of the Government of Serbia

98 Assistant Minister of Finance that was in charge of excise policy transferred to a larger enterprise – manufacturer of excise products.

ROLE

Public Sector Management (law and practice)

To what extent is the executive committed to and engaged in developing a well-governed public sector?

Score: 50

In laws, there is a detailed organized system of employment, appointing, improving, remuneration and promoting state servants in the system of the state administration. In practice, however, there is domination of political parties over state administration at all levels of authority and party criteria are above professional⁹⁹.

And the European Parliament in the Resolution on European Integrations of Serbia, from January 2011, commented progress on the reform of public administration, but referred to necessary additional efforts to create independent public services and emphasized that public officials are often employed on the basis of political connections¹⁰⁰.

The Human Resource Management Service was established according to the Government's Strategy of the Reform of State Administration, from 2004 that proclaims principles of professionalization, depolitization, rationalization and modernization of the state administration.¹⁰¹ The Human Resource Management Service announces vacancies in state administration bodies and Government's services, deals with harmonized rearranging of the state administration, advises bodies of state administration and Government's services on how to manage personnel, and organizes professional trainings of state servants, "especially in the area of the fight against corruption"¹⁰².

Thanks to the existence of all those normative mechanisms and preconditions, the standpoint of the Secretary General of the Government is that the executive authority disposes with appropriate mechanisms and bodies that are able to efficiently supervise and to manage activities of state services and that it is performed effectively¹⁰³.

According to analysts, however, the executive authority is not committed to good governance and development of human resources¹⁰⁴. The logic of division of political spoils is predominant in the public sector, wider and profound appointing from politics to the public sector, and therefore resisting true professionalization¹⁰⁵. Commitment to good governance is a political-media slogan and contrary to that, there is almost complete dominance of the parties over state administration on all levels of authority. Party affiliation and great loyalty to party leadership is a sufficient and necessary condition for progress in the state service¹⁰⁶.

By the end of 2009 Serbian authorities committed, as part of the arrangement with IMF, to significantly decrease employees in the public sector. That is why the Law on Decreasing the Number of

99 Joint estimation from separate interviews with political analysts Zoran Stoilković and Dejan Vuk Stanković

100 <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0021&format=XML&language=EN>

101 <http://www.digitalnaagenda.gov.rs/FileSystem/SiteDocuments/strategije/Strategija%20reforme%20drzavne%20uprave%202009%202012.pdf>

102 Law on State Servants, article 158

103 Secretary General refused to be interviewed and replied by e-mail to questions. Answer delivered by the Secretary General were not additionally elaborated; to the question whether there is a transparent system of rewarding as a form of stimulating in the public sector there was no answer

104 Joint estimation from separate interviews with analysts Dejan Vuk Stanković and Zoran Stoilković

105 Interview with analyst Zoran Stoilković, January 2011

106 Interview with analyst Dejan Vuk Stanković, January 2011

Employees in the Republic Administration and Local Administrations was adopted, that should, as elaborated then¹⁰⁷, revive the system of evaluation where previously there was almost no “unsatisfactory” grades. In Parliamentary discussions on that Law, the opposition claimed that the number of employees is significantly increased because every government brought new party staff, and retains the previously employed staff, awarding them with less significant and responsible jobs¹⁰⁸.

Legal system (law and practice)

To what extent does the executive prioritize public accountability and the fight against corruption as a concern in the country?

Score: 25

The fight against corruption is, according to statements of ministers and the Prime Minister, one of the most important priorities and one of the six most important tasks from the expose on establishing the Government of Serbia¹⁰⁹. To a large extent, Serbia has established the legal and institutional framework to fight corruption. A number of important laws were adopted and international conventions were ratified, but there are problems in law enforcement.

Despite the fact that a series of important laws for fighting against corruption were adopted, Serbia still lacks some very important legislation, such as the law on the protection of whistleblowers, the legislation to regulate lobbying and provide the organization of public hearings, public ownership of the media and other influences on impartiality of media reporting.

The Government provided basic conditions for beginning the Anti-corruption Agency’s work in temporary premises, that do not satisfy conditions for work in full capacity, and that accommodate all independent control bodies and organs – ACA, SAI, Commissioner for Information of Public Importance and Ombudsman¹¹⁰.

The Anti-corruption Strategy is implemented in Serbia (adopted in 2005), the Strategy for the Reform of State Administration (2004) and reform of the judiciary is also implemented, through the reorganization of the network of courts, new procedural laws and general election of judges and prosecutors.

In the European Commission’s Opinion on Serbia’s application for membership to the European Union from 2011, it was pointed out that “the Strategy (of anti-corruption) and the Action Plan were implemented slowly and need to be updated.” Work on the new Strategy began in June 2011 and it received the same estimate as the previous year - “the lack of law enforcement.”

Standpoints on whether there is a true willingness of the government to fight corruption vary. There is some praise of the government’s work, like statements of the Resident Coordinator of the Office of United Nations in Serbia William Infante that “the Government makes true efforts in the fight against corruption” and that “political will for that genuinely exists”¹¹¹. The President of the Board of the Anti-corruption Agency Čedomir Čupić stated the opposite in the media – that there is no political willingness and that the government showed the willingness to implement standards of EU for fighting against corruption “formally, but is unavailable to materially and substantially support it”¹¹².

107 <http://www.vesti.rs/Politika/Skupstina-o-administraciji.html>

108 <http://www.vesti.rs/Vesti/Rasprava-o-smanjenju-administracije-2.html>

109 <http://www.srbija.gov.rs/pages/article.php?id=46940>

110 <http://www.poverenik.org.rs/yu/iz-medija/255-2009-01-14-10-48-46.html>

111 http://www.danas.org/content/korupcija_infante_unpd/2243878.html

112 http://www.slobodnaevropa.org/content/intervju_cupic_korupcija/2285658.html

Political analysts¹¹³ agree with such estimations. The fight against corruption is high on the agenda of the Government, but that is the result of pressure of the EU and the public climate because corruption is recognized by citizens as one of the key issues. Declarative willingness to fight corruption is therefore more of a political reflex, then serious belief¹¹⁴.

Corruption is a subject for the media and is used as one of the favorite abstract grasping of general issues. Its mentioning is usually for the purpose of collecting political points in the eyes of unsatisfied citizens. The same goes for the commitment of the Government for good and credible governance¹¹⁵.

The Government in previous years fulfilled a series of recommendations of the National Anti-corruption Strategy, but that strategy was predominantly based on the adoption of the missing legal framework. The implementation of adopted measures was missing in practice¹¹⁶. The Head of Delegation of the European Union in Serbia Vincent Deger indicated that, stating that states that wish to be members of the Union (including Serbia) must accomplish a high level of fight against corruption and to establish firm mechanisms for that, which means that it is not just necessary to pass proper laws, but also to implement them¹¹⁷.

The Government declaratively supports independent bodies and bodies that implement anti-corruption laws, but such bodies are in temporary premises (the reason they can't hire the necessary number of personnel) and for several years the Government refused to implement decisions of independent bodies¹¹⁸. One of the most drastic examples was in 2009 when the Government refused a recommendation of the Republic Committee for Resolving the Conflict of Interest (that performed activities as an independent body in that area until the establishing of the Anti-corruption Agency) for dismissal of two state secretaries for conflict of interest. In that case the Government took the competencies of the independent body and concluded that the state secretaries didn't violate the law¹¹⁹ and that there is no conflict of interest and therefore reason for dismissal.

The Action Plan for carrying out the National Anti-corruption Strategy was adopted in December 2006 and it anticipates a series of obligations for the Government of Serbia. Until the establishing of the Anti-corruption Agency (January 2010) no one supervised the implementation of Anti-corruption Plan. According to data from the Anti-corruption Agency, part of the obligations, that were mainly from the area of passing and amending the laws and other regulations, were fulfilled. During 2011 a detailed report on the remaining obligations is expected and a proposal for the revision of the Action Plan, that would include obligations of the executive authority¹²⁰.

The Government of Serbia signed in June 2010 with the Anti-corruption Agency a memo on cooperation and fulfilling of obligations from the National Anti-corruption Strategy and Action Plan. The Government, among other things, obligated that all organs under its competencies should deliver quarterly reports on the implementation of the Action Plan and on implemented obligations. All those that had such obligations already sent their first report¹²¹.

The President of Serbia, the Prime Minister and Ministers regularly declare that fighting against corruption represents a priority¹²².

113 Joint estimation from separate interviews with analysts Dejan Vuk Stanković and Zoran Stoiljković

114 Estimation of the analyst Zoran Stoiljković, interview with the author of the research, January 2011

115 Estimation of the analyst Dejan Vuk Stanković, interview with the author of the research, January 2011

116 Estimation of the President of TS and political analyst Vladimir Goati at presentation of the results of CPI 2010

117 http://www.rtv.rs/sr_lat/drustvo/dezer:-potrebni-cvrsti-mehanizmi-za-borbu-protiv-korupcije_219604.html

118 http://www.ombudsman.rs/index.php/lang-sr_YU/aktivnosti/saopstenja/569-2009-08-12-11-36-42 <http://www.naslovi.net/2010-10-29/vecernje-novosti/nezavisna-tela-su-iznad-glave/2077859>

119 <http://www.srbija.gov.rs/vesti/vest.php?id=55224>

<http://www.politika.rs/rubrike/Politika/Government-odbila-predlog-za-smenu-Homena-i-Cirica.lt.html>

120 ACA annual report, http://www.acas.rs/sr_cir/pocetna/229.html

121 Data from the ACA. In the office of the Secretary General of the Government they have no information on fulfilling of that obligation by the Government and for the purpose of this report information was delivered that obligation regarding monitoring of implementation of Action Plan is in ACA competencies

122 <http://www.glasamerike.net/content/serbia-memorandum-06-18-96679024/768413.html> http://www.mondo.rs/s191467/Info/Srbija/Tadic-Borba_protiv_korupcije_nema_kraja.html

However, there is a discrepancy between words and action: the President of Serbia stated in June 2010 that no one will be protected from the fight against organized crime and corruption regardless of political and family connections or the function they perform or the role they have in society and declared that he gives full and absolute support to the establishing of the rule of law and establishing of institutions in Serbia, as well as to the persons doing that job and implementing reforms¹²³. Two months later the President refused the appeal not to sign changes of the Law on ACA which were, after being harmonized by the Government with the ACA, changed by amendments of a deputy and that way ACA was deprived of part of its competencies¹²⁴. Five months later he stated that without strong institutions there cannot be an efficient fight against corruption¹²⁵.

The Prime Minister of Serbia stated in March 2009 that the main priorities of Serbia are conducting of the rule of law, primarily through the reform of the judiciary, and the fight against corruption and organized crime¹²⁶. One month later the Government refused to dismiss two state secretaries for whom independent bodies determined they were in a conflict of interest¹²⁷.

123 <http://www.kurir-info.rs/vesti/politika/tadic-u-borbi-protiv-korupcije-nece-biti-zasticenih-38169.php>

124 <http://www.021.rs/Info/Srbija/Tadic-potpisao-Zakon-o-borbi-protiv-korupcije.html>

125 <http://www.mondo.rs/s/191467/Srbija/Tadic-Borba-protiv-korupcije-nema-kraja.html>

126 <http://www.blic.rs/Vesti/Politika/85924/Cvetkovic-Borba-protiv-korupcije-i-kriminala-prioriteti-Srbije>

127 <http://www.politika.rs/rubrike/Politika/Vlada-odbila-predlog-za-smenu-Homena-i-Cirica.lt.html>

EXECUTIVE

Key findings and recommendations

The Executive is under the shadow of the President who is also the chairman of the party which is the backbone of the Government. The Government decision-making process is not transparent enough and depends on the agreement of the ruling party leaders. The Government is not effective in monitoring public companies under its jurisdiction.

1. The Government to submit detailed reports to the Parliament on its activities, which should include a report on the implementation of tasks from the Anti-corruption Strategy and programs related to the fight against corruption;
2. The Law on Ministries, after a public hearing and approval based on wider political structures, should determine the number and structure of line ministries and other public administration bodies in order to avoid frequent changes that are not based on the need for the most efficient performance of state administration, but needs to settle a number of ministerial places during the formation of the government;
3. To enable the public to influence the budget process and to provide explanation on the influence of the planned budget expenditures to the fulfillment of legal obligations of state bodies and implementation of defined priorities;
4. To ensure effective supervision of the constitutionality and legality of the Government decisions, by modifying the Law on the Constitutional Court and through the compulsory publication of Government's conclusions with regulatory effect;
5. To prescribe standards on conflicts of interest that would apply to special advisers in the government and ministries;
6. To regulate lobbying (an attempt to influence decision making and drafting of regulations) in order to reduce inappropriate non-institutional influences on the work of the Government;
7. To introduce an obligation to publish all decisions of the Government, except when it is necessary to protect predominant public interest;
8. Allow the media to attend Government sessions and to publish transcripts of sessions of the Government, except in the area when discussing issues that need to remain confidential; to publish a notice of the agenda of the Government;
9. Publish data on the candidates proposed by the Government, about elected, appointed and dismissed persons, along with the reasons for such decisions;
10. Provide greater public disclosure of data of the entire annual report of the Government (made up of reports of the Ministries). The report should include a review of the plans and implementation of all statutory functions of every administrative body;
11. To publish more data on budget execution and financial commitments of the state;
12. Precisely define the situation when a ministry must organize public hearings before a law is proposed, the method for public participation and the handling of received proposals, thus to allow all interested parties to submit proposals that could improve the quality of regulations and to ensure that all proposals are considered;

13. The introduction of the practice to call for responsibility of the government ministers if failure occurs as a delay in fulfilling the obligations – e.g. the delay in delivering to the Parliament the proposed budget and final account statement, non-compliance with decisions of the Commissioner for Information of Public Interest and other agencies, non-compliance with the recommendations of the Ombudsman, Anti-corruption Agency, the Supreme Audit Institutions and other bodies, failure to pass by-laws and failure to comply with the anti-corruption strategy and action plan;
14. When setting up each new government, to establish and to publish the priorities in the fight against corruption area; these priorities should be in accordance with the general Anti-corruption Strategy and action plan for its implementation;
15. Timely, thorough and transparent review of the work of public companies and financial plans of other organizations subjected to the Government's approval;
16. The introduction of the practice to review all reports of the Anti-corruption Council and to solve problems that the report indicates. In case of disagreement about the facts or views of the Government with the Council, to publish the Government's position if the Council did the same;
17. Continue the good practice of co-ordination of activities of public administration in the fight against corruption. The responsibilities of the Government's coordinator should be clear. There should be no confusion about the role of the Government's coordinator and duties of independent agencies (such as the Anti-Corruption Agency or public prosecutor).



JUDICIARY

NATIONAL INTEGRITY SYSTEM

Summary: The lack of judges' independency, because of uncertainty regarding permanency of their functions during the process of general elections, re-elections, as well as for the announcement of the audit of all decisions on re-elections, and lack of resources in some of the courts after the reorganization of the network of courts, are the greatest problems of the judiciary. The system of judges' responsibility is set properly. There is an appropriate framework for keeping the judges' integrity that is mostly implemented. Supervision over the work of the executive authority is lingered because of the lack of capacity, while prosecuting corruption is slow.

JUDICIARY Overall Pillar Score: 60			
	Indicator	Law	Practice
Capacity 56/100	Resources	75	50
	Independence	75	25
Governance 75/100	Transparency	75	50
	Accountability	100	50
	Integrity	100	75
Role 25/100	Executive oversight	25	
	Corruption Prosecution	25	

Structure – The highest court is the Supreme Court of Cassation. There are 4 appellate courts, higher courts and municipality courts that have separated units. There is an Administrative Court, Commercial Court and Commercial Appellate Court, Misdemeanor Courts and higher Misdemeanor Courts. There is approximately 1.800 judges. Judges are elected permanently by the Supreme Judiciary Council with 6 members that are judges, one is a representative of the Law Faculties and of attorneys, and one member of the following functions – Minister of Justice, representative of the Parliamentary Committee and President of the Supreme Court of Cassation. The Supreme Judiciary Council proposes candidates that are elected for the first time to the judge’s function which are then elected by the Parliament.

ASSESSMENT

CAPACITY

Resources (Law)

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

Score: 75

Legal conditions secure appropriate salaries in the judiciary, working conditions, regarding overburdening with cases, number of appointees and accommodation conditions, are diverse depending on courts.

According to the Law on Judges¹, a judge has the right to a salary that is in accordance with the dignity of a judge's function and his responsibility. A judge's salary guarantees his independence and the security of his family. A judge's salary, or coefficient for calculating the salary is envisaged by the Law on Judges², and Law on the Budget of the Republic of Serbia determines the basis for the amount of the salary as well as the method of financing of that salary. The basis for the salary is RSD 28.000 (USD 350) and that is multiplied with the coefficient in regards of which court a certain judge is appointed to. Coefficients are between 2.5 for judges of basic courts to 6.00 envisaged for the President of Supreme Court of Cassation. There are no regulations that forbid decreasing the judges' income.

According to "special collective contracts for state bodies" that also refer to judges, it is envisaged that parties of the contract should negotiate the amount of the basis for calculation and payment of employees' salaries in the process of creating decisions on the budget – in mid - November for the following year, going from the highest amount of the basis determined for the previous budget year and envisage inflation and determine dynamics of its increase during the budget year³. During that procedure the possibility and the need for changes of coefficients for the basis is considered. The budget of the judiciary for 2011 is RSD 19,776 billion (USD 242 million), which is 2 percent more than in 2010⁴. According to claims of Ministry of Justice⁵, an increase of judges' and prosecutors' salaries from 13 percent is planned in 2011.

The Law on Courts' Organization⁶ stipulates that assets for courts' work are provided by the budget of the Republic of Serbia and those assets should maintain with this amount and inflow the independence of court authority and provide proper work of courts. The Law on Courts' Organization stipulates that the Supreme Judiciary Council proposes the amount and structure of budget assets necessary for current expenditures with a previously obtained opinion of the Ministry of Justice and performs the division of assets to courts. The same Law stipulates that the Ministry of Justice is in charge of proposing part of the budget for investments, projects and other programs for the work of judiciary bodies, handling accommodation conditions, equipping and securing the courts, administrating and developing of a judiciary information system, development and implementation of capital projects and other programs for judiciary bodies⁷.

1 article 4

2 article 37-40

3 http://www.sind-prav.org.rs/Support/KU_08.pdf

4 <http://www.parlament.gov.rs/narodna-skupstina-.872.html>

5 Interview with State Secretary in the Ministry of Justice, Mr. Slobodan Homen, February 2011.

6 Law on Courts' Organization , article 82

7 Law on Courts' Organization, articles 82-86

It is expected that by September 1st 2011 the Supreme Judiciary Council takes over all budget competencies regarding judges and courts from the Ministry of Justice. The Ministry of Justice does not influence the determining of the amount of assets for the courts in the Republic of Serbia, but only requests them from the Supreme Judiciary Council, proposes to the Ministry of Finance to provide requested assets for the work of courts in the budget⁸.

Resources (Practice)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Score: 50

The estimation of this report is that financial assets, personnel, including clerks, and infrastructure, including technical equipment and computers, are not adequate for the efficient work of the judiciary.

The budget of the judiciary is increased in 2010 in regards to 2009 (0.5 percent) and 2011 in regards to 2010, but it is still significantly below the level from 2008 (RSD 22.5 billion or USD 281 million) and it is not sufficient. During 2010 the court administration and appointees in the judiciary protested demanding significant increases of salaries⁹ which were between RSD 16.000 and 40.000 (USD 200 - 500). The state owes experts, ex-official lawyers and lay judges approximately RSD 1 billion RSD (USD 12.5 million) for their services¹⁰. The Ministry of Justice estimates that debt will be paid by the end of 2011 through increased income from court taxes¹¹.

According to data of the Serbian Association of Judges, courts have unbalanced conditions regarding accommodating judges and its administration. Certain courts have a lack of premises, while certain, especially in smaller cities in Serbia, have room to spare. Since the reorganization terminated municipality courts in almost 130 municipalities and now there are only court units in them, in a large number of cases court buildings, renovated in previous years, are now empty and unused.

Besides that, since criminal cases are prosecuted only in court seats, parties use transportation from distant places, and at the same time judges travel to court units. The European Commission pointed out to that in the report on the progress of Serbia in European integrations for 2010: The reduction of the number of judges and prosecutors was not based on a proper needs assessment. Under the new court system, courts which were closed continue to function as court units, in which civil cases are heard. This means that judges and judicial staff have to travel between courts and court units requiring significant resources and creating security concerns¹². A uniform system for organizing the work of the court seats and the new court units has not been established¹³. In a large number of courts, according to claims of the Serbian Association of Judges access to internet is allowed only in cabinets of the president of the courts. The Ministry of Justice, however, denied this and states that all judges have access to internet, and therefore access to the court portal¹⁴ with databases with 5.5 million cases and access to the bases of all valid access¹⁵.

The number of judges is inappropriate for the needs of Serbia¹⁶. According to claims of the Serbian Association of Judges the number of judges was estimated with the decision of the Supreme Ju-

8 Explanation of the Government of Serbia in the answers to Questionnaire of EU, chapter 23

9 <http://www.sind-prav.org.rs/> x

10 Interview with State Secretary in the Ministry of Justice Slobodan Homen, February 2011

11 Interview with State Secretary in the Ministry of Justice Slobodan Homen, February 2011

12 Data of the Serbian Association of Judges, interview with president of the Association Dragana Boljević, February 2011

13 http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf page 10

14 www.portal.sud.rs

15 Interview with State Secretary in the Ministry of Justice Slobodan Homen, February 2011

16 Data of the Serbian Association of Judges, interview with president of the Association Dragana Boljević, February 2011

diciary Council in June 2009 to 1.838 (instead of so far 2.400) exclusively on the basis of data on the average number of judges to 100.000 people in member countries of the Council of Europe, without respecting specifics of Serbia and historic conditions. As proof for that the Serbian Association of Judges stated that the SJC in May 2010 increased the number of judges in 14 courts.

The amount of a judge's salary is determined with the Law on Judges, judge's salaries range from RSD 70.000 to 168.000 (USD 875 -2.100). The basic salary is increased by the addition formed on the basis of experience, and it is possible to be increased by 50 percent for work in the court that has many open judges' positions and by 100 percent for judges that proceed in the cases with criminal acts with elements of organized crime and war crimes. Those salaries are considered to be adequate¹⁷.

The average net salary of the court administration employees for October 2010 was 32.829 RSD (318 Euros).

The current level of salaries in the judiciary is on a higher level than the one of their counterparts in the executive and legislative branch. It is not possible to make comparisons with their counterparts in the private sector, since lawyers don't have guaranteed incomes. However, the very fact that there is no massive fled of judges to the private practice in place, as it used to be in the past, this might be evidence that salaries are relatively competitive¹⁸.

Training of judges, specialized for certain areas, like training of candidates for the first election for a judge, is conducted through the Judicial Academy¹⁹. In accordance with the Law on the Judicial Academy, initial training represents a precondition for the election to a judge's and prosecutor's position. Advertisement for enrolling of the first generation for initial training was announced on 23rd August 2010. The Judicial Academy begun working on 1st January 2010 and according to the estimation of the Association of Judges still hasn't got adequate capacities for development of the necessary number of courses for judge's specializations. According to data of the Judicial Academy, during 2010, 90 trainings were held lasting up to 5 days, from the area of civil, criminal and commercial law, human rights, juvenile criminal, EU Law, administrative law, misdemeanor law and court administration²⁰.

Independence (Law)

To what extent is the judiciary independent by law?

Score: 75

Legal framework represents a good base ground for judges' independency, since, beside the law, the Constitution guarantees the independence of judges, permanency of their function, stipulates existence of a supreme court – the Supreme Court of Cassation, method of election of the president, prescribes the method of election of judges and their dismissal and those provisions of the Constitution can be changed only with two thirds of a majority in the Parliament with obligatory confirming on a referendum with a majority of voters who voted. The Constitution also forbids influencing judges and forbids political activity of judges²¹.

Basic provisions on independence of the judiciary, independence of judges, and permanency of judge's functions that are proclaimed in the Constitution are confirmed with provisions of the Law on

17 Interview with president of the Serbian Association of Judges Dragana Boljević, February 2011

18 Interview with president of the Serbian Association of Judges Dragana Boljević, February 2011

19 www.pcsrbija.org.rs

20 <http://www.pars.rs/active/sr-cyrillic/home.html>

21 Constitution of Serbia, articles 142-149

Court Organization and the Law on Judges. One of the basic provisions of performing judicial authority stipulated by the Law on Court Organization, authorities belong to courts and they are independent from the legislative and executive authority, that court decisions are obligated for everyone and that they cannot be subject of non-court control. It is prohibited to use public functions, means of public notification and any other public appearances that inappropriately influence the course and result of court procedure, like any other influence of courts or pressure on participants in a procedure²².

The Constitution stipulates that courts are independent²³. The Supreme Court of Cassation is the highest instance court in Serbia²⁴ and its president is elected by the Parliament of Serbia, upon the proposal of the Supreme Judge's Council, on the obtained opinion of the General Session of the Supreme Court of Cassation and the competent Parliamentary Committee²⁵.

The Constitution stipulates permanency of the judicial function²⁶, and the exception is that a person elected for a judge for the first time is elected for a three year period. They are elected by Parliament, upon the proposal of the Supreme Judiciary Council. Judges are elected to permanent functions by the Supreme Judiciary Council²⁷.

The Law on Judges in more details prescribes the election of judges – besides the general conditions and necessary professional working experience after passing the bar exam, envisaged conditions are capability, expertise and worthiness²⁸. Personal and professional biographies are taken into consideration for all candidates.

The judicial function can be terminated upon a judges 'own request, or by the implementation of legal conditions or dismissal due to legal reasons, as well as if he is not re-elected to a permanent function²⁹ (for judges elected for the first time to that function, for a three year period). The decision on termination of a judicial function is adopted by the Supreme Judiciary Council. A judge has the right to file an appeal against that decision to the Constitutional Court. The decision of the Constitutional Court is final³⁰.

The Law on Judges stipulates in detail the procedure of dismissing, envisaging dismissing of a judge when sentenced to committing a criminal act of unconditional prison sentence of at least six months or for a punishable act that makes him unworthy of the court function, on unprofessional performing of the function or for heavy disciplinary misdemeanors. Insufficiently successful performing of the judicial function is considered as unprofessional, if the judge receives an "unsatisfactory" evaluation, according to criteria and measures for evaluating judges. According to a provision of the Rulebook on disciplinary procedure and disciplinary responsibility of the judge, the Disciplinary Commission submits to SJC a proposal for dismissing a judge when responsibility for heavy disciplinary misdemeanors is determined³¹.

The initiative for dismissing a judge can be submitted by anyone. The procedure for dismissing is initiated by a proposal of the president of the court, the president of a directly higher instance court, the President of the Supreme Court of Cassation, competent authorities for evaluating the judge's work and the Disciplinary Commission³².

22 Law on Court Organization, articles 1-3, and Law on Judges, article 1-2

23 Constitution of Serbia, article 142

24 Constitution of Serbia, article 143

25 Constitution of Serbia, article 144

26 Constitution of Serbia, article 146

27 Law on Judges, articles 50-52

28 Estimation is made on the basis of the Decision on determining criteria and measures for estimation of expertise, capability and worthiness for election of judges and presidents of the courts

29 Constitution of Serbia, article 148

30 Law on Judges, articles 62-68

31 Law on Judges, article 62, Rulebook on disciplinary procedure and disciplinary responsibility of the judge, <http://www.vss.sud.rs/doc/akti/Pravilnik%20o%20disc%20postupku.pdf>

32 Rulebook on disciplinary procedure and disciplinary responsibility of the judge, article 19

The Supreme Judiciary Council is, according to the Constitution³³, an independent and autonomous body that provides and secures independence and impartiality to courts and judges. The Supreme Judiciary Council has 11 members – the President of the Supreme Court of Cassation, the Minister of Justice and the President of the Parliamentary Committee for Judiciary, as members by function and eight members are elected by the Parliament, in accordance with the Law. Six out of eight are permanent judges, and two “respectable and prominent lawyers with at least 15 years of experience in the profession, one is a lawyer and the other a professor of a Law Faculty”.

The Constitution stipulates that a judge is independent and subordinated only to the Constitution and the law, that every influence of a judge is prohibited, and that political engagement of the judge is also prohibited. The judge is obligated to maintain trust of his independence and impartiality at any time. Laws that regulate court proceedings (Law on Civil Procedure, Law on Criminal Procedure, and Law on Administrative Procedure) stipulate reasons for the disqualification of judges; disrespect of those provisions represents important violations of procedure³⁴.

A judge is obligated to restrain from trial in cases with reasons for questioning his impartiality. The Code of Ethics prescribes that suspicion of impartiality of the judge is especially encouraged with family, friendly, business, social and similar relations with parties and their representatives. Violation of provisions on impartiality represents one of the disciplinary violations³⁵.

The Law on the Anti-corruption Agency stipulates that an official is obligated to immediately notify the Agency on forbidden influence to which he was exposed to, and the Agency then notifies the competent body on the official’s statements, for initiating a disciplinary, misdemeanor and criminal procedure³⁶.

Judges are allowed the right to associate in the goal of protection of their interest and maintaining independence and impartiality as judges³⁷. The Serbian Association of Judges exists and works in Serbia since 1997³⁸ and has around 1.800 members, from a total number of 2.400 judges. The public does not participate in the process of the election of judges³⁹.

Independence (Practice)

To what extent does the judiciary operate without interference from the government or other actors?

Score: 25

The judiciary is exposed to strong pressure from the Government and representatives of political parties, and that pressure was especially strong in the process of the general election of judges. According to an estimation of judges, the Law on Judges, and its changes, endangers the provision of independence, so that independence depends exclusively on the personality of the judge⁴⁰. The European Commission in the report on the progress of Serbia in 2010⁴¹ pointed out that the major aspects of the recent reforms in the judicial system are a matter of serious concern because

33 article 153

34 Law on Civil Procedure, articles 66-73 Law on Criminal Procedure, articles 42-48 Law on Administrative Procedure articles 32-38

35 Law on Judges, articles 89-92

36 Law on Anticorruption Agency, article 37

37 Law on Judges, article 7

38 <http://sudije.rs/en/about-us/history>

39 Serbian Association of Journalists in February 2011 opposed the candidacy of one judge that sentenced a journalist for criminal offence of insult, for a member of SJC. Request of SAJ to organize public debate on candidates for judiciary functions was supported by Ombudsman Saša Janković. <http://www.uns.org.rs/sr-Latn-CS/content/uns-info/10930/uns-osporava-kandidaturu-zorana-%C5%A1e%C5%A1i%C4%87a-za-visoki-savet-sudstva.xhtml>

40 Estimation from the interview with the judge of Supreme Court of Cassation Vida Petrović Škero, February 2011, and reports by Serbian Association of Judges

41 http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/sr_rapport_2010_en.pdf

the reappointment procedure for judges and prosecutors was carried out in a non-transparent way, thus putting at risk the principle of the independence of the judiciary.

Objective criteria for reappointment, which had been developed in close cooperation with the Council of Europe's Venice Commission, were not applied⁴². Judges and prosecutors were not heard during the procedure and did not receive adequate explanations for the decisions. First-time candidates (876 judges and 88 deputy prosecutors) were appointed without conducting interviews or applying merit-based criteria. The overall number of judges and prosecutors was not calculated in a reliable way and adjusted several times after the reappointment had already been carried out⁴³. The right to appeal for the judges who were not re-appointed was limited to recourse to the Constitutional Court, which does not have the capacity to fully review the decisions⁴⁴.

Judges shouldn't suffer damageable effects because of their decisions, but sometimes in practice a decision that is not favorable for one part of the public or political parties or other centers of power causes inappropriate pressure for judges and can result with initiating the procedure for resolving before passing a second instance decision, which represents additional pressure to judges in the second instance court⁴⁵.

A characteristic example of pressure of state bodies, but also bodies of court authorities to courts is represented by a letter from April 2009 in the period before the general election of judges, that the Ministry of Economy through the Ministry of Justice forwarded to the President of the Supreme Court of Serbia, which she then sent to all County Courts in Serbia. The letter asked from the courts to stop the trials and execution of labor dispute decisions. This matter reached the public when the President of one County Court notified the Supreme Court on receiving the letter but refused to forward it to municipality courts. Then collegiums of the Supreme Court took a stand that judges will in labor, as well as in all other procedures, pass decisions on the basis of the Constitution and laws and reminded that court authority is, in its jurisdictions from the other two branches of authority, independent and impartial.

According to data from previous years, in 2009 four judges were dismissed upon personal request, while one was dismissed for the conviction of a criminal act that makes him unworthy of being a judge. Also, one judge was dismissed for the conviction of committing a criminal act. During 2010 thirteen judges resigned upon their personal request.

Independence of the first Supreme Judiciary Council (SJC) was questioned in public⁴⁶. All decisions regarding the general election of judges, were made without all members of the SJC - the eleventh member of SJC, a legal expert, was elected in July 2010, when the general election was finalized, since previously the Parliament in several attempts refused to elect a second candidate proposed by the profession. The tenth member, a lawyer, was elected in October 2009 at the time of the general elections. His election was followed by accusations that the deputy of the ruling party, which is President of the Committee for Judiciary and member of SJC and allegedly godfather of the elected lawyer⁴⁷, pressured the Bar Association to propose that candidate⁴⁸.

The first Supreme Judges Council was elected on the basis of transferal of provisions of the Law on Supreme Judiciary Council the Venice Commission of the Council of Europe that evaluated the quality of legal solutions was not given insight into. Those provisions envisaged that members of the first SJC, after termination of their mandate automatically return to higher courts than the

42 Report by Helsinki committee of Serbia, december 2010

43 Interview with president of the Serbian Association of Judges Dragana Boljević, February 2011

44 Interview with president of the Serbian Association of Judges Dragana Boljević, February 2011

45 Interview with presiden of Serbian Association of Judges Dragana Boljević, February 2011

46 Estimation of European Commission, Štefan File, June 2010 <http://sudije.rs/sr/aktuelnosti/vesti/evropska-komisija-o-reviziji-reizbora> <http://www.cnp.rs/articles/view/27> <http://forum.mojepravo.net/new/b2/blogs/blog4.php/montirani-reizbor>

47 <http://www.pescanik.net/content/view/4269/61/>

48 <http://www.vesti.rs/Nis/Nelegalan-izbor-clanova-VSS.html>

ones they came from. They, also, did not go through the process of general election, but automatically kept judge's function. One former judge of the Supreme Court therefore concluded that the first SJC was "prepared to listen to whispers of political power owners", and therefore this could influence the independence of the SJC and thus, the whole judiciary that underwent re-election, committed by SJC.⁴⁹

Judges in Serbia have one professional association – the Serbian Association of Judges that represents interests of judges and is especially active in the protection of judge's interests and is especially active in the protection of judge's rights that are not re-elected in the general election⁵⁰.

49 Estimation of former judge of Supreme Court of Serbia and Law Faculty Union professor Zoran Ivošević, <http://forum.mojepravo.net/new/b2/blogs/blog4.php/montirani-reizbor>

50 <http://www.sudije.rs/sr/publikacije>

GOVERNANCE

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

Score: 75

Laws stipulate transparency of the judiciary, verdicts and court documents are available to the public, judges are obligated to report property and one part of that report is public, and the Supreme Judiciary Council is obligated to regularly notify the public on its work and to submit an annual work report.

The Law stipulates that sessions of SJC can be open for the public, but Rules on Procedure of SJC contradict the law, and stipulate that sessions are closed for the public and that minutes from sessions of the Council are generally not available to the public, unless SJC decide differently⁵¹. Transparency of the Council's work is achieved "with the publishing of general acts in the Official Gazette, holding press conferences, publishing press releases and publishing on the web-site of the Council"⁵².

The election of judges and presidents of courts, SJC announces in the Official Gazette and one daily paper. The law prescribes that each decision on the election of a judge must be elaborated and published in the Official Gazette of Serbia, as well as proposals for first time election of judges that must be elaborated. For the general election of judges, or re-election, conducted on the basis of transitional provisions of the Law on Judges, there was no obligation of elaborating the election to a permanent function or proposing for the first election⁵³.

The Supreme Judiciary Council is obligated to submit once a year a work report to the Parliament of Serbia. SJC adopts the report for the previous year by March 1st of the current year, publishes it on the web-site and presents it to the public at an annual press conference⁵⁴.

The law⁵⁵ envisages publicity of court proceedings and trials. Only in special cases that are strictly envisaged, the public can be excluded from the procedure and in the goal of protection of some important state or special private interests of children, family relations and similar.

According to the Law on Criminal Procedure, anyone that has justified interest can be allowed for reconsidering, transcription, copying or recording of certain criminal documents, besides documents that are marked with "official – top secret". A published verdict must be written within a eight days deadline, and in complex issues, exceptionally within a 15 days deadline⁵⁶.

Judges are obligated to report property and income on the basis of the Anti-corruption Agency Law, to the Agency within a 30 days deadline since they were elected to that function. Also, they are obligated to report annually on changes regarding the previous period, and the obligation of reporting lasts three days after the termination of the function⁵⁷.

51 Rules on Procedure of SJC, article 29

52 Rules on Procedure of SJC, article 29

53 Law on Judges, articles 47 and 100-101

54 Law on SJC; article 19 Rules on Procedure of SJC, article 37

55 Law on Criminal Procedure, Law on Civil Procedure

56 Law on Criminal Procedure, article 250

57 Law on ACA, article 44

Transparency (Practice)

To what extent does the public have access to judicial information and activities in practice?

Score: 50

One of the major problems in communication with the public is the fact that a large number of courts does not have web-sites. Those courts that have web-sites uploaded a link for searching portals for cases, Information Directories that contain financial reports, reports on the courts' work, as well as a series of service data for citizens⁵⁸. The situation is much better in commercial courts that were even awarded for transparency on the occasion of the global Right to Know day⁵⁹, three years ago.

A great problem of transparency was related to the acting of the Supreme Judiciary Council during the general re-election of judges, when decisions were adopted in a non-transparent manner⁶⁰. That regulation was changed in 2011 before the process of revalidation of the re-election started. According to the current rules, sessions may be declared partly public, thus enabling presence of persons concerned and press.⁶¹ The Supreme Judiciary Council generally notifies the public on its activities through the web-site and press releases and annual report on its work. The decision on the election of permanent judges is available on the web-site⁶² that includes a list of elected ones, without elaboration. Decisions issued in the process of revalidation were not published on SJC web-site in August 2011.

An important mechanism for transparency of court work is the web-portal of the judicial network. The web portal allows⁶³ monitoring of the status of all cases from Serbian courts. According to statements of the Ministry of Justice cases from separate court units are still not inserted into the system, it is expected by the end of 2011⁶⁴. The portal can be searched by courts, judges, names of parties of the procedure or reference number. Such a portal has been functioning for years for commercial courts.

The Supreme Judiciary Council has an Information Directory on their web-site that contains a financial report⁶⁵. The web-site of the Supreme Judiciary Council contains a work report of Serbian courts in 2010⁶⁶. The annual work report of SJC is also available on the SJC web-site⁶⁷.

While there are no major problems related to the possibility for stakeholders to attend trials, access to the documents about trials is still limited. Verdicts are delivered only to parties in the procedure and their defenders, but with their content stakeholders parties can get familiarized with insight into the documents.

Information on appointing, transfer and resolving of judges can be found in the Official Gazette, or on the web-site of SJC or can be directly obtained from SJC with implementation of FOI Law⁶⁸.

58 <http://www.ni.vi.sud.rs/> <http://www.opstinskisudnis.org/> <http://www.ns.os.sud.rs>

59 <http://www.poverenik.org.rs/index.php/you/arhiva/saopstenja-arhiva/313----28092007.html>

60 EU report on Serbia 2011, also claimed by Association of Judges of Serbia, and by of Supreme Court of Cassation judge Vida Petrović Škero, interview, February 2011

61 SJC Rules of procedure, articles 5 – 5v.

62 <http://www.vss.sud.rs/doc/akti/odluka-o-izboru-sudija-na-stalnu-funkciju-16-12-2009.pdf>

63 www.portal.sud.rs

64 Interview with state secretary in Justice Ministry, Mr. Slobodan Homen, February 2011

65 <http://www.vss.sud.rs/doc/informator/informator%20avgust%20VSS%202010.pdf>

66 <http://www.vss.sud.rs/lzvestaji-o-rad-u-sudova.htm>

67 <http://www.vss.sud.rs/doc/godisnji-izvestaj-2010.pdf>

68 Research done for purposes of NIS

Accountability (Law)

To what extent are there provisions in place to ensure that the judiciary has to report and be accountable for its actions?

Score: 100

Judges are obligated to elaborate their decisions by stating each piece of evidence from the main procedure, transfer the opinion of the parties in the procedure on the evidence and in the end an opinion of the judge is stated and what the reasons for accepting or rejecting a certain opinion/evidence are and in which way he passed the conclusion on certain evidence, i.e. whether he accepted it or not. The verdict without elaboration is illegal and that is the reason for its annulment in appeal procedure before higher courts, and lack of elaboration can be basis for a complaint against a judge⁶⁹.

The complaint on the judge's work can be submitted to the Disciplinary Commission established by the Supreme Judiciary Council⁷⁰, directly to the Supreme Judiciary Council or through the president of the court. A disciplinary misdemeanor⁷¹ is unconscious of performing of a judge's function, and sanctions can be a public notice, decreasing of their salary up to 50% in a one year period and prohibition of prospering in a three year period. For heavy disciplinary misdemeanors⁷² the procedure for resolving is initiated. During the procedure, the judge can be suspended⁷³. In those cases judges can be removed. There is a formal complaints procedure – a judge can appeal to the Constitutional Court⁷⁴.

The immunity of judges refers to the responsibility for the stated opinion and voting during the adoption of court decisions, except in the case of criminal acts of violation of the law by a judge. A judge is not protected with immunity from a prosecution in case he commits any other criminal act, including corruption.

Accountability (Practice)

To what extent do members of the judiciary have to report and be accountable for their actions in practice?

Score: 50

Participants in court procedures have the right to complain about judge's work when they suspect any prohibited influence to the course and result of a procedure. Complaints are not treated as mechanisms for establishing responsibility or accountability of judges, but instead just as a mechanism to solve individual problems in procedures. The initiative for dismissal or reporting to the Disciplinary Commission, on the other hand, as a mechanism to establish accountability is rather ineffective. The reason for this is that criteria for establishing incompetence are not yet prescribed by SJC, and that the Disciplinary Commission was founded with delay and it has no capacity to deal with all reports⁷⁵.

Members of the Disciplinary Commission, consist of three judges, were appointed on 28 December 2010 and the Disciplinary Commission until the finalization of this report hasn't considered complaints about the work of judges. The Supreme Judiciary Council, according to available information⁷⁶, took over 636 cases.

69 Law on Criminal Procedure, articles 428-429

70 <http://www.vss.sud.rs/doc/akti/Odluka%20dis%20komisija%20SI%20gl%20102%2030%2012%2010.pdf>

71 Law on Judges, articles 89-91

72 Law on Judges, articles 89-91

73 Law on Judges, articles 14-17

74 Law on Judges, article 67

75 Results from research done by TS in project „Monitoring of judges' accountability mechanisms in Serbia“

76 Answers of the Government of Serbia to Questionnaire of European Commission

Elaborations of court's decisions are most often such that can be simply comprehended⁷⁷. In public and media, however, attention to the elaboration of verdicts is rarely turned, especially in the cases when judges after sentencing deliver a detailed elaboration to parties in the procedures afterwards.

An atmosphere was created in the public that judges were mostly responsible for the problems in the judiciary, so that anger for a liberating sentence because of lousy indictments is aimed at judges⁷⁸. This happened when a judge wanted to explain in detail why an indictment was dismissed, stating what is considered to be a criminal act of the defendant, and pointing out to what was written in the indictment does not respond to the description of a criminal act, one daily paper interpreted it as a disgraceful explanation⁷⁹. Thus, judges were called in public to take responsibility for something they did not do wrong.

Integrity mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Score: 100

Judges are required to disclose their assets and make them available to the Anti-corruption Agency. Part of their assets report is public⁸⁰. Mechanisms that are to provide integrity of members of the judiciary authority exist in the Law on Judges, Law on the Anti-corruption Agency, as well as in procedural laws – Code on Criminal Procedure and Law on Civil Procedure. The Judges' Code of Ethics exists, prescribed by the Supreme Judiciary Council and whose violation represents a disciplinary misdemeanor, as well as the Code of Ethics and Standards of Judge's Ethics of the Serbian Association of Judges, an organization that consists of app. three quarters of judges in Serbia. Laws also regulate in detail provisions that are supposed to prevent conflict of interest, especially in the procedure itself, through provisions on the exception or excluding of judges from procedure.

The Code of Ethics that SJC adopted in December 2010⁸¹, determines ethical principles and rules on judges' behavior that they are to abide in the goal of maintaining and promoting dignity and reputation of judges and the judiciary. Ethical principles are: independence, impartiality, professionalism and responsibility, commitment to performing a judge's function and freedom of associating.

The Code of Ethics is comprehensive. It stipulates that a judge can perform other activities that are important for increasing the reputation of a judge and promoting the court's work, stipulates which activities outside the court do not interfere with a judge's regular and proper performing a judge's function. The Law on the Organization of Courts envisages that court personnel is obligated to conscientiously and impartially perform their functions and to maintain the court's reputation⁸².

The Code of Judges' Ethics of the Serbian Association of Judges from 1998 and Standards of Judges' Ethics of the Serbian Association of Judges from 2003 contain the same principles – independence, impartiality, professionalism, integrity, commitment and loyalty to standards, or the code⁸³.

77 http://www.sudskapraksa.com/odluke/akt_kvivicno.htm#13

http://www.sudskapraksa.com/odluke/akt_gradjansko.htm#9

http://www.sudskapraksa.com/odluke/akt_upravno.htm#7

http://www.sudskapraksa.com/odluke/akt_postupak.htm#6

78 <http://www.blic.rs/Vesti/Tema-Dana/195574/Sudija-mora-da-odgovara-za-sramno-obrazlozenje>

79 <http://www.blic.rs/Vesti/Tema-Dana/195574/Sudija-mora-da-odgovara-za-sramno-obrazlozenje>

80 Law on ACA, article 47

81 <http://www.vss.sud.rs/doc/akti/Eticki%20kodeks%20SI%20gl%2096%2018%2012%2010.pdf>

82 Law on the Organization of Courts, article 69

83 <http://www.sudije.rs/sr/publikacije/posebna-izdanja/standardi-sudijske-etike>

Provisions on conflict of interest exist in the Constitution and the Law on Judges, stipulating norms for the exemption of a judge⁸⁴, and those provisions are regulated, along with matters of gifts with the Law on the Anti-corruption Agency and are applicable to all public officials, including judges⁸⁵.

The Constitution of Serbia stipulates that political activity of judges is prohibited, while according to the Law on Judges, a judge cannot be in a function and in bodies that adopt regulations and executive authority bodies, public services and bodies of a provincial autonomy and municipality units. A judge cannot perform any public or private job that is paid, or provide legal services or advice for compensation. Exceptionally, a judge can be a member of a managerial body of an institution in charge of trainings in the judiciary, on the basis of a decision of the Supreme Judiciary Council, in accordance with a special law (like “the Judiciary Academy”⁸⁶).

The Law on the Anti-corruption Agency stipulates that officials can perform only one public function, and exceptionally also another public function, with the consent of the Agency⁸⁷. The Agency will not give consent for performing the other function, if performing that function is in conflict with the public function that the official already performs, or if the existence of conflict of interest is determined, and adopts an elaborated decision on that⁸⁸. All officials, including judges, are obligated to report to the Anti-corruption Agency all mobile and immobile property they have. The Agency publishes on their web-site⁸⁹ parts of this data, and by law has the authorities to check the accuracy of the delivered data.

The Law prescribes that officials cannot accept gifts related to the function they perform, except for proper or protocol ones, and that they must report to the body they work in all accepted gifts. Services and travels are also considered gifts. A copy of the records of gifts for the previous year the body delivers to the Agency by 1st March and the Agency publishes it on its web-site by 1st June⁹⁰. The Law contains a two year restriction after the termination of a mandate during which officials cannot work in the domain related to the function he performs without the Agency’s consent⁹¹.

The possibility for clients in procedures to ask for an exemption of a judge in a procedure exists. Reasons are stipulated in procedural laws.

The Law on Civil Procedure stipulates that the judge is obligated to withdraw from trial if there are reasons that question his impartiality.

Integrity mechanisms (Practice)

To what extent is the integrity of members of the judiciary ensured in practice?

Score: 75

Judges disclose their assets in practice. Provisions that protect the integrity of judges are implemented in practice or at least for now there is no evidence that those provisions are violated. The web-site of the Anti-corruption Agency contains data on judges, and there is no data that the Agency so far initiated procedures against any judge because of not reporting their property or false statements in the report. The Agency checks certain officials or certain categories of officials, on

84 Law on Criminal Procedure, article 37, Law on Civil Procedure, article 67

85 Law on ACA, articles 27-42

86 Law on Judges, article 30

87 Law on Anticorruption Agency, article 27-31

88 Law on Anticorruption Agency, article 27-31

89 http://acas.rs/sr_cir/aktuelnosti/199.html

90 Law on Anticorruption Agency, article 39-41

91 Law on Anticorruption Agency, article 38

the basis of an annual verification plan⁹² but data on which officials were checked are not public. The Supreme Judiciary Council adopted a Code of Judges' Ethics in December 2010 and for now there is no data on its violation. Violation of the Code will be supervised by the Disciplinary Commission also established in December 2010.

In 2010 ever since the provision that regulates pantouflage⁹³ came into force, there were no requests of judges for consent for performing other work after the termination of their judge's function. The deadline for delivering records on gifts for the judges expires on 1st March, and the deadline for their publishing is 1st June. The Law that was in force before 1st January 2010 and that regulated reporting of gifts did not refer to judges⁹⁴.

Parties in a court procedure can question in practice the impartiality of judges, or to ask for their exemption⁹⁵. The request for exemption is frequently submitted, especially in criminal cases, mostly as an attempt of delaying trials.⁹⁶

92 Law on Anticorruption Agency, article 48

93 In Law on Anti-corruption Agency.

94 Law on prevention of conflict of interest in discharge of public office, Official gazette of the Republic of Serbia 43/2004

95 Law on Criminal Procedure, article 37, Law on Civil Procedure, article 67

96 Interview with criminal law attorney, Belgrade, January 2011.

ROLE

Executive oversight (law and practice)

To what extent does the judiciary provide effective oversight of the executive?

Score: 25

Court supervision over the work of the executive authority is inadequate primarily due to an insufficient number of judges in the Administrative Court that decides on the legality of individual acts of bodies, including the Government and Ministries. The Administrative Court, according to a decision of the Supreme Judiciary Council should have a president and 35 judges, which is not considered enough for effective work, but currently it has even less - 31 judges⁹⁷.

In 2010 the Administrative Court had 34.139 cases, which represents 615 cases per each judge. Resolved - 13.843 cases, which represents 457 cases per judge a year. That is "extremely high efficiency of judges"⁹⁸, but for a small number of judges it can be concluded that the court in general is insufficiently efficient in conducting the supervision over the executive authority's work.

From 20.000 appeals from February 2011, approximately 1.000 referred to acts adopted by the Government of Serbia, 5,800 to acts of Ministry of Finance⁹⁹, 1.300 to acts of the Ministry of Agriculture and 250 to acts of Ministry of Labor and Social Protection.

The judiciary authority conducts supervision and reassesses the work of the executive authority through actions of the Constitutional Court that reassesses the constitutionality and legality of laws and regulations¹⁰⁰.

In 2009 the Constitutional Court of Serbia had a total of 804 cases¹⁰¹ for assessing legality, out of that 261 cases were decided on laws or other acts of Parliament (resolved 116) and 130 where decided on regulations and other documents of the Government and other republic organs and organizations (resolved 48).

According to statements of the Government of Serbia from the answers to the Questionnaire of the European Commission, there are no recorded cases that decisions of the Constitutional Court were not respected. However, the Government sometimes violates decisions of the Constitutional Court in another way. A landmark example for such practice is the situation where the Court ordered a governmental conclusion about "the Kosovo supplement"¹⁰² illegal, as such issues should be regulated by the law, whereas the Government adopted a new conclusion on the very next session.¹⁰³

97 <http://www.up.sud.rs/uredjenje> and data obtained from spokesman of Administrative Court Vesna Dabić, interview, March 2011

98 Spokesman of Administrative Court Vesna Dabić, interview, March 2011

99 Out of that 2.500 to Customs Administration and 1.400 to Tax Administration

100 Constitution of Serbia, article 167

101 <http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/Pregled2009.pdf>

102 Supplement to the salary paid to the people employed in public entities on Kosovo and Metohija province.

103 http://www.b92.net/info/vesti/index.php?dd=01&mm=04&nav_category=640&nav_id=503399&yyyy=2011

Corruption Prosecution (practice)

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

Score: 25

The Judiciary is involved in proposing anti-corruption measures through working groups which prepare anti-corruption laws and strategies.

Court procedures in several of the largest uncovered corruption cases last extremely long, the judiciary complains about bad indictments, and the prosecution about the inefficiency of the judiciary and about penalty policies, a large number of verdicts is below legal minimum.

Precise data on processing corruption was for a long period either not updated or unreachable¹⁰⁴. The Republic Prosecution has a Department for fighting against corruption whose task is to monitor cases with corruptive elements, but data from that department refers to the period from 2005 to 2007¹⁰⁵.

Criminal act	Number of reported persons	Number of processed persons
Abuse of official position	4.311	2.673
Bribe accepting	196	148
Bribe giving	98	82

According to the statistics, provided upon request from the EU in March 2011, the Public Prosecutor's offices in Serbia dealt in 2010 with 5209 new cases of abuse of office, 1031 new cases of the criminal offence "violation of law by a judge, public prosecutor and his deputy", 180 new cases of accepting bribes and 259 of giving bribes and 329 other cases of crimes against the capacity of the office.

Out of 8573 newly reported crimes from the group and 2224 reports inherited from the previous year, the prosecution rejected 2818. It is worth mentioning that the percentage of rejected reports is greater in regards to the alleged violation of the law by a judge or public prosecutor. As it could be seen from this data, the overall number of corruption related to criminal cases increased.

The Republic Prosecutor in 2009 stated that in the previous 4 years in the County Court in Belgrade there were seven liberating sentences for criminal acts of corruption, 50 percent of the penalties for abuse of an official position were probation prison sentences, and that in 100 percent of the cases for more severe form of abuse of an official position the sentence was below the legal minimum. Regarding these claims, high court officials disputed statistical data, stating that it's unclear to which courts they refer to, but pointed out the matter of quality of indictments¹⁰⁶.

The Republic Public Prosecutor then in charge, announced in April 2008 that the prosecution will begin to check criminal charges related to corruption that the prosecution rejected, because, according to his statement, "in some prosecution offices a number of rejected criminal charges for corruptive behavior is extreme"¹⁰⁷. The Prosecutor then stated the assumption that charges were dismissed because there was no adequate cooperation between the police and prosecutor's office – or the prosecutor didn't administer to the police what actions to undertake, and if he did,

104 Research done for purposes of NIS

105 On the web page of Republic Public Prosecutor in February 2011 there was an announcement that Department for fighting against corruption will begin working in 2008 and statistics for period 2005-2007 were posted. Prosecution didn't proceed by request for delivering of information that TS directed according to FOI Law in November 2010.

106 <http://www.blic.rs/Vesti/Hronika/173922/Sudije-moraju-da-prestanu-da-izricu-kazne-ispod-minimuma> It is important to mention that statistical data on verdicts for acts with elements of corruption used during 2008 and 2009 as an argument that general election is necessary, re-election of judges so they should be taken with caution since there were different interpretations on accuracy of statistics.

107 <http://www.politika.rs/rubrike/Hronika/Borba-protiv-korupcije-na-prvom-mestu.lt.html>

the police didn't perform what the prosecution requested¹⁰⁸. There is no data on whether those verifications were done and what their results were.

Court procedures for temporary seizure of property of persons indicted for acts of organized crime and corruption are implemented efficiently, on the basis of the October 2008 Law¹⁰⁹. However, due to the fact that trials for corruption cases last very long, the decisions on property seizure are mostly of a temporary nature¹¹⁰, i.e. the outcome will depend on the sentence.

Trials in Serbia, in general, last long, and trials for several of the largest corruption affairs last extremely long. Procedures in which 86 persons were indicted for corruption in one faculty began in 2007. The indictment was complemented in March 2008. Since December 2008 to September 2009 the trial was delayed because of a request for the exemption of the judge, prosecutor, president of the court, absence of parties in the procedure. The indictment consisted of 159 criminal acts, 75 witnesses were to be interrogated in the procedure, and pleading of all defendants was not finalized until February 2011. The efficiency of the Serbian judiciary is often criticized on the basis of this example, in particular by making comparisons with a similar case that occurred in Croatia that was finalized within a year.¹¹¹

The issues such as long prosecution of corruption cases and lack of convictions against the high level was raised by the EU, in 2011, in the context of Serbian candidacy for the EU. EU experts showed interest for the dealing of the prosecution and courts with actual corruption cases. After that prosecution increased the level of activities in that regard, covering cases related to the privatization of firms and abuse in public enterprises.¹¹²

108 <http://www.politika.rs/rubrike/Hronika/Borba-protiv-korupcije-na-prvom-mestu.lt.html>

109 Law on seizure of proceeds of criminal offence, OG RS 97/2008.

110 <http://www.studiob.rs/info/vest.php?id=44532> http://www.pressonline.rs/sr/vesti/vesti_dana/story/169072/Apelacioni+sud+ukinuo+odluku+o+oduzimanju+imovine+D%C5%BEaji%C4%87u.html

111 <http://www.novosti.rs/vesti/naslovna/aktuelno.69.html:299181-quotIndeksovciquot-drze-katedre>

112 <http://www.rts.rs/page/stories/sr/story/135/Hronika/910454/EU+tra%C5%BEi+proveru+privatizacija.html>

JUDICIARY

Key findings and recommendations

Independence of the **Judiciary** is severely compromised by the non-transparent reappointment of judges which led to the termination of functions for more than 800 judges. Independence is also compromised by the changes in the law which ordered the review of decisions on unelected judges, but left the possibility to review functions of the judges elected in the previous process. Prosecution of corruption is extremely slow, and the system of accountability and work evaluation has not yet been established.

1. To apply the rules on the independence of the judicial budget
2. Complete the contentious issues surrounding the general election of judges in 2009, through rapid examination of the complaints, providing reasons for the candidate's non-election and to regulate the status of non-elected judges till the end of the examination process, through the law
3. To determine the number of judges in accordance with the need to resolve all cases within a legal or a reasonable time frame, including the current backlog cases, to reduce the risks of corruption and to pay damages for failing to take a decision within a reasonable time frame
4. To conduct procedures for establishing the accountability of judges' deliberate violations or omissions in the work indicating ignorance of the law or unprofessional conduct
5. To ensure adequate transparency of the courts' work, so that the special rights that have parties and other persons in the proceedings do not constitute an obstacle for other persons to exercise their right of access to information
6. Setting up a web-site of all courts, the publication of bulletins about the work with required content, publication of data on cases in progress, data on public sales and any other data that is currently published on the "notice board" of the court
7. Amendments to the Rules of Court Procedure, so the responsibility of the court's president is stressed for planning, integrity and enforcement of anti-corruption regulations; to introduce a duty for the consideration of complaints in regular intervals; to determine more clearly criteria for the urgency; to ensure control of compliance with the "accidental judge" rule in the court registry office
8. Finalize the establishment of a system for monitoring the flow of cases through a database search on the Internet; to include all courts and all types of cases in such databases
9. Conduct an analysis of procedures in cases where it comes to allegations of corruption crimes, which take a long time and to present to the public reasons for this
10. Publish statistics on the number of legally adjudicated cases related to the corruption cases, and excerpts from the verdict
11. To ensure a right to compensation for victims of corruption, in accordance with the Council of Europe Civil Law Convention, ratified by Serbia
12. Conduct a specialization in the courts for cases of violation of anti-corruption legislation



PUBLIC SECTOR NATIONAL INTEGRITY SYSTEM

Summary: The structure of the public sector institutions and allocation of budget funds depends on the available resources and political power of the minister, rather than on objectively determined needs, criteria and priorities. Salaries in the public sector are still over the country's average, but they are not stimulating enough for highly qualified staff. The Law on Civil Servants envisages political neutrality of public servants as well as procedures which should prevent political influence in employment and promotions. Regulations on professionalization of the public administration are not completely implemented. There is significant informal influence of the political factor in employment and prosper throughout the public sector. Legal provisions related to the disclosure of personal assets, income and financial interests in the public sector agencies are involved only for the top management. Access to the public sector activities is not fully ensured due to the lack of other legislation or its poor implementation. Regulations on the protection of "whistleblowers" have a very limited scope and do not provide necessary protection. Regulations on "conflict of interest" refer to civil servants, but there is no requirement for them to report about their property. There are numerous cases of public procurement rules violation.

PUBLIC SECTOR			
Overall Pillar Score: 42			
	Indicator	Law	Practice
Capacity 50/100	Resources	/	75
	Independence	75	0
Governance 46/100	Transparency	50	50
	Accountability	25	25
	Integrity mechanisms	75	50
Role 25/100	Public Education	25	
	Cooperation with public institutions, CSOs and private agencies in preventing/ addressing corruption	25	
	Reduce Corruption Risks by Safeguarding Integrity in Public Procurement	25	

Structure - In its broadest sense, the public sector includes all public services that are financed by the state budget. Given the fact that some parts of the public sector, such as the police, judiciary, local self-government, are evaluated as separate pillars within NIS, the public sector is considered here as the level of ministries and administrations that serves them, public enterprises at the national level and the government agencies. Public administration¹ comprises the state government - ministries, agencies within ministries (administrations, inspections, directions) and “specialized organizations”.

There are also “public services” in place². Public services may be established to ensure the rights and needs of citizens and organizations, as well as to meet other interests in areas such as education, science, culture, physical education, student well-being, health care, social protection, social and child care, social security, health, animal-care and the like. Public enterprises are established to conduct activities in the field of public information, post service, energy, roads, utilities and other fields determined by law³.

The ministerial administration employs approximately 30,000 people⁴. The structure of the public administration is seriously disturbed by the establishment of new and sometimes unclearly defined organizational forms⁵ of the public sector whose duties partially overlap with those carried out by ministries and specialized organizations. This also implies to the “classic” government bodies of the state administration, and even more often to the government agencies⁶. There are around 130 government agencies, according to some estimation. The exact list of government agencies has never been made, but the most comprehensive list can be found on the web-site of the Commissioner for Public Information⁷.

There are two categories of civil servants – “civil servants appointed to positions” and “executive servants”. Civil servants appointed to positions are: assistant ministers, secretaries of ministries, directors of administrations, etc. Executive positions are sorted by titles, depending on the complexity and responsibilities they have. In addition, the hierarchy of executive positions depends from the required knowledge, skills, and working experience⁸. The law defines the level of education, years of experience and specific knowledge, working experience and skills required for each executive position. The way in which executive positions are fulfilled is also defined by the Law. Each executive position has to be clearly defined and planned by the internal regulations related to the job recruitment and staffing plan.

1 The Law on Public Administration

2 The responses to the European Commission questionnaire

3 The Law on Public Agencies

4 Data from the interpretation of the Law on determining the maximum number of employees in the Republican administration. It does not include public corporations, agencies, police.

5 <http://www.mfp.gov.rs/pages/issue.php?id=7271>

6 The Law on Public Agencies

7 <http://www.poverenik.rs/sr/zakon-i-podz-akti-.html>

8 Titles include: senior adviser, advisor, counselor, junior counselor, associate, junior associate, officer and junior officer.

ASSESSMENT

CAPACITY

Resources (Practice)

To what extent does the public sector have adequate resources to effectively carry out its duties?

Score: 75

Allocations in the public sector are high⁹ and public sector reform¹⁰, which would determine the actual number of required employees and the rationalization of the public sector, is being delayed for years. Consequently, there are more employees than needed in some sectors and not enough in others¹¹. During the period between 2003 and 2008 public sector wages grew with an average annual rate of about 20%. Especially high was the wage growth in the public sector in the period just before the elections in 2007 and 2008 and before the referendum on the Constitution in 2006¹². Because of the global economy crisis in 2008, in the following year the public sector wages were frozen at the nominal level and The Law on Determining the Maximum Number of Employees in the State Administration was adopted¹³. As a result of these measures, an average net salary in the public sector in Serbia rose by only 4.4% in nominal terms in 2009, which was primarily a result of the “carry-over” effect of wage increase in the second half of 2008¹⁴. Nevertheless, in 2009, 2010 and 2011 the fluctuation of wages in the public sector was more favorable than in other areas with a registered high nominal decline¹⁵. In other words, employees in the public sector lost fewer jobs in relative terms, compared to other sectors, which is in a line with the assumption of a more secure employment and wages in the public sector.

The Law on Determining the Maximum Number of Employees in the State Administration resulted in a set-off (with a social program or severance) about 2,500 employees in the ministries and their ministries’ departments, agencies, social security funds etc. Such a linear downsizing has resulted in the departure of some of the best experts in the public sector - those who have been able to find jobs in the private sector¹⁶. Therefore, the Fiscal Council is warning that it is necessary to reduce the number of employees in the public sector, but with a complete and comprehensive reform¹⁷. The appeal of employees in the public sector was also grounded in a research by UNODC and the Statistical Office of the Republic of Serbia (2010). According to this research job security and accompanying benefits in the public administration make these careers most desirable.¹⁸

Currently, allocation for certain government bodies depends on available resources and political power of the minister, rather than on objectively determined needs, criteria and priorities. Salaries in the public sector are still above the country average, but are not simulative enough for skilled

9 http://www.danas.rs/konferencije/e_government_i_smanjenje_troskova_javnog_sektora_u_srbiji.970.html?cld=55

10 http://www.kss.org.rs/doc/1102_makroekonomska_proj_razv_Srbije_2011-2020.pdf

11 The assessment of the Fiscal Council President Pavle Petrovic <http://www.novimagazin.rs/ekonomija/otpustanja-u-javnom-sektoru-nema-rasta-plata-i-penzija>

12 Wages in public sector in Serbia and their impact on macro stability and the country’s international competitiveness, Aleksandar Ilic, Serbian Economic Forum, 2010.

13 <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>

14 Wages in public sector in Serbia and their impact on macro stability and the country’s international competitiveness, Aleksandar Ilic, Serbian Economic Forum, 2010.

15 <http://www.mfp.gov.rs/pages/issue.php?id=1568>

16 The assessment of the Fiscal Council President Pavle Petrovic <http://www.novimagazin.rs/ekonomija/otpustanja-u-javnom-sektoru-nema-rasta-plata-i-penzija>

17 The assessment of the Fiscal Council President Pavle Petrovic <http://www.novimagazin.rs/ekonomija/otpustanja-u-javnom-sektoru-nema-rasta-plata-i-penzija>

18 Research “Corruption in Serbia”, UNODC, Republic Institute for Statistics, 2011

personnel. Because of the disruption of the labor market during the global economy crisis, governance and the public sector as a whole, currently seems more appealing than the private sector. However the government will not be competitive on the market after the crisis. The qualified personnel will go after the better status and higher wages¹⁹. The exceptions are the government agencies and public companies which the Law on Civil Servants does not apply at and where salaries and their ranges are determined freely. The wages in the public sector are, in average about 70 percent higher than in the private sector²⁰, but the main problem lies in the huge differences within the public sector itself.

An average salary in Serbia in June 2011 was 390 euros and the government officials holding a university degree had a salary in the range from 340 to 1,100 Euros, depending on the rank²¹. For example, at the Business Registers' Agency, where employees do not fall under the Law on Civil Servants, executives had an average salary of around 1,600 Euros in November 2010, while the average salary at the Agency was 600 Euros²². Heads of the government agencies earn three to four times more than ministers and there is a disparity at all levels within the agency in comparison to the other state agencies²³. The Minister of Public Administration, Mr. Milan Markovic, has announced a review of the wage policy in the public sector and the establishment of agencies and bodies responsible for the transfer of duties which are supposed to work within the government ministries. However, this had not been carried out when this report was written.²⁴

Public services are not being delivered effectively enough. However, some progress can be noticed. There are significant differences in the levels of development and efficiency²⁵. There are those that allow monitoring of cases through SMS²⁶, as well as those which lose cases in their archives²⁷.

The Strategy for Public Administration Reform 2009-2012, chapter "rationalization," anticipates "The improvement of the ways the public administration system functions" under which functional analyses should be prepared in all bodies of state administration by the end of 2012, as well as the corresponding changes in the Regulation of job classification. It means that the public administration should be rationalized by 2012²⁸.

In 2011, the Serbian government adopted the Strategy on vocational training of civil servants, for the period until 2013²⁹.

Independence (Law)

To what extent is the independence of the public sector safeguarded by law?

Score: 75

The Civil Service Act provides the political neutrality of civil servants and also it prescribes the procedures that are supposed to prevent political interference in the recruitment and promotion in the public sector. A civil servant is obliged to act in accordance with the Constitution, the law and other regulations, according to the codes of conduct, in an impartial and politically neutral manner.

19 Minister of Public Administration Milan Markovic, interview

20 <http://www.blic.rs/Vesti/Drustvo/289250/Javni-sektor-u-Srbiji-zaposljava-triput-vise-radnika-od-evropskog-proseka>

21 <http://www.mfp.gov.rs/pages/issue.php?id=1568>, Information directories of ministries

22 Information directory of Business Registers Agency, <http://www.apr.gov.rs/>

23 <http://www.politika.rs/rubrike/Politika/t52560.lt.html>

24 <http://www.pressonline.rs/info/politika/172514/u-agencijama-su-preterano-velike-plate.html>

25 The assessment of Milos Mojsilovic, Sector for the Prevention of Anti-Corruption Agency

26 For example: <http://www.nkosk.rs/>

27 The assessment of Milos Mojsilovic, Sector for the Prevention of Anti-Corruption Agency

28 <http://reforma.bezbednost.org/wp-content/uploads/downloads/2012/09/2009-Akcioni-plan-zasprovo%C4%91enje-reforme-dr%C5%BEavne-uprave-u-Republici-Srbiji-za-period-od-2009.-do-2012.-godine.pdf>

29 http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678

Civil servants cannot express and represent political beliefs in their work³⁰. The Code of conduct for civil servants obliges civil servants to the political neutrality by a provision which states that in the official premises civil servants must not display any features of political parties or their promotional material and must not influence the political beliefs of other state officials and employees³¹.

According to the Law on Civil Servants, all candidates are equally entitled to all positions in state bodies and the selection should be based strictly on professional competence, knowledge and skills.³² According to the Civil Service Act, positions are filled by appointment, but the law requires a prior competition - internal or public³³. Internal competition is required if the position is filled by the Government. An announcement for internal competition for other positions is optional. Other state agencies may conduct an immediate public announcement. A civil servant may be re-appointed to the same position without competition after the expiration of the previous term.

There are “special cases”, such as the possibility to “take over” employees, which sets aside the necessity to have an open competition for a position (either internal or public). Apart from these “special cases”, the transitional provisions of the law have postponed the obligation for an open competition until December 31st, 2010.³⁴

Civil servants are annually assessed with the aim to detect and remove the “defects” in their work, as well as to encourage better performance and create conditions for the proper promotion, selection and professional development³⁵. A civil servant in charge of the government agency is not assessed.

Civil servants on appointed positions can be dismissed from that position if the position is abolished or if he or she is removed. Civil servants are protected from a politically motivated dismissal or removal and advancement prevention, by the Regulation on mobbing which provides legal protection³⁶ and by Anti-Discrimination Law, both providing court protection. These laws apply to all employees, including those in the private sector. Those who point out corruption cases are protected by the rules set in the by-law of the Anti-corruption Agency, which states that whistleblowers cannot be subject of the retaliation or adverse effects.³⁷

Employees of public enterprises, institutions and government agencies fall under general labor regulations, but not the rules of employment, evaluation and promotion, and pay scales (Chapter Resources), stated by the Civil Service. This fact leaves more space for penetration of political interest – i.e. employment and promotion based on political affiliation instead of professional skills.³⁸

Independence (Practice)

To what extent is the public sector free from external interference in its activities?

Score: 0

There is no institution responsible to safeguard the public sector from political interference. Existing regulations on professionalization of public administration are not fully implemented. There is a large informal influence of political factors in employment and prospering. After each election,

30 The Law on Civil Servants, Article 5

31 The Code of Conduct of Civil Servants, Article 5

32 The Law on Civil Servants, Articles 9, 10

33 The transitional provisions of the law have postponed the obligation of open competition until December 31st, 2010.

34 Civil Service Act, articles 49-51 and 57(p1)

35 The Law on Civil Servants, Article 82

36 The Law on Prevention of Harassment at Work http://paragraf.rs/propisi/zakon_o_sprecavanju_zlostavljanja_na_radu.html

37 Rulebook on protection of persons reporting suspicion of corruption, http://www.acas.rs/sr_cir/zakoni-i-drugi-propisi/ostali-propisi/pravilnici.html

38 The assessment of Minister of Public Administration Milan Markovic, interview, March 2011

a new government (or a new party, a new member of the ruling coalition) sets new managers in the civil service, ministries, public enterprises and government agencies³⁹. In addition, the public sector employees are hired by party affiliation and based on other personal connections⁴⁰.

After the change of the government, in almost all organizational units and government bodies, personnel changes in the public sector have happened, depending on the political affiliation, while employment and advancement in the public sector occur under political influence⁴¹. The protection against dismissal is defined in regulations and is not an obstacle for the removal of officials appointed during the previous regime. Assistant ministers and other “civil servants in appointed positions” should be holders of professional and depoliticized structures of ministries. However, in the majority of cases they are selected and appointed on a political basis. Hence, entire structures of the ministries are politicized. Depoliticization is bypassed by a direct violation of regulations as well⁴².

Although the Civil Servants Law defines evaluation of civil servants as a condition for promotion, assessment is based on the subjective opinion of the superior. There is no internal criteria at each individual government body that would be used to explain precisely the basis of which grades are assigned. In practice and by default, most of the employees get the highest grades⁴³.

The obligation of public announcements for the selection of “civil servants on appointed positions” was delayed by transitional provisions of the Civil Servants Act on several occasions since 2007. The deadline expired on December 31st, 2010. According to the responses to the European Commission questionnaire, until November 2010 there were 340 civil servants on appointed positions in Serbia. The HR Management Service has launched 270 competitions for such positions, of which 35 were repeated. Till May 25th, 2011, 201 civil servants were appointed to positions. This means that the obligation to select all “civil servants to positions” after public announcements was not accomplished.

39 The Secretary of State who insisted on anonymity, interview

40 The Secretary of State who insisted on anonymity, interview

41 Interview with president of the Union of Administration Njegos Potezica, February 2011

42 The assessment of Minister of Public Administration Milan Markovic, interview, March 2011

43 A former Deputy Minister who insisted on anonymity, interview

GOVERNANCE

Transparency (Law)

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

Score: 50

Legal provisions related to the disclosure of personal assets, income and financial interests in the public sector agencies apply only to top management. The Law on the Anti-Corruption Agency, which states the obligation to disclose personal assets and income applies to “elected, appointed and nominated persons” in public bodies, thus involving the category of “civil servants to positions” (e.g. assistant ministers, directors, deputy and assistant directors of government bodies functioning out of ministries)⁴⁴. The rest of the civil servants have conflict of interest rules to comply with, but not the duty to report about their income and property⁴⁵. Declarations have to be submitted at the beginning of the mandate and after the end of it, as well as during the mandate in case of significant changes. These declarations could be verified by the Anti-Corruption Agency that may ask for additional information, including those owned by other public authorities (e.g. cadaster for real estate) and banks⁴⁶.

In 2006 free access to information became a constitutionally guaranteed right. The Law on Free Access to Information of Public Importance prescribes⁴⁷ that the public could potentially obtain all information at the disposal of public authorities (unless there is prevailing interest). The Commissioner for Information of Public Importance and Personal Data Protection issued a by-law Instruction for Publishing an Information Directory on Public Authority Work which consists of the essential information that the state authority possesses. The Instruction states that public authorities should publish, without anyone’s request information on: budgets and expenditures, number of employees, salaries and costs of representation etc. Publishing of the Directory would reduce the number of complaints and shall facilitate the work of authorities⁴⁸.

The advertisement of jobs in the civil service is regulated by the Civil Service Act and by the Regulation on the implementation of internal and open competition to fill vacancies. The criteria for HR selection is regulated by the Guidebook on the assessment of professional qualifications, knowledge and skills in the human resources selection in state administration⁴⁹.

The Public Procurement Law regulates the transparency of information in the implementation of various phases of public procurement. An independent state authority that controls all stages of procurement (starting from the plan to the execution of the contract) is the State Audit Institution. Audit reports of SAI are being published on their website but further information (e.g. compliance reports) are made available only throughout FOIA requests.

There is various legislation in place that regulates public information management. Basic provisions of that kind can be found in The Law on State Administration⁵⁰ and their further elaboration in the regulation related to specific procedures, as well as in two Decrees⁵¹ that regulate office procedures

44 Law on ACA, articles 2 and 44

45 Law on Civil Servants, articles 25-31

46 Law on ACA, articles 47 and 49

47 <http://www.poverenik.rs/sr/pravni-okvir-pi/zakoni.html>

48 <http://www.poverenik.rs/sr/pravni-okvir-pi/podzakonski-akti.html>

49 <http://www.suk.gov.rs/dotAsset/7296.pdf>

50 The Law on Public Administration, Article 85: (1) Office procedures encompass collection, recording, keeping, classifying and archiving materials received or produced in relation to the functioning of state administration authorities, as well as all other issues related to the business of state administration authorities. (2) Office procedures shall be determined by a regulation of the Government

51 The Regulation on office of state administration, the Regulation of electronic office operation of state administration

(the newer one dealing with electronic office procedures). Overall, the legislation provides a solid legal framework for recording public administration work, with reasonable legal deadlines specified for the “keeping information” deadline. Furthermore, the duty for proper maintenance of the documentation (“information holders”) is fostered through provisions on free access to information. This includes annual reports to the Commissioner about the implementation of the Law on free access to information of public importance.

Legal provisions prefer reactive publishing of information, with the regulations coming from the Law on Free Access to Information of Public Importance and providing the possibility to obtain a legal copy of any document held by the government body. However, there are also significant rules in place regulating pro-active publishing of documents. First of all, some regulations issued by the administrative bodies have to be published in the Official Gazette (e.g. by-laws adopted by the minister); more recent legislation provides also the publishing of information on various documents on web-sites (e.g. registries); on the basis of the Law on Free Access to Information, Commissioner for Information of Public Importance issued in September 2010 Instructions, thus mandating public authorities to publish in detail information about their structure, budget, public procurements, property, services etc.

The major deficit of the current legislation is not related to the question of how existing documents are kept or to which extent they are accessible by members of the public, but rather to the issue of what documents have to be prepared at all when taking decisions. Such deficit is visible in the absence of clear rules on necessity to have analyses that would support policy documents and legislative drafts, justify working plans, expenditures and public procurements⁵².

Transparency (Practice)

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

Score: 50

Vacancies in the public administration are advertised publicly. This, however, does not ensure fair and open competition.

Considering transparency of the work in the public sector, there are cases in which administrative bodies unjustifiably refuse to allow access to information⁵³. Access to information about public administration work is widely used. According to available data, at least 45,000 of such requests were formally lodged during the year 2010⁵⁴, out of which more than 40% to various central government bodies. The Commissioner received a total of 2,066 appeals, which indicates that most of the requests were answered within the legal deadline and in a satisfactory manner. The majority of appeals were well founded (93%). Upon the Commissioner’s intervention, 91% of the institutions fulfilled their duty and provided information. However, there are still cases where access is not provided, even after the Commissioner’s final decisions⁵⁵. On the other hand, the vast majority of public institutions do not fulfill standards of pro-active information publishing, although the situation significantly improved in recent years. Information Directories, even when published, are not updated properly and do not contain all mandatory information, as regulated by the Commissioner’s Instruction⁵⁶.

52 Former Deputy Minister who insisted on anonymity, interview

53 Annual report of Commissioner for information of public importance and personal data protection for 2010 <http://www.poverenik.org.rs/index.php/en/doc/reports.html>

54 Annual report of Commissioner for information of public importance and personal data protection for 2010 <http://www.poverenik.org.rs/index.php/en/doc/reports.html>

55 Annual report of Commissioner for information of public importance and personal data protection for 2010 <http://www.poverenik.org.rs/index.php/en/doc/reports.html>

56 Annual report of Commissioner for information of public importance and personal data protection for 2010 <http://www.poverenik.org.rs/index.php/en/doc/reports.html>

The Anti-Corruption Agency publishes online data on the assets of public officials, including the civil servants appointed to positions. Some data is public and can be found on the Agency's web-site⁵⁷. According to available data, the Agency has not initiated any proceedings against civil servants appointed to positions for failing to report property.

Public procurement announcements are regularly and timely posted on the Public procurement portal⁵⁸, as this became mandatory from 2009. Even if the number of announcements is rather high (according to PPO officials, over a hundred thousand announcements per year) no one could claim that all procurements were covered⁵⁹.

As far as public procurements are considered, the most common abuse in practice is: incorrectly set up requests for procurement, i.e. exceeding the actual need, so the state allocated more money for that supply; favoring one bidder; favoring certain bidders based on the technical specifications and unjustified application of bargaining procedure; conclusion of contracts without the procedure of public procurement⁶⁰.

Accountability (Law)

To what extent are there provisions in place to ensure that the public sector employees have to report and be answerable for their actions?

Score: 25

Norms on the protection of whistleblowers that exist in the Law on Civil Servants, Law on Free Access to Information of Public Importance and Law on the Anti-Corruption Agency⁶¹ have a very limited scope and do not provide necessary protection so that more servants could dare to use them. Neither legally, nor in practice, have civil servants been systemically encouraged to indicate problems inside the institutions they work.

For example, the provisions of the Law on Free Access to Information⁶² state that an employee in a public authority cannot be held accountable or be subject to any consequences if they disclose information of public interest, or information that may indicate the existence of corruption, abuse of power, irrational management of public funds and illegal act or conduct of the authorities, but only if this is information that may not otherwise be restricted by this law. This means that employees can be held accountable for disclosing information about corruption if this information is proclaimed to be secret.

Civil servants may incur criminal and offense liability, as well as disciplinary responsibility for violations of their duties⁶³. For example, they may be liable for several criminal offences including abuse of office, extortion, bribery⁶⁴.

There are no general provisions on the handling of citizens' complaints, but the procedures are governed by individual acts of the institutions and bodies. The only general provisions are those contained in the Decree on office operations that require issuing a confirmation receipt for all solved cases by the Administrative Procedure Act and that are directly handed over to the authority⁶⁵.

57 http://www.acas.rs/sr_cir/registri.html

58 <http://portal.ujn.gov.rs/> Portal is managed by government's Public procurement office

59 Neither Public procurement office nor any other institution possesses comprehensive information about the number of public procurement procedures in the country. PPO statistics are based only on reports delivered to them from various purchasing entities. Source: Communication with PPO staff, February 2011.

60 Ibid.

61 Paragrafnet, August 15th 2011, Expert comment to Rulebook on protection of persons reporting suspicion to corruption.

62 Article 38

63 Civil Servants Law, articles 107-120

64 Criminal Code, articles 359

65 http://www.arhivrs.org/zakoni/Uredba_o_kancelarijskom_poslovanju.pdf

Public Administration Law stipulates that the work of government agencies is subject to the supervision by the government itself. The supervision of the ministry work is conducted by the Government. The supervision of the work of the special organizations, may, by law, become a delegated duty of the ministry. In this case the ministry is the only body authorized to request reports and data on the work of specialized organizations, determine the state of the undertaken work and warn about irregularities. The ministry can also issue instructions and propose to the Government measures to take within its authorization.

Administrative supervision of the state authorities is under the jurisdiction of administrative inspection within the Ministry of Public Administration, while Labor relations are supervised by the Labor Inspectorate within the Ministry of Labor. Complaints against the decisions of state authorities can be processed within the Administrative Court. The supervision of the work is also the responsibility of the Ombudsman, who can make recommendations to the state authorities, but these recommendations are not binding. The State Audit Institution conducts the audit of financial statements, regularity of operations and usefulness of public funds of all direct and indirect budget spending.

Accountability (Practice)

To what extent do the public sector employees have to report and be accountable for their actions in practice?

Score: 25

Existing state oversight mechanisms are not effective. Reports on the work of administrative bodies, public enterprises and institutions are not being reviewed in the Parliament and the procedure for determining liability for the lack of implementation is not being initiated.⁶⁶

At the time when the report was drafted there was only one case of quoting special provisions to protect whistleblowers (based on the Law on Free Access to Information of Public Importance), although regulations on the protection of whistleblowers could be found in the Law on Civil Servants, and the Law on the Anti-Corruption Agency.

There is a legal obligation to elaborate decisions made by administrative bodies, as well as the possibility for court and administrative supervision, as well as supervision by the independent Ombudsman (Citizens' Protector). In 2010 the Ombudsman received 2,656 complaints from citizens⁶⁷. During the first six months of 2011 the Administrative Court received 7,259 files, meaning that each judge had an average of 610 pending cases during a year. There is no evidence of any disciplinary procedures taken as a result of this.

Overall, there is no systematic cumulative data on disciplinary actions, nor about misdemeanor or criminal proceedings initiated against state officials for failures related to their work. However it was not noticed by the representative from the Department for Prevention of the Anti-Corruption Agency, as something that would be a systematic phenomenon⁶⁸

Therefore, the protection of citizens from irresponsible work of administration bodies is still insufficient in practice – the Administrative Court has a large number of cases left behind⁶⁹ and the number of administrative inspectors is a lot smaller than necessary, as well as the number of the Ombudsman's staff⁷⁰.

66 Research done for purposes of NIS, interviews with MPs Radojko Obradovic and Jorgovanka Tabakovic, www.parlament.gov.rs

67 <http://www.ombudsman.rs/images/dokumenta/Annual%20Report%202010.doc>

68 The estimation of the representative from the Department for the Prevention of Anti-Corruption

69 At the beginning of 2010 Administrative Court had 17.000 unsolved cases, while at the end of that year total of 19.400, Annual report of Administrative Court, <http://www.up.sud.rs/izvestaj-2010>

70 Annual report for 2010, <http://www.zastitnik.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>

The State Audit Institution has no capacity for regular audits of financial statements for a greater number of bodies, but it operates on the principle of general sample – auditing just a small fraction of the bodies⁷¹. Also, the SAI has no capacity to audit the purposefulness of the funds. Budget inspection controls the application of the regulations in the area of material financial operations and appropriate and lawful use of the funds being directly and indirectly spent, but it is poorly developed, as well as internal audit, all of which was pointed out by the SAI in the final revision of the 2010 budget draft⁷².

Professionalization and depoliticization is outlined as one of the priorities of the Strategy for Public Administration Reform 2009-2012. The Needs Analysis for the development of the National Strategy for the Fight against Corruption for the period 2012-2016 indicates that, although the authors of the Strategy for Public Administration Reform consider that the improvement in employees' system is regulated by the new Law on Civil Servants in 2009, the anti-corruption point of view requires periodical changes of the regulations. This especially implies to the experience in the application of those standards related to the employment of civil servants, promotion and evaluation of their work, determining the number of employees and their jobs; and especially the application of anti-corruption measures related to civil servants (whose implementation is not monitored systematically)⁷³.

Integrity mechanisms (Law)

To what extent are there provisions in place to ensure the integrity of public sector employees?

Score: 75

A public official is obliged to submit a disclosure report concerning his property and income to the Anti-Corruption Agency within 30 days after elections, appointment or nomination. A Report is also filed within 30 days from the day of termination from the position in office. An official may hold only one public function unless another function is an obligation according to another law (e.g. Minister of Justice is, by the law also member of the High Judicial Council). An official who is elected, nominated or appointed to another public office and who intends to discharge multiple public functions concurrently is required to request consent from the Anti-Corruption Agency within three days from the day of election, nomination or appointment.

An official may not retain an appropriate gift whose value exceeds 5% of the average monthly net salary in the Republic of Serbia and/or appropriate gifts received during a calendar year whose total value exceeds one average net salary in the Republic of Serbia. An official shall be fined from 50,000 to 150,000 RSD for the offences regarding accepting a reward or gift⁷⁴.

Civil servants in contracted positions are not considered public officials and they do not fall under the provisions of the Anti-Corruption Agency on declaration of assets. The exceptions are appointed civil servants in positions who are required to report their assets and income⁷⁵.

The Civil Servants Act stipulates that the civil servants in positions are “subject to the laws and regulations that govern the conflict of interest when exercising public functions” (currently the Law on the Anti-Corruption Agency), and the provisions of the Law on Civil Servants on additional work and the prohibition of establishing a company, public service or entrepreneurship. The Civil Servants Act contains provisions to prevent conflicts of interest related to the ban on gifts and the abuse of the employment in a state agency.

71 During 2010. SAI has performed an audit of 13 financial statements, and during 2011. a revision of 43 financial statements

72 <http://SAI.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

73 <http://reforma.bezbednost.org/wp-content/uploads/downloads/2012/09/2009-Akcioni-plan-zasprovo%C4%91enje-reforme-dr%C5%BEavne-uprave-u-Republici-Srbiji-za-period-od-2009.-do-2012.-godine.pdf> and Need analysis for the development of the National Strategy for the Fight against Corruption for the period 2012-2016 (unpublished).

74 The Law on ACA, articles 43-46

75 The Law on ACA, article 2

This also applies to additional work and the advertisement of additional work, the prohibition of the establishment of companies and public services, limited membership in legal entities (a state official cannot be a director, deputy or assistant director of a legal entity; while a member of the management board, supervisory board or other governing bodies of the legal entity may be appointed only by the government or other authority) and the reporting of interests in connection with the decision of the state authorities.⁷⁶ Defying the provisions that prevent a conflict of interest is considered “a serious breach of working duty”⁷⁷. The same law stipulates that a civil servant is required to notify his immediate supervisor or manager if, during his work, he came to the conclusion that a certain act of corruption has been committed by public officials, civil servants and employees of a state agency where he is employed. A state officer or employee “shall enjoy protection under the law from the date of the written notice”⁷⁸.

Anti-Corruption provisions are defined by the Code of Conduct for civil servants as well⁷⁹. The Code stipulates that a civil servant must not allow his personal interests to conflict with the public interest; that he shall take into account the actual or potential conflicts of interest and take the measures provided by law in order to avoid conflicts of interest.

A civil servant shall not accept gifts, or any service or other benefit for himself or other persons while he or she exercises duties, unless the protocol or occasional gifts is of small value, therefore in accordance with the regulations governing conflict of interest when exercising public functions⁸⁰.

If a public official is offered a gift or other benefit, he is obliged to refuse or return a gift handed to him; to take action to identify a person who offered him a gift, and if it is possible to find witnesses and immediately, and no later than 24 hours, to make an official record and inform his immediate superior⁸¹.

If a civil servant is in doubt whether an offered gift may be considered appropriate gifts of small value, he shall request an opinion of the immediate superior.

A civil servant is required to use all entrusted material and financial resources in an economic and effective manner, and exclusively for the performance of his work and not to use them for private purposes. In the performance of his personal affairs, a civil servant shall not use the officially available information in order to obtain benefits for himself or related entities. The violation of the Code represents a minor violation of duty, but the repetition of the offense is treated as a serious offense for which the prescribed punishments range from fines to the loss of jobs⁸².

The Customs Service has a special code (the Code of Conduct of Customs Officers) that stipulates that an officer cannot, in connection with work obligations, accept money, gifts, services or some other benefit for himself or someone else, to encourage gift exchange, or show that he expects benefits, and that he must not take actions or procedures which could bring him into a dependent position⁸³.

The Public Procurements Law contains an anti-corruption clause which states that the contracting authority will reject an offer if it has credible evidence that the tenderer directly or indirectly threatened, gave, offered, or advertised a gift or some other benefit to a member of the Public Procurement Office, a person who participated in the preparation of tender documents, a person participating in the procurement planning or any other person in order to influence them to reveal confidential information or influence the procuring entity or decision-making at any stage of the procurement procedure. A purchaser is obliged to immediately report this to “the authorities that will take legal measures against such entities”⁸⁴.

76 The Law on Civil Servants, Articles 25-31

77 The Law on Civil Servants, Article 109

78 The Law on Civil Servants, Article 23a

79 The Code of Conduct of Civil Servants, Articles 7-11

80 This matter is regulated by the Law on Anti-Corruption

81 Code of Conduct for civil servants, article 9, The Law on Civil Servants, Article 25, The Law on ACA, articles 40-41

82 Code of Conduct for civil servants, article 10

83 Code of conduct of customs officers, article 3

84 The Public Procurements Law, article 19

Integrity mechanisms (Practice)

To what extent is the integrity of civil servants ensured in practice?

Score: 50

In 2010, of 1,256 people accused of crimes related to corruption, 333 were civil servants, 242 cases were an abuse of office and 83 were cases of bribery⁸⁵.

There is no systematic verification of following regulations on conflict of interest which refer to civil servants. In addition these regulations are implemented very rarely⁸⁶. There are rules set by the Law on Civil Servants and Code of Conduct which deal with matters of accepting gifts, using entrusted assets, additional work, using the information and conflict of interest. They are also implemented very rarely, and there is no track record about their implementation⁸⁷. Rules regarding future employment are not developed, neither are the special regulations on conflict of interest regarding decisions on public procurements.

There is no summary information on disciplinary actions against the state officials for violations of the Code of Conduct for civil servants.

However, there is information available for some government bodies, such as the Customs Administration. According to data from the Customs Department⁸⁸ in 2010, 81 officers were suspended, and 40 disciplinary proceedings for serious misconduct were completed against 43 customs officers. Six of these employees were terminated from work and 26 were fined. In 2011, the Department of Internal Affairs of the Customs Administration initiated 30 disciplinary proceedings against 57 customs officers.

There are trainings and consultations regarding the implementation of ethical rules, but they do not comprehend a sufficient number of employees. Codes of ethics do not exist as separate areas in the training programs conducted by the HR Management Service of the Serbian Government. There is a domain called "fight against corruption", in which programs are organized occasionally. Training on the Code of Conduct for civil servants was held in May 2011. Since the beginning of 2011 until September the same year, five seminars on combating corruption were organized and the speakers were representatives of independent bodies (Anti-Corruption Agency, the Commissioner for Information of Public Importance) and NGOs (Transparency Serbia)⁸⁹.

In 2010, the Anti-Corruption Agency organized training courses and seminars for representatives of 41 national, 17 regional and 94 local government bodies on issues related to the corruption prevention, strengthening the integrity, development and implementation of integrity plans, the National Strategy for the Fight against Corruption and action plan and responsibilities of the Anti-Corruption Agency⁹⁰.

The anticorruption regulation from the Public Procurement Law was never implemented⁹¹.

85 The Data on Public Prosecution

86 A former deputy minister who insisted on anonymity, interview

87 A former deputy minister who insisted on anonymity, interview

88 <http://www.subotica.com/vesti/stop-korupciji-akcija-carinika-id9341.html>

89 Data from HR Management Service of Serbian Government, www.suk.gov.rs

90 The Annual report on Agency work for 2010 http://www.acas.rs/sr_cir/component/content/article/229.html

91 Data from PPO

ROLE

Public Education (practice)

To what extent does the public sector inform and educate the public on its role in fighting corruption?

Score: 25

Notifications on corruption and fight against it is not done in a comprehensive manner; a small number of administrative bodies adopted their own anti-corruption plans; few administrative bodies organized their own programs and allowed citizens to assist in fighting against corruption.

Cooperation with the Anti-Corruption Agency took place, but so far this cooperation hasn't been sufficient (e.g. regarding fulfillment of the anticorruption strategy and action plan tasks)⁹².

The public sector has not organized any anti-corruption educational programs aimed at the general public and all initiatives in this field are left to the Anti-Corruption Agency and civil society organizations. During recent years, several anti-corruption actions were launched within the public sector, which were addressed to the public. In most cases these were the talks about anti-corruption campaigns in certain segments of the public sector, promotions of hotlines for reporting corruption, followed by posters in the areas of public services (at border crossings, health facilities, etc.)⁹³.

Media campaigns were publicly promoted in lavish ceremonies in the presence of government officials and ministers, but then the state authorities and the public sector would never advertise the results of these campaigns, and the media expressed no interest in them⁹⁴.

It turned out that these campaigns had no impact on citizens. Thus, the study from 2010⁹⁵ showed that 27% of people say that if they ever wanted to report a bribe, they would go to the police, 26% would go to the chief of the officer who asked for a bribe, and 19% would turn to the body in charge of fighting corruption. However, most of those who admit they bribed someone (36%) believe that reporting would not be successful because no actions would be taken.

According to surveys on corruption in Serbia, the experience of citizens, conducted by UNODC and the Statistical Office in 2009, 2010 and 2011⁹⁶, health care is perceived as the most corrupt. The majority of people with direct experience with the bribery have had these incidents in the domain of health care. Personal experience with bribery or experience within family or friends was registered among 13.7 percent of respondents. Bribes were given to doctors (55%), police (39%), nurses (26%), cadastre officers (16%). Respondents could choose more than one answer, so the sum is greater than 100. The perception has not even been changed after a continuous campaign of the Ministry of Health "educating patients on their rights." The campaign which conspicuously avoided explicit mentioning of corruption began in 2007⁹⁷ by means of TV spots, billboards and distribution of brochures, it lasted one month and then it was reduced only to the posters in health facilities through which patients are informed of the location of the lawyer's office, who is already employed in the health center but also exercises the duty of the protector of patients' rights.

92 The estimation of the representative from the Department for the Prevention of Anti-Corruption

93 Reserach done for purposes of NIS

94 Reserach done for purposes of NIS

95 Corruption in Serbia, the experience of citizens, UNODC and the Republic Institute for Statistics, 2011

96 Corruption in Serbia, the experience of citizens, UNODC and the Republic Institute for Statistics, 2011, TNS Miedum Gallup for UNDP Serbia, 2009, 2010 and 2011

97 <http://www.diabeta.net/2007/kampanja-ministarstva-zdravlja>

At the end of 2008, the Market Inspection Sector of the Ministry of Trade opened a hotline call center through which all businesses and citizens can use a free call (phone line) to report the negligence of market inspectors with the guarantee of full protection of the applicant. Since the call center was established in October 29th, 2008 till mid – 2011, more than 1000 calls were received, and only five of them were related to suspicions of corruption⁹⁸. The applicants were anonymous and did not want to cooperate in collecting evidence, fearing that they themselves will be held responsible for bribery.

In 2007, the Ministry of Labor and Social Policy opened a hotline for reporting corruption in connection with the corruption in the work of the Inspectorate, as well as for other irregularities within the jurisdiction of the ministry. The line was in operation for a year and the vast majority of calls were related to problems of employees who are not under the Ministry of Labor and Labor Inspection and there were no reports of corruption⁹⁹.

In 2011, the Customs Administration opened a phone line for reporting “irregularities” in the work of customs officers. Border crossings display the posters that inform citizens about the existence of this phone line. The same campaign advertised that corruption can be reported via a e-form at the Customs website¹⁰⁰. A similar pattern for reporting irregularities also exists on the website of the Agency for Privatization¹⁰¹.

A distinctive case of media campaign without sustained effects was also a telephone line for reporting corruption which was presented at the Clinical Center of Serbia in 2011. Patients were initially given a symbolic box of drugs called “Justicedol”, with a list of the rights and the instructions on their entitlements, and the explanation to whom they can turn if someone asks for money in return for health services. At the beginning of the campaign it was announced that the Clinical Center would record all complaints of citizens and continue to explore or divert them to other authorities - the police and the prosecution. Soon, the director of the Clinical Center resigned, and the anti-corruption hotline says that this action is suspended and the Clinical Center has no data on its results as a spokesman who coordinated the action left the institution after the replacement of the former director¹⁰².

Cooperate with public institutions, CSOs and private agencies in preventing / addressing corruption (practice)

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

Score: 25

The willingness of administration to cooperate with civil society organizations is unbalanced and mostly depends on priorities of administrative authority and financed projects. There is no general legal framework that would oblige the government authorities to cooperate with CSOs and to support initiatives for the corruption prevention. Moreover, there is no obligation for the government authorities to explain their decision on cooperation or non-cooperation with business and civil society, but it is subject to their discretion.

Examples of cooperation exist and include an involvement of NGOs and business associations in public debates or consultations in the implementation of policies and regulations, support of

98 Data obtained from the Ministry of Commerce. The vast majority of calls were from the area of consumer protection and calls for market inspection to conduct investigation.

99 Data obtained from the Ministry of Labor

100 <http://www.carina.rs:81/CarinaAnonimusPortal/OtvorenaCarinskaInternetLinija.aspx>

101 http://www.priv.rs/O+Agenciji/166/Prijava+neregularnosti.shtml/nav_start=0

102 Research done for purpose of NIS

the promotion of projects through the presence of relevant ministers or other officials at conferences or the adoption of initiatives from business and civil society for changes in regulations or procedures¹⁰³. However, there are far more cases in which public sector bodies do not consider the initiatives and recommendations of business and civil society¹⁰⁴.

There is no systematic support from the public sector in regards to anti-corruption projects of civil society organizations, although the fight against corruption, according to the Law on Associations, is among areas to be treated as a domain¹⁰⁵ of public interest and for which the budget of Serbia can establish competition to provide promotion funds or to compensate the defects of the program funding.

The cooperation of the public sector with public watchdog organizations is often not just a matter of good will, but also a legal obligation. Even though sometimes it is necessary to establish additional mechanisms so that this cooperation can function, such as the case with the signing of the Memorandum of cooperation between ACA and the Serbian Government¹⁰⁶, which specified liabilities in connection with the implementation of the National Strategy for the Fight against Corruption and the development of Integrity plans. Thus, a Memorandum of cooperation covered obligations of the public sector that already existed within the Law on ACA.

Reduce Corruption Risks by Safeguarding Integrity in Public Procurement (law and practice)

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

Score: 25

There are numerous cases of public procurement rules violation, among which most frequent are misdemeanors regarding prescription of discriminatory conditions and elements of criteria; non publishing of all advertisements in accordance with the law; payment for tender documentation in a larger sum; breaking procurements into several smaller ones to avoid tender procedure; unjustified implementation of emergency and uncompetitive procedures and signing of unjustified annexes to the contracts for additional deliveries and works¹⁰⁷.

Also, there are numerous cases in which non transparent procedures of procurement, which aren't contrary to the legal provisions. Omissions of the legislator are being used, like in small value procedures where companies already agreed in advance, are being invited without publishing and providing the possibility to other companies to submit their bid; the problem is in non transparent planning of budget assets that will be spent on public procurements, as well as insufficient control of contract execution¹⁰⁸.

Mechanisms of supervision over public procurements are insufficient, because they do not cover all the aspects of this process, because jurisdiction and duties in that process is not clearly divided and because of insufficient capacities of control bodies; reviewing implemented public procure-

103 <http://www.naled-serbia.org/propisi>

104 <http://gradjanske.beograd.com/page/civicEducationProgram/sr/projekti.html?view=story&id=1218§ionId=1>

105 The programs that stand out within the program of the public interest are in the fields of social protection, Veterans, protection of persons with disabilities, child welfare, protection of internally displaced persons from Kosovo and refugees, encouraging fertility, assisting the elderly, health care, protection and promotion of human and minority rights, education, science, culture, information, environmental protection, sustainable development, animal protection, consumer protection, the fight against corruption, as well as humanitarian programs and other programs in which the association exclusively and directly follows the public needs

106 <http://www.politika.rs/rubrike/tema-dana/Vlada-i-Agencija-zajedno-u-borbi-protiv-korupcije.lt.html>

107 Danilo Pejovic, Transparency Serbia, training material for public procurement seminars for civil society, 2010.

108 Needs Assessment prepared for the purpose of drafting of National Anti-corruption Strategy (unpublished).

ments is sporadically and sanctions are extremely rare, which is why the system isn't protected enough from corruption¹⁰⁹.

The Public Procurement Office (PPO) is set up as an independent governmental agency with the mission to help the establishment of sound procurement procedures and practices, ensuring that public funds are spent in an efficient and transparent way, thus complementing the government's overall drive in containing corruption¹¹⁰. The Public Procurement Office's facilitates, via its Public Procurement Portal, the publishing, monitoring and searching of public procurements, as well as its presenting an overview of, and the possibility to download tender documents¹¹¹. The Public Procurement Act was passed mostly in accordance with European Commission directives, but the desired goals of transparency and advancement of competition have so far not been achieved. The application of the Act has not yet reached its full capacity¹¹².

A procuring entity shall ensure equality of all bidders in all phases of the public procurement procedure¹¹³. A procuring entity shall: keep records of all the phases of the public procurement procedure; keep all the documentation pertaining to public procurement in line with the regulations governing documentation and archives, at least eight years from the expiry of the agreed period for the execution of the individual public procurement contract; keep records of all public procurement contracts awarded¹¹⁴. A procuring entity shall collect and keep records of certain data concerning public procurement procedures and awarded public procurement contracts. The Republic Commission for the Protection of Rights in Public Procurement Procedures is established as an autonomous and independent body of the Republic of Serbia, which shall ensure the protection of bidders' rights and public interest in public procurement procedures¹¹⁵.

The Act introduced two new solutions: the Public Procurement Portal¹¹⁶ and the Public Procurement Officer¹¹⁷. The Public Procurement Portal is a specialized website for announcing public procurements, where all kinds of notifications regarding public procurements, public invitations, reports of the Public Procurement Administration, decisions of the Commission for the Protection of Rights and other relevant documents are posted. Most of the information on public procurements, which is under the previous Act was published in the Official Gazette and one daily paper, has now, through the Portal, become more accessible to the general public and therefore to potential bidders. The other significant solution of the current Act is the public procurement officer. Namely, the Act stipulates that the purchasing entity must define an officer to handle public procurements. Such an officer is, under the provisions of the Act, obliged to undergo the appropriate training, and after successfully passing the relevant tests he is awarded a certificate.

The most important role in the control of public procurements is with the State Audit Institution. The State Audit Institution has possibilities to inform the Public Prosecutor about any irregularities. The law obliges the courts, prosecutors, police and other authorities to respond within 30 days at the request of SAI¹¹⁸.

109 Ibid.
 110 Law on public procurement, Official Gazette of Republic of Serbia, 116/2008, Article 98.
 111 *ibid*, articles 10 and 31.
 112 Communication with PPO office, June 2011.
 113 *ibid*, Article 11.
 114 *ibid*, Article 14.
 115 *ibid*, Article 100.
 116 *ibid*, Article 99.
 117 *ibid*, Article 97
 118 Powers and results of work of SAI are described in separate chapter of this book.

PUBLIC SECTOR

Key findings and recommendations

The public sector is politicized and under heavy political influence, although there are formal norms and regulations which should prevent that. Appointments, employment and promotions are often associated with party affiliation. There is no adequate protection of whistleblowers, public hearings on the regulations are the exception, and violations of the provisions of public procurement are very common.

1. Conduct an analysis of responsibilities and tasks performed by the state administration bodies and other public sector organizations in order to determine whether and in what areas their jobs overlap; to determine who will perform these tasks in the future and thus make public administration more efficient and cost-effective
2. Perform functional analysis within each body of the state administration - to determine the need for human resources to carry out tasks that the government authority has, and change the rules of job classification accordingly
3. To conduct survey on corruption and privilege in employment in the public administration and public services (e.g. testing to test the correlation between political party affiliation of officers from non-political positions with the political party whose representative was in charge of that institution) and based on the findings of the research to carry out further measures
4. Expand the range of norms on conflict of interest for civil servants in areas currently not covered by the law (log of assets, future employment, special rules for deciding on the procurement, rotation of civil servants) and to organize periodic review of the application of these standards in every body of the state administration
5. To regulate the duty of each state administration body to set up a web site, to publish certain information there, to update it regularly and to be responsible for the accuracy and completeness of published information; to ensure full implementation of the Law on free access to information in the state administration
6. Legal protection of whistleblowers to cover the entire public sector; to stimulate the reporting of such irregularities by the vigilant citizens and organizations that monitor the work of state bodies
7. Completion of the process of appointment of "civil servants on positions" through a public recruitment process (deadline passed on January 1st 2011)
8. To introduce a public recruitment procedure for the appointment of all officials that are currently not covered (e.g. directors of public companies)

Public procurements:

1. To improve monitoring mechanisms in public procurement, so that each of the institutions that play a role in this system given clear responsibilities and resources to fulfill these tasks
2. Standardize the identification of needs for procurement wherever possible. Through setting standards to avoid arbitrary decision-making in determining the items and quantities of purchases in a given year or procurement.

3. To provide explanation on why the planned acquisition is determined, why it is conducted in a non-competitive process and how the estimated value of procurement was calculated
4. Control of budget planning in order to prevent circumvention of public procurement rules
5. Reducing the arbitrariness in determining purchasing entities' requirements and criteria for evaluation, related to the weighting of individual elements, the required references, proof of financial and technical qualifications and other requirements.
6. To regulate problematic proceedings such as negotiating process and the method of collecting data on potential bidders for the procurement of low value
7. Exclusion and reduction of the impact of the "human factor" in the public procurement procedure, by mandatory use of electronic procurement and electronic auctions, whenever feasible
8. Identifying, reporting and effective resolution of conflicts of interest for all persons involved in the procurement process
9. Enabling the filing of a legal suit for the protection of public interest in public procurement procedures (with the limitation of the suspense effect of such procedures) to any interested party.
10. Detailed regulation on which provisions of public procurement contracts cannot be changed. Instead of additional non-competitive procurement of goods, works and services from the same provider, to implement a simplified procedure with negotiation in which other qualified bidders can participate. Changes to the contract price due to changes in the relevant market should be used only if it was foreseen by the tender documentation.
11. Standardize procedures for checking compliance with the contract prior to payment. To regulate internal control systems for clients before payment is approved and completed.
12. Limitation of advance payment before work, services and goods are delivered.
13. Publication of data on bidders who have not implemented public procurement contracts as it had been planned in a way that will make them available to all clients in the future.
14. The introduction of the duty to initiate annulment of the contract when the grounds exist
15. Increasing the number of inspectors and the introduction of budgetary obligations to investigate every case when they reported a violation of the rules on public procurement.



LAW ENFORCEMENT NATIONAL INTEGRITY SYSTEM

Summary: Having in mind the widespreadness of corruption, existing capacities of law enforcement agencies cannot be considered sufficient. Regulations guarantee independence in the work of investigative bodies. Criteria for election and advancement of prosecutors exists, but is not completely objective.

Practice shows that proceedings on corruption cases involving people close to the government are not being dealt with, although regarding them there is some information. There are cases of unjustified denial of information by the prosecution and police. Rules on conflict of interest and gifts are applied to prosecutors. Members of the police sector for fighting against organized crime are also required to declare their assets to the ACA. Legal possibilities for efficient prosecution of corruption exist, including the possibility of using special investigative techniques in certain cases, but such possibilities are insufficiently used.

LAW ENFORCEMENT			
Overall Pillar Score: 50			
	Indicator	Law	Practice
Capacity 50/100	Resources	/	50
	Independence	75	25
Governance 50/100	Transparency	50	25
	Accountability	75	25
	Integrity mechanisms	75	50
Role 50/100	Corruption prosecution	50	

Structure - The prosecution in Serbia is organized in such a way that a lower prosecutor is directly subordinate to a higher public prosecutor, and each attorney is subordinated to the Republic Public Prosecutor. Prosecutors have deputies and a deputy public prosecutor is obliged to perform all the acts entrusted by the public prosecutor. A deputy public prosecutor may, without specific authority, perform any action for which the prosecutor is authorized. There is a special entity within the prosecutorial system - Prosecution for Organized Crime, and acts of serious corruption also fall under its jurisdiction. The function in the Prosecutor's Office is performed by the public prosecutor and 14 deputy public prosecutors. The work organization foresees 25 deputies.

The Prosecutor for Organized Crime is elected by the Serbian Parliament for a term of six years, and deputies are chosen by Republic Prosecutors.

The Republic Public Prosecution has established an Anti-Corruption Department whose mandate is coordination of the work of all subordinate public prosecutors in processing these types of crimes. This department hires three deputy state prosecutors. All four Appellate Public Prosecutor's Offices in the Republic of Serbia have one deputy public prosecutor who is in charge of this particular type of crime.

The Special Prosecution for Organized Crime is responsible for criminal offenses against official duty when the defendant or the person who receives a bribe is an official or responsible person who holds an office by election, nomination or appointment by the Parliament, the Government, the High Judicial Council and State Prosecutor's Council. This includes, among other, MPs, ministers, directors of public companies and institutions in public health, education and culture institutions, judges and prosecutors.

In the Ministry of Internal Affairs, within the Criminal Police Department in charge of the fight against organized crime, there is a Department for fighting financial crime with a specialized department for fighting corruption. It employs 12 law enforcement officers. All police departments in the Republic of Serbia have a Department for fighting corruption.

The fight against corruption within the police authority is under the jurisdiction of the Internal Control Sector of the Ministry of Interior that is directly subordinate to the Minister (not to the Director of the Police). There are also separate departments for the control of the legality of the Police Department work, the Department for safety and legality in the Gendarmerie Command of the Police Department and for the control of the legality of the police headquarters in the city of Belgrade, and 27 regional police departments, all of them have people who are involved in the control of the legality of police work¹.

¹ Information Directory of Ministry of Interior, www.mup.gov.rs

ASSESSMENT

CAPACITY

Resources (Practice)

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Score: 50

Having in mind the extent of corruption, the existing capacities cannot be considered sufficient.

According to data from the beginning of 2011, the Ministry of Interior employs around 43,000 people², of which “about 25,000 are uniformed police officers”, but this number is less than the total demand. There is a deficit of about 14,000 people, and the biggest problem is the insufficient number of “uniformed officers”. Only in Belgrade they are short of about 2,000 people³.

During the first nine months of 2011, the police unions organized strikes on two occasions, demanding higher salaries, payment of special allowances in accordance with the union contract and better working conditions⁴.

The police departments in charge of fighting organized crime and corruption have particularly expressed dissatisfaction with wages⁵. In fact, everyone engaged in fighting organized crime who is employed in the prosecution, courts and prisons is entitled to salaries increased by 100 percent, while the employees in the Department for fighting organized crime (SBPOK) do not have this right⁶. Thus, special prosecutors have a salary of RSD 200,000 (USD 2.500), while the SBPOK Inspector has about RSD 60,000 (USD 750), which is not adequate to attract qualified and committed staff. For this reason, the employees of the Ministry of Interior engaged in these activities filed about 100 lawsuits for which the resolution is still in progress⁷.

The Serbian budget money intended for law enforcement is not presented separately for the criminal police and other departments. The police requested the budget for the criminal police to be separated, but these requests were not met⁸. In 2010, the budget for the Ministry of Interior amounted to 47.5 billion RSD and in 2011 it was 53.4 billion, which is an increase of 12.4 percent (bigger than the 10.9 percent increase of the total state budget in 2011, compared to 2010). The budget for prosecution was increased by 12.6 percent (from 2.4 to 2.9 billion RSD)⁹.

Besides that, Minister Ivica Dacic, who is also the Deputy Prime Minister, declared that he is not satisfied with the budget because “the police is constantly getting new duties, and has fewer resources.” He also complained about police equipment, stating that “cyber-crime cannot be fought with the computers from the past millennium” or that a “Mercedes”, going a hundred miles per hour, cannot be chased with an “old-timer”¹⁰.

2 The Information Directory on the work of MUP, www.mup.gov.rs

3 The statement of Minister Ivica Dacic, August 2010, <http://www.vesti.rs/Ivica-Da%C4%8Di%C4%87/Dacic-Nedostaje-veliki-broj-uniformisanih-policaajaca.html>

4 <http://www.npss.rs/> <http://www.novosti.rs/vesti/naslovna/teme/teme.97.html:tema-223-Strajk-policije>,

5 An interview with a police official who asked for his name not to be published, June 2011; and a representative of the Independent Police Union Blaza Markovic.

6 The Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other particularly serious crimes.

7 An interview with a police official who asked for his name not to be published, June 2011.

8 An interview with a police official who asked for his name not to be published, June 2011.

9 <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>

10 <http://www.naslovi.net/2009-12-04/empportal/dacic-nezadovoljan-budzetom-za-mup-za-2010/1438676>

The Ministry of Interior has not submitted any official data on police computer equipment, and this data and information on an integrated computer system for the investigation and criminal intelligence system is treated as an official secret and marked as strictly confidential¹¹.

The Serbian Ministry of Interior has the Department for Information Technology, which is composed of, among others, the Department of computing infrastructure. Police computer equipment varies; it is satisfactory on the national level (which refers to the units responsible for the fight against corruption - SBPOK), while the conditions are worse on the level of individual police departments and police stations¹². There are cases when written-off equipment from the services at the national level gets sent to the police throughout Serbia¹³.

Under the Criminal Police Department for the fight against organized crime, there is a department for combating financial crime, with a specialized department for combating corruption. In addition, the police officers in charge for economic crime in the Office of Crime Prevention of the Criminal Police headquarters in the Ministry of Interior are also engaged in the detection and repression of corruption. All police departments in the Republic of Serbia have the Department for Fighting Corruption¹⁴.

The central Department for Fighting Corruption is supposed to have 15 members but it has 12 people. The entire department, which includes the prevention of money laundering and prevention of counterfeiting money and securities, employs 30 people¹⁵. There is an operational network in local police departments with which SBPOK cooperates, but the problem is weaker equipment of these departments and the fact that these members of the police are paid less and therefore less motivated than their specialized colleagues from SBPOK. The specialized police unit most often closely works with the prosecution of organized crime. If it does not have jurisdiction, the case is forwarded to a higher or basic prosecution. These prosecutions have people that are strictly dedicated to dealing with cases of corruption, but as stated by the Ministry of Interior, the operatives know “all the experts in this matter within different prosecutor’s offices¹⁶.”

The Department for Prevention of Corruption in the Republic Prosecution is not operational and is responsible for statistics and analysis¹⁷. The prosecution believes that there are not enough prosecutors to deal with the existing caseload and that a number of additional prosecutors and administrative personnel will be required when the public prosecution undertakes investigative powers¹⁸ as provided with transitional provisions of Code of Criminal Procedure.

Technological infrastructure in the prosecutor’s office is adequate, although there is plenty of room for improvement. Even though most prosecutors have personal computers and use an automated case tracking system, some computers lack an Internet connection. In some offices there are no computers and cases are tracked manually in the absence of a networked and automated case tracking software¹⁹.

Independence (Law)

To what extent are law enforcement agencies independent by law?

Score: 75

Regulations guarantee independence in the work of investigative bodies’, and other bodies have no authorities to order the prosecutor not to initiate criminal proceedings for corruption in some cases. Criteria for the election and advancement of prosecutors exists, but are not completely objective.

11 Responses to EU questionnaire.

12 An interview with a police official who asked for his name not to be published, June 2011.

13 An interview with a police official who asked for his name not to be published, June 2011.

14 The Information Directory on the work of MUP, www.mup.gov.rs

15 An interview with a police official who asked for his name not to be published, June 2011

16 An interview with a police official who asked for his name not to be published, June 2011

17 <http://www.rjt.gov.rs/>

18 The survey was conducted among prosecutors for purposes of the report “Reform Index of the Prosecution in Serbia”,

ABA ROLI http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

19 The survey was conducted among prosecutors for purposes of the report “Reform Index of the Prosecution in Serbia”, ABA ROLI.

Under the Constitution of Serbia²⁰, the Public Prosecutor's Office is a "self-contained" but not "independent" state agency. The Public Prosecutor is proposed by the Government and, following the opinion of the competent committee of the Parliament, elected by the Parliament²¹. The Republic Public Prosecutor is elected for a term of six years and may be reappointed. The Republic Public Prosecutor's function is terminated if he is not re-elected, if he submits such a request, upon the occurrence of statutory requirements or upon dismissal for reasons determined by law²².

Decisions on the termination of the Republic Public Prosecutor function is reached by the Parliament and in accordance with the law, while the decision on the dismissal is reached upon the Government's proposal. This affects independence of the prosecution within limits prescribed by the Constitution and Law, claiming prosecution to be self-contained but not independent²³.

Prosecutors are also elected by the Parliament upon the proposal of the Government. The term of a public prosecutor lasts for six years and he may be reappointed. The mandate of the deputy public prosecutor elected for the first time lasts for three years. The State Prosecutor's Council elects deputy public prosecutors to permanently perform that function. The State Prosecutor's Council decides on the promotion of deputy prosecutors, or their possibility to be selected for the higher public prosecution²⁴.

The decision on the dismissal of the deputy public prosecutor is reached by the State Prosecutor's Council (SPC). The public prosecutor and deputy public prosecutor may appeal to the Constitutional Court against the decisions on termination.

The State Prosecutor's Council encompasses the Republic Public Prosecutor, the Minister of Justice and the President of the competent committee of the Parliament as members in the position and eight members elected by the Parliament in accordance with the law.²⁵

Any proposal or decision on the choice made by the State Prosecutor's Council has to be justified²⁶. One of the main criteria in conditions for the advancement of public prosecutors and their deputies is the evaluation of their work. A grade from the evaluation is entered in the personal list of the public prosecutor or deputy public prosecutor²⁷.

The Directorate of the Police is led by the Director of the Police who is appointed and dismissed by the Government at the proposal of the Minister, and is responsible to them for his work and the work of the Directorate. Organizational units at Headquarters and regional police departments are led by regional chiefs, and police stations are led by commanders²⁸.

The Police Act stipulates the appointment of directors by the government after the completion of the competition. The competition process is based on the Directive on the definition of the requirements for the selection of candidates for the Director of the Police. Internal appointments and promotions are made in accordance with the Police²⁹ and the Civil Service Act, which stipulate regular assessment of work. The performance of employees is evaluated by the heads of organizational units, and the work of the heads of organizational units is evaluated by the Director of the Police, an officer in charge of performing certain tasks and duties, or police officer authorized by them. Extraordinary promotion in the police is also possible³⁰. The employees whose work in the last two years was given the highest positive score, and who have spent in their rank at least half the time allocated for direct acquiring of higher positions, may gain a higher position prematurely.

20 Serbian Constitution, Article 156

21 The Constitution of Serbia, Article 159

22 The Constitution of Serbia, Article 161

23 The Constitution of Serbia, Article 158

24 The Law on Public Prosecution, Articles 74-75

25 The Law on State Prosecutors Council, articles 20-21.

26 The Law on Public Prosecution, Articles 78-83

27 The Law on Public Prosecution, Articles 99-102

28 Information Directory of Ministry of Interior, www.mup.gov.rs

29 The Law on Police, Articles 112, 116.

30 The Law on Police, Article 127.

In the Department for fighting organized crime all appointments are made with prior approval of the Prosecutor's Office for Organized Crime³¹.

The Law on Public Prosecution stipulates that the public prosecutors and deputy public prosecutors are independent in the exercise of their powers. It is prohibited to influence the work of the Public Prosecutor's Office and the cases by actions of executive and legislative branch members, by means of using public office and the media, or in any other manner that could undermine the autonomy of the work of public prosecutors³².

Superior public prosecutors may immediately issue to subordinate public prosecutors instructions to be followed in individual cases where there is doubt about the efficiency and legality of his conduct, and the republic public prosecutor may do it to each public prosecutor. Mandatory instructions are issued in writing and must include the reason and justification. A lower public prosecutor who believes that the mandatory instruction is unlawful and groundless may file a complaint with an explanation to the republic public prosecutor within eight days of receipt of the instructions³³.

The law forbids anyone outside of public prosecution to allocate tasks to the public prosecutor and deputy public prosecutor, or to influence the decisions in the cases³⁴. The public prosecutor and deputy public prosecutor justify their decisions only to the competent public prosecutor³⁵.

Prosecutors in Serbia are obliged to appeal against every acquittal, and in the event that the deputy prosecutor believes there is no place to appeal, he is obliged to make an official report with a detailed explanation of the decision taken with the consent of the public prosecutor³⁶.

Independence (Practice)

To what extent are law enforcement agencies independent in practice?

Score: 25

While by law, prosecutors have guaranteed autonomy, the ability of internal and external influences causes concern. It was reported that prosecutors are subject to mandatory instructions by superiors on any aspect related to the case, and it is suspected that there is influence from political authorities on high profile cases. Political authorities are seen as having too much influence on the selection process of prosecutors and members of State Prosecutor's Council (SPC), diminishing its role as an independent body that manages public prosecution³⁷.

Practice shows that procedures in corruption cases involving people close to the government are not being dealt with, although there is information indicating possible liability available³⁸. After five years, during the last 12 months, the proceedings for several cases reported in media were initiated and public pressure, after the media repeatedly rose questions and kept this topic high on the agenda, started influencing the work of law enforcement agencies³⁹.

31 Law on organization and Competence of State Organs in Combating Organised Crime, Corruption and Other Serious Crimes, article 10.

32 The Law on Public Prosecution, Article 5.

33 The Law on Public Prosecution, Article 18.

34 The Law on Public Prosecution, Article 45.

35 The Law on Public Prosecution, Article 45.

36 The binding instruction of the Public Prosecutor, May 2009.

37 The findings of the American Bar Association "Rule of Law Initiative" http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

38 Reports made by Anti-corruption Council, <http://www.antikorupcija-savet.gov.rs/>

39 <http://www.blic.rs/Vesti/Hronika/282390/Istraga-o-aferi-Kolubara-daje-rezultate>

The election of judges and prosecutors in 2009 was not transparent⁴⁰, so it was not certain in which way criteria was being implemented and what data was taken into consideration. This matter is still not entirely resolved. In this re-election process 837 judges and 220 prosecutors, whose functions were supposed to be permanent, were removed or have not been appointed, making their functions de facto ceased⁴¹. Decisions of the High Judicial Council and State Prosecutorial Council under which these positions were terminated did not contain a single explanation⁴². After the Constitutional Court started considering the appeals of the unelected prosecutors, changes in the law transferred all the appeals to the High Judicial Council and State Prosecutor's Council.

The analysis of the American Bar Association 'Rule of Law Initiative' found that the career progress of prosecutors in Serbia is not based on objective criteria defined in advance. One of the main reasons is that HJC in the first and second session did not act as an independent body, devoid of political influence⁴³.

A special form of pressure on the independence is the "acting state", which is maintained in the judiciary, but also in the police. The Police Director's term expired in June 2011, and the competition for the selection of a new director has not been announced yet, due to disagreements within the ruling coalition, that is, between the Democratic Party which appointed the Prime Minister and the Socialist Party of Serbia which appointed the Deputy Prime Minister and Minister of Interior, whose candidates will be elected as the Director⁴⁴. Therefore, the Government decided to keep the Police Director in office as the acting director, and this situation will last at least a year⁴⁵.

Some of the biggest cities in Serbia have not yet appointed a Chief of the Police (Nis, Novi Sad) because the Minister refuses to sign the decision on appointment proposed by the Director of the Police. The fact that the Minister cannot decide independently prevents direct political interference and progress of "political staff", but also maintains the acting condition that is not favorable for the fight against crime – having towns with no police chiefs⁴⁶.

There are assessments that the prosecution has a great number of professional and skilled staff, though, especially in smaller towns, incompetence presents a bigger problem than corruption⁴⁷. However, it is certain that one part of the top leaders were politically appointed⁴⁸. Investigations also have political interference. Police and prosecutors begin working on cases, but then they are stopped - they are not allowed to process politically sensitive examples⁴⁹. On the other side, some proceedings are initiated although it is certain that there was no crime⁵⁰.

One example of "delayed" reaction of law enforcement authorities is the case of embezzlement of the public company "Kolubara". In mid-2009, the media revealed a rumor that the engagement of the private owners' machines for a fee "inflated" prices and caused enormous damage to the budget⁵¹.

A month later, the Republic Prosecutor announced that he is familiar with the case, and that allegations have been under examination for quite some time⁵². Almost two years later, in January 2011,

40 EU report on Serbia, 2011.

41 <http://www.sudije.rs/sr/aktuelnosti>

42 European Association of Judges and Prosecutors for Democracy and Freedom (MEDEL): http://www.uts.org.rs/index.php?option=com_content&task=view&id=216&Itemid=65

43 Findings from the "Reform Index of the Prosecution in Serbia", ABA ROLI.

44 An interview with a senior police official.

45 http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=06&dd=16&nav_id=519417

46 An interview with a senior police official.

47 Interview with RPP deputy and UJT president Goran Ilic.

48 Interview with RPP deputy and UJT president Goran Ilic.

49 The estimation of lawyer Boza Prelevic, former judge and minister of the police, interview.

50 As an example of such procedure, Boza Prelevic cites the case of mayor of Zrenjanin Goran Knezevic.

51 <http://www.novosti.rs/vesti/naslovna/aktuelno.239.html:246832-Ukrali-celu-elektranu>

52 http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=08&dd=19&nav_id=377082

a Belgrade TV station published a series of abuses⁵³ and after the broadcast of the TV show the former Director of “Kolubara” was arrested. The indictment has not been raised till September 2011.

The fact that the prosecutors avoid to investigate people connected with the parties in power is not necessarily the direct result of political pressure, but also “self-censorship” that has developed over the years of political pressure⁵⁴. The re-election in 2009 sent a message that prosecutor’s careers are politically based, and this is the reason that often deters prosecutors and deputies from prosecution of people with political protection⁵⁵. Both politicians and the public are aware of this, and when politicians want to emphasize that they are really determined to fight corruption they usually send a political message that “no one, regardless of party affiliation, will be protected.”⁵⁶

It is disturbing that the prosecutors have more responsibility according to the new Law on Criminal Procedure⁵⁷, even though the prosecutorial structure remains rigidly hierarchical. In recent years, such a high level of uncertainty among professional prosecutors was felt, particularly because of the process of re-election and the review on the re-election decision, that there is a perception that prosecutors make decisions in a position where they fear internal and external consequences⁵⁸. It is noted that a situation possibly exists in which the public prosecutor may be influenced by their own perception of what they are expected to do by individuals who possess political power, and particularly by media reports. It should be clear that a large number of media is controlled by political parties. Prosecutors, even those at the lowest level, often have to seek guidance from senior prosecutors in the hierarchy of any criminal matter that is at least indirectly related to corruption⁵⁹. Even though only written instructions are allowed, verbal instructions are more the rule than the exception, which in some ways creates parallel lines of formal and informal communication in regard to the great number of important decisions made by prosecutors.⁶⁰

During investigations the police is trying to avoid manipulation and intervention in cases by involving the prosecutor and investigating judges in early pre-trial proceedings⁶¹. This diminishes the possibility of interference in police work because prosecutors seek a quarterly report of what was done in the case, and the investigation can be politically stopped only with immediate pressure on both the police and the prosecution.

The perception that the police, in connection with the prosecution, is trying to escape from the influence of politics, is confirmed by RPP deputy for the purpose of this analysis who says that, despite all the problems with political pressures on the prosecution, major problems are present in the police. All criminal charges received by the police are processed by the prosecution, but there are no criminal charges against people tied to the government, which would mean that police is more under political pressure than prosecution⁶².

Despite the widespread belief about the political pressure on the judiciary, prosecution and police, there was no investigation of these pressures. What happened was the opposite - everyone who had a connection with certain court cases was not elected in the re-election and all those who worked on cases in which government representatives had special interest, and might have interfered in the work of the judiciary and law enforcement, have progressed⁶³.

53 http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=01&dd=31&nav_category=11&nav_id=489337

54 Interview with RPP deputy and UJT president Goran Ilic.

55 Interview with RPP deputy and UJT president Goran Ilic.

56 <http://www.naslovi.net/tema/186255>

57 New ZKP anticipates the introduction of “prosecutorial investigation.”

58 Findings from the Reform Index of Serbian prosecution. http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

59 Findings from the Reform Index of Serbian prosecution. http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

60 Findings from the Reform Index of Serbian prosecution. http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

61 Interview with an official of the Department for Fighting Organized Crime.

62 Interview with RPP deputy and UJT president Goran Ilic.

63 Interview with RPP deputy and UJT president Goran Ilic who pointed out the cases “Jataci” and “Milan Obradovic”, <http://www.rts.rs/page/stories/sr/story/135/Hronika/382621/Reizbor+odlo%C5%BEio+su%C4%91enje+jatacima.html>

GOVERNANCE

Transparency (Law)

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

Score: 50

The law requires assets of all prosecutors and deputy prosecutors as well as police officials in the Department for fighting against organized crime to be disclosed regularly.

The police and prosecution are subjected to the Law on Free Access to Information. Regulations on information that the police and prosecution should publish their work, even when there are no requests, are not sufficiently precise. A lot of information is marked as confidential by internal acts, which is an exception to the rule that everything may be publically available. The Law allows such exceptions, but does not treat them as absolute ones; the rejection still has to be justified. Secrecy provisions are often used and abused. The law stipulates that the work of the public prosecutor and deputy public prosecutor is transparent, unless otherwise provided by law – in the cases prescribed by the Law on Criminal Procedure, Law on Civil Procedure and Law on Administrative Procedure⁶⁴.

The Law on the Police stipulates that the police is obliged to objectively inform the public of its activities, without revealing confidential information⁶⁵. In relations with the media, the police complies with the law and according to professional guidelines instructed by the Minister⁶⁶. The police directly informs individuals and legal entities on matters within its jurisdiction whose resolution is within their interest⁶⁷.

The Ministry of Interior has a Public Relations Bureau through which it issues press releases and manages the contacts of police officials and the media⁶⁸. Members of the police are not allowed to make statements to the media if the media has not obtained approval through the Bureau. Police administrations have spokespersons that publish press releases and establish the contacts of media and local police officials⁶⁹.

The flow of information within the Ministry of Interior is organized in such a way that they are submitted to the Bureau with an indication of whether there is consent of the prosecution and the investigating judge for disclosure of certain information⁷⁰.

The prosecution communicates with the public only through the spokesperson of the Republic Public Prosecutor's Office. The prosecution has an obligation to inform the injured party if an application gets rejected or discontinued, so that the damaged party could take the role of a subsidiary prosecutor. Until the decision on rejection, there are no special rules that would allow the damaged party insight into the case⁷¹.

64 The Law on Public Prosecution, Article 48.

65 The Law on Police, Article 5.

66 The Law on Police, Article 5.

67 The Law on Police, Article 5.

68 Information Directory, www.mup.gov.rs

69 Interview with an official of the Department for Fighting Organized Crime.

70 Interview with an official of the Department for Fighting Organized Crime.

71 Interview with RPP deputy and UJT president Goran Ilic.

Transparency (Practice)

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

Score: 25

Assets of prosecutors and deputy prosecutors as well as police officials in the Department for fighting against organized crime are disclosed in practice and part of the information on the assets are public on the ACA web site⁷². There are cases of unjustified denying of information by the prosecution and police, even after the decision of the Commissioner for Information⁷³.

In 2010, the Commissioner completed 1,466 appeals, and of 610 complaints submitted to the work of government bodies, most of them were the police – 162. A large number of complaints against this Ministry are, at least to some extent, explicable by the fact that a very large or perhaps the largest number of requests for information was requested from this Ministry. In two cases the police did not act according to the decision of the Commissioner passed in 2010⁷⁴.

There is strong tension and a high level of frustration between the media and the public prosecutor's office. The prosecution is quite closed and hierarchical, since there is only one spokesperson for the entire public prosecution, located at RPP in Belgrade, and one spokesman for the prosecution of war crimes. In order for prosecutors to have any contact with the media, they either have to obtain approval from the spokesperson, or to authorize him to deal with this issue⁷⁵. There is an impression that the public prosecutor lacks a proactive approach to expedite the delivery of information to the media, even in cases where there is a great public interest. This lack of proactivity in combination with a strict hierarchy eventually prevents citizens to have accurate and timely information⁷⁶.

Some of the standards were established by the decision of the Commissioner that prosecutors are obliged to give the applicants both the internal regulations and decisions, and if they contain confidential or operational data without evidence, that data should be removed from the document. There is also the view that the prosecution must provide the justifications of decisions to dismiss criminal charges or to abandon the prosecution⁷⁷. This is generally respected in practice, but not at all times⁷⁸.

The web-site of the Republic Public Prosecutor contains statistics and data ending with 2007, and the Information Directory has not been updated for 14 months⁷⁹.

Police reports on arrests through press releases, and statistical information about the activities of the Ministry of Interior. However, the police does not inform citizens about the handling of complaints. Strategic Intelligence Analysis on corruption stated the data based on the survey of 2,224 citizens that a large percentage of those who experienced the corruption in the police and reported it never found out what happened after their complaint was filed⁸⁰.

The problem is that the vast majority of people who made reports do not know whether any actions were taken or claim that nothing happened (37.5 and 47.5 percent) and the Department concludes that there is little insight into the actions of the police⁸¹.

72 http://www.acas.rs/sr_cir/registri.html

73 The report on the work of Commissioner for Public Information in 2010.

<http://www.poverenik.rs/sr/o-nama/godisnji-izvestaji/1018-izvestaj-poverenika-za-2010-godinu.html>

74 The report on the work of Commissioner for Public Information in 2010,

<http://www.poverenik.rs/sr/o-nama/godisnji-izvestaji/1018-izvestaj-poverenika-za-2010-godinu.html>

75 Findings from the report "Reform Index of the Prosecution in Serbia", ABA ROLI.

76 Findings from the report "Reform Index of the Prosecution in Serbia", ABA ROLI.

77 Cites of RPP deputy Goran Ilic, interview.

78 Reserach done for purposes of NIS.

79 www.rjt.gov.rs

80 Strategic Intelligence Analysis on the corruption, Ministry of Interior Internal Affairs

81 Strategic Intelligence Analysis on the corruption, Ministry of Interior Internal Affairs

The same questionnaire was administered to 10,128 police officers and 13.5 percent of the respondents knew that some of their colleagues had received a bribe. Out of 1,367 of them who had that knowledge, 77 percent did not take any actions, 11.7 percent reported it to their officer, 3.9 percent to the criminal police, and 7.5 percent spoke to the colleague who accepted the bribe about that⁸².

Accountability (Law)

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be accountable for their actions?

Score: 75

Prosecutors have the obligation to elaborate their decisions on whether they will initiate prosecution. There is a legal mechanism for complaints about police work. Although there is a sector of internal control in the police, the immunity of prosecutors exists and elaborations of prosecutors' decisions are not always available.

The public prosecutor and deputy public prosecutor are independent of the executive and legislative branches in exercising their functions. The Law stipulates that the public prosecutor and deputy public prosecutor are obliged to maintain confidence in the independence of their work⁸³. No one outside of the public prosecution has the right to allocate tasks to the public prosecutor and deputy public prosecutor, or to influence the decisions in the cases⁸⁴. Public prosecutors and deputy public prosecutors are required to explain their decisions only to the public prosecutor in charge⁸⁵.

The damaged party or the victims may, in the event that police and prosecutors will not prosecute their applications, assume the prosecution themselves⁸⁶.

In fact, when the public prosecutor finds no grounds to initiate prosecution for an ex officio offense or when he finds that there are no grounds to prosecute any of the reported accomplices, he shall notify the damaged party within eight days and direct him to independently undertake prosecution. The claimant is entitled to initiate or continue a prosecution within eight days of receipt of this notice⁸⁷.

Currently, the constitutional and legal framework in Serbia does not regulate the protection of victims (injured parties), nor does it provide required information for the victim (injured party) in connection with the case, unless the case is dismissed⁸⁸. There is no function or unit for central coordination of the victims in the public prosecutor's office, with the exception of special offices for prosecution of organized crime and war crimes. Even then, these services are available only for the duration of the trial⁸⁹. Also, victims are not granted legal aid to help them claim their rights under or in parallel with criminal proceedings⁹⁰.

Corruption cases in which the suspects are prosecutors and deputy prosecutors are conducted by the Prosecution of Organized Crime and the Police Service for the fight against organized

82 Strategic Intelligence Analysis on the corruption, Ministry of Interior Internal Affairs

83 The Law on Public Prosecution, Article 45.

84 The Law on Public Prosecution, Article 45.

85 The Law on Public Prosecution, Article 45.

86 The Law on Criminal Procedure, article 52.

87 Criminal Procedure Code, Articles 61 and 62.

88 The Constitution of Serbia, The Law on Criminal Procedure, Findings from the Reform Index of Serbian prosecution http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

89 Findings from the report "Reform Index of the Prosecution in Serbia", ABA ROLI. http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

90 Findings from the Reform Index of Serbian prosecution http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

crime⁹¹. Cases where suspects are members of the police, are handled by the Police Department of Criminal Investigation, which is subordinated to the Director of Police. At the same time, the internal control of the Police Department is conducted by the Sector of internal controls, directly responsible to the Minister⁹².

The Division for Internal Affairs acts on the proposals, complaints and petitions of individuals and legal entities, on written addresses to the police and on its own initiative, or on the basis of the collected data and other information⁹³. The Chief of the Division for Internal Affairs notifies the Minister of all cases of taking police action or omission that is considered to be against the law, and promptly takes the necessary actions⁹⁴.

Everyone has the right to file a complaint with the Ministry against police officers in case the police officer violated his rights or freedoms by an unlawful or improper action⁹⁵.

Besides the Internal Affairs Division, whose jurisdiction and powers are prescribed by the Law on the Police⁹⁶, the control of police work is also under the jurisdiction of the Department for the control of legality of police operation (within the Police Directorate), Department for safety and legality of the Gendarmerie Command (within Police Directorate) and the Department for the control of legality of police operation (Police Directorate of the City of Belgrade).

Prosecutors have functional immunity for actions taken in the line of official duty and can be arrested for an offense committed while performing official duties only with the approval of the Parliament or its committee.⁹⁷

Public prosecutors and deputy public prosecutors also cannot be held responsible for the opinions expressed in the exercise of the prosecutor's office, unless it is a criminal violation of law by the public prosecutor or deputy public prosecutor⁹⁸. In the police no one has immunity from prosecution or arrest⁹⁹.

A public prosecutor and deputy public prosecutor may be removed when legally convicted of a crime with a penalty of imprisonment of not less than six months, or for an offense that makes him/her unworthy of public prosecutor's function, when the function is done unprofessionally or for committing a serious disciplinary offense¹⁰⁰.

The Code of Police Ethics states that the lawful external control of the police, exercised by the legislative, executive and judicial organs, provides accountability of the police to the state, citizens and their representatives.¹⁰¹

As for the filing of complaints against the prosecution, that matter is defined by the Regulations on Administration of the Public Prosecutor's Office, claiming that anyone who files a petition or complaints against a public prosecutor's office is to be notified about the decision in his case.

The public prosecutor is obliged to notify the complaint about the measures taken within 30 days of receipt of the complaint or petition. Petitions or complaints may be submitted directly to the superior prosecutor, or by the SPC, the Ministry of Justice, RPP, or other superior public prosecution¹⁰².

91 The Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other particularly serious crimes.

92 The Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other particularly serious crimes.

93 The Law on the Police, Article 180.

94 The Law on the Police, Article 180.

95 The Law on the Police, Article 180.

96 Articles 171-179.

97 Serbian Constitution, Article 162.

98 The Law on Public Prosecution, article 51.

99 The Law on Police.

100 The Law on Public Prosecution, article 92.

101 The Code of Police Ethics, Article 44.

102 Regulations on Administration of the Public Prosecutor's Office, article 73.

Accountability (Practice)

To what extent do law enforcement agencies have to report and be accountable for their actions in practice?

Score: 25

The Public Prosecution Office does not publish reports on the execution of priorities concerning the work of the prosecution or the individual or periodic reports, but only an annual report. However, there are rare prosecution web-sites that publish the reports. There is no regular practice of publishing the reasons behind the prosecution's decisions, especially in cases of rejection of complaints or deviations from prosecution¹⁰³.

Decisions of rejection or withdrawal of prosecution may be disputed through the complaints. However, in practice, they rarely or never lead to a decision change¹⁰⁴. Due to the hierarchical structure of the prosecution, it is unlikely that a manager or a supervisor who is responsible for the person who made the decision point out the shortcomings and thereby admit that was not supervising the subordinate¹⁰⁵.

Even more disturbing is the fact that the public prosecution in many cases does not respond to requests for information from affected parties regarding possible prosecution¹⁰⁶. Although there is no strict deadline for the public prosecutor to decide on prosecution (excluding obsolete cases), the Law on Criminal Procedure states that the public prosecutor shall reject the application if the application indicates that a reported act is not a criminal act or that is not prosecuted *ex officio*¹⁰⁷. The public prosecutor shall notify the victim within eight days about the rejection of the application and the reasons for it. Victims and their families have a bigger problem to obtain information from the public prosecutor's office when the case is still being considered (whether charges will be filed or not), than when the prosecution has already started. The case of the RTS bombing in 1999 is an extreme example of this, as the families of those who died have yet to receive a final decision regarding the investigation that has been conducted since then¹⁰⁸.

There is no centralized coordination unit within the Public Prosecutor's Office for victim assistance, except for special jurisdiction in the prosecution of organized crime and war crimes, and the services of this department are only available during criminal proceedings. Finally, victims are not provided with legal assistance to help them in the processing of requests within or parallel to criminal proceedings¹⁰⁹.

During 2010 and the first nine months of 2011 citizens have filed the total of 173 complaints to the Sector for internal control of the police and regional police departments which pointed to the problem of corruption in the police force. Out of this number, 76 reports were anonymous, indicating a lack of trust in the authorities that deal with fighting corruption in the police force¹¹⁰.

Criminal charges against police officers were filed after 13 petitions submitted by citizens and the Department of internal control believes it is just the tip of the iceberg and that the gray figure of corruption in the police is much higher¹¹¹. The study¹¹² recommended that the Department of

103 Reserach done by TS, prosecution web sites.

104 RPP Deputy and APPS President Goran Ilic.

105 RPP Deputy and APPS President Goran Ilic.

106 Reserach done by TS.

107 Law on Crminal Procedure, article 284.

108 Findings from the Reform Index of Serbian prosecution http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

109 Findings from the Reform Index of Serbian prosecution. http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

110 Data from the "Strategic Intelligence Assessment of Corruption" MUP Internal Control Sector.

111 "Strategic Intelligence Assessment of Corruption" MUP Internal Control Sector..

112 "Strategic Intelligence Assessment of Corruption" MUP Internal Control Sector.

internal control becomes a national center responsible for the fight against corruption in the police. This body would determine priorities in investigations and coordinate all anti-corruption and counter-corruption activities within the Interior Ministry. It was also recommended to establish an independent supervisory body that would protect the public interest and ensure fairness, professionalism and accountability in all matters related to corruption¹¹³.

The manner in which investigations are carried out in the fight against corruption within the Ministry of Interior is not coordinated¹¹⁴. The Ministry has a great number of departments and units involved or responsible for investigating corruption and it has a range of disciplinary and misdemeanor investigations and activities. Everything is done without prior notification of the Internal Control.¹¹⁵

The Internal Control is usually hierarchically subordinate to the Minister's office, including the independence from the Director of the Police, but excludes the possibility of taking measures against the employees in the office, and this raises the question of accountability of employees in the Minister's office. The Serbian Police Union argues that the Department is unable to achieve serious results because the staff in the Department is compromised, incompetent and appointed through nepotism and has no credibility, while their work results before moving to the Department are controversial¹¹⁶.

Integrity mechanisms (Law)

To what extent is the integrity of law enforcement agencies ensured by law?

Score: 75

The Police Code of Ethics was adopted by the Serbian Government in 2006. The Law on Police stipulates¹¹⁷ that behavior contrary to the Code of Ethics, which damages the reputation of the service or distorts relationships among employees, is a serious violation of official duties which may lead to disciplinary measures of wage reductions, lower hierarchical job transfer for a certain period, or conditional or unconditional cessation of employment.

The Code required all officers to oppose any act of corruption, not to illegally obtain any benefit for themselves or others, not to accept gifts, and not to engage in any activity which is incompatible with official duty and that could affect the work and undermine the reputation of the police and state¹¹⁸. Police members are also obliged to follow the provisions on the conflict of interest stipulated by Law on Civil Servants. They are not (with the exception of the Minister, State Secretary and the Director of Police) covered by the obligations of the Law on the Anti-Corruption Agency pertaining to conflict of interest, gifts and post - employment restrictions, as well as the report of assets. The obligation of reporting property also applies to the members of the Department for fighting organized crime of the Serbian Interior Ministry¹¹⁹.

The provisions of the ACA Law and the obligation of reporting assets and liabilities is applied to all prosecutors and deputy prosecutors¹²⁰.

Actually, mechanisms that are to provide integrity of prosecutors exist in the Constitution, Law on Public Prosecution, Law on the Anti-Corruption Agency, as well as in procedural law – the Code on Criminal Procedure¹²¹.

113 "Strategic Intelligence Assessment of Corruption" MUP Internal Control Sector.

114 "Strategic Intelligence Assessment of Corruption" MUP Internal Control Sector.

115 "Strategic Intelligence Assessment of Corruption" MUP Internal Control Sector.

116 The report of Police union "Experienced opinion on corruption in the Ministry of Interior of Serbian Government".

117 The Law on the Police, Article 12.

118 The Code of Police Ethics, Article 19.

119 The Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other particularly serious crimes.

120 The Law on ACA, articles 2 and 45-47.

121 Serbian Constitution, Article 163, The Law on ACA, articles 28-47, Law on Public Prosecution, articles 65-66, Code on Criminal Procedure, articles 37-42.

The Constitution prohibits political activities of public prosecutors and deputy public prosecutors. The law regulates what other functions, activities or private interests are incompatible with the prosecutorial function¹²².

Deputy public prosecutors are required to notify the public prosecutor of another function, business, or private interests that have the potential to be incompatible with his function, as well as of all business or private interests of members of their immediate families that have the potential to be incompatible with his function. In the case of such a function or private business interests, the public prosecutor immediately notifies the senior public prosecutor, and Republic Public Prosecutor notifies the State Prosecutor's Council¹²³.

The Law on Public Prosecution stipulates that the public prosecutor and deputy public prosecutor may not hold the function within law-making bodies and executive bodies, public services, provincial or local governments, or be members of a political party engaged in public or private work to provide legal services or give legal advice for compensation¹²⁴.

The Law on the Anti-Corruption Agency stipulates that an official can perform only one public function, and exceptionally also other public functions, with consent of the Agency¹²⁵. The Agency will not give consent for performing other functions if it is in conflict with public function that officials already perform or if existence of conflict of interest is determined¹²⁶. All officials, including prosecutors and their deputies, are obligated to report to the Anti-Corruption Agency all mobile and immobile property they have¹²⁷. The Agency publishes part of this data on its web-site¹²⁸, and is mandated to check the accuracy of the delivered information¹²⁹.

The Law prescribes that officials cannot accept gifts related to the function they perform, except from proper or protocol ones, and that they must report all accepted gifts to the body they work in. Services and travel are also considered as gifts¹³⁰. The copy of the record of gifts for the previous year is delivered to the Agency by March 1st and the Agency publishes it on its web-site by June 1st¹³¹. The Law contains a two year restriction after the termination of the mandate during which officials cannot work in the domain related to the function they perform without the Agency's consent¹³². Concealing information about the property is treated as a criminal offense that carries a prison sentence of six months to five years¹³³.

Since the provisions of ACA Law do not apply to the police, there are no post-employment restrictions. The police has no mechanism for internal reporting of assets of their members.

The adoption of the Code of Ethics is the obligation stipulated by the Public Prosecutor's Office: "In exercising their functions, a public prosecutor and deputy public prosecutor shall act in accordance with the Code of Ethics, adopted by the State Prosecutor's Council."¹³⁴ The draft version of the Prosecutors' Code of Ethics is prepared by SPC. Violation of the Code of Ethics would constitute a disciplinary misdemeanor.

The Draft Code provides that the public prosecutor and deputy public prosecutors' conduct must not compromise the integrity, fairness and impartiality of the Public Prosecution through their ac-

122 Serbian Constitution, Article 163.
123 The Law on Public Prosecution, Article 66.
124 The Law on Public Prosecution, Article 65
125 The Law on Anti-Corruption Agency, Article 27-31
126 The Law on Anti-Corruption Agency, Article 27-31
127 The Law on Anti-Corruption Agency, Article 43-47
128 http://acas.rs/sr_cir/aktuelnosti/199.html
129 The Law on Anti-Corruption Agency, Article 48-49
130 The Law on Anti-Corruption Agency, Article 39-42
131 The Law on Anti-Corruption Agency, Article 39-41
132 The Law on Anti-Corruption Agency, Article 38
133 The Law on Anti-Corruption Agency, Article 72
134 The Law on Public Prosecution, Article 47

tions and behavior in private life, that during and after the performance of their functions public prosecutors and deputy public prosecutors shall not use in any manner the information obtained during the performance of prosecutorial functions for personal gain for themselves or for others and that the public prosecutor and deputy public prosecutor shall not accept any gift, reward, favor, hospitality, preferential treatment by others or conduct any business that is contrary to law or by-laws, or could jeopardize his integrity, fairness and impartiality¹³⁵.

Integrity mechanisms (Practice)

To what extent is the integrity of members of law enforcement agencies ensured in practice?

Score: 50

Existing codes of conduct, conflict of interest policies and integrity bodies are partly effective in ensuring ethical behavior by law enforcement officials.

The preparation of the Code of Ethics for prosecutors is in progress, but until it is approved by the SPC, the ethical standards for prosecutors are inadequate. They consist of general and vague rules within a number of different laws and regulations. Education and training on ethics lacks at the academic and professional level¹³⁶. The prosecution does not have organized training programs on ethics rules, but these programs are organized by professional associations - the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia¹³⁷.

Prosecutors are rarely subjected to criminal proceedings for their failures¹³⁸.

The Police Code of Ethics is studied at the Center for basic police training, but in practice the police knows little about its provisions¹³⁹. In reality, there are no recorded cases of someone being punished for violating the Code. The system of determining unethical behavior functions poorly because shortcomings in police work are in charge of several bodies and departments for which the headquarters are the Department of Homeland Control¹⁴⁰. This Department is directly subordinate to the Minister instead of the Parliamentary Committee on security (this was the case until 2002), which threatened its independence¹⁴¹.

Members of the police involved in SBPOK in the fight against corruption, went through training programs on ethics, while other levels have no such trainings¹⁴². The Department of Homeland Control has recommended the introduction of ethics training for all officers of the Ministry¹⁴³. A small fraction of police members ever attended any seminar on corruption - in a survey of the Sector for Internal Control in the first half of 2011, the question of attending a lecture or a seminar on corruption in the last two years was negatively answered by 78.7 percent, and positively by 8.7 percent of police officers.

Although prosecutors have not received any general training on conflict of interest, it seems that they are aware of the issue and the importance of preserving the integrity of the profession. Respondents in the survey for analysis "Index Reform of the Serbian Prosecution" agreed unanimously that prosecutors take action to avoid a conflict of interest, since it can be the basis for rejecting the

135 The draft version of Prosecutors' Code of Ethics, www.dvt.jt.rs

136 The estimation from the Reform Index of Serbian prosecution

137 Interview with RPP Deputy and APPS President Goran Ilic

138 The Research "Reform Index of Serbian Prosecution"

139 The estimation of the representative of the Independent Police Union Blaza Markovic

140 The estimation of former minister of Interior Affairs Boza Prelevic, interview

141 The estimation of former minister of Interior Affairs Boza Prelevic, interview

142 The representative of the Independent Police Union Blaza Markovic and an SBPOK official, interviews

143 "Strategic intelligence assessments of corruption" Internal Control Sector of the MUP

case¹⁴⁴. A conflict of interest is not reported as a problem, partly because many prosecutors were appointed to the functions outside of their housing areas, so as to minimize the possibility to receive cases involving individuals or organizations with which they have had previous contact¹⁴⁵.

144 Findings from the report "Reform Index of the Prosecution in Serbia", ABA ROLI http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html

145 The research conducted among prosecutors and deputies for the purpose of analysis the "Reform Index of prosecution in Serbia"

ROLE

Corruption prosecution (law and practice)

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

Score: 50

Legal possibilities for efficient prosecution of corruption exist, including the possibility of using special investigative techniques in certain cases, but such possibilities are insufficiently used. For example, for two years there has been a possibility of using special investigative techniques by the Prosecution for Organized Crime in all cases of suspected corruption by high officials, but so far there were no examples of conducting such investigations.

The amendments to the Law on Criminal Procedure in 2009 enabled the application of special techniques and measures for corruption offenses which are not defined as organized crime¹⁴⁶. Measures from the Law on Criminal Procedure could increase the efficiency of the prosecutor's work, and therefore prosecution of corruption, but these measures also entail danger from corruption (e.g. plea bargaining)¹⁴⁷.

The number of discovered corruption cases is increasing nearly 20 percent each year¹⁴⁸, but this still doesn't represent more than 1% of petty corruption cases that occur every year, having in mind research of citizens' experience with corruption¹⁴⁹.

As for the statistics, it is clear that only a small fraction of crimes related to corruption is processed through the actions of specialized police units and prosecutors. In 2010, the Prosecutor's Office for Organized Crime has submitted the requests for investigation of 195 persons, 232 of which was reported, and in this period the indictment was raised against 94 people. These statistics, however, involve corruption and organized crime, so the most common offense was the abuse of office (66 submitted requests for investigation), the illicit production and trafficking of drugs (38 submitted requests for investigation) and acts of fraud (36 required investigations)¹⁵⁰.

According to police records in 2010, 3,858 criminal acts with elements of corruption were revealed, and a total of 3,814 persons were reported. Only a small fraction was prosecuted by the Prosecutor's Office for Organized Crime, a majority by the "regular" Prosecution¹⁵¹ offices. The Public Prosecutor or Department for fighting against corruption in RPP has the most comprehensive data on the processing of offenses in connection with corruption.

Apart from conducting the statistics on crimes related to corruption, the Department for Fighting Corruption in RPP acts as a body for internal control of the work in cases of corruption offenses¹⁵². Lower public prosecutors are required to inform the Department of the Republic Public Prosecutor's Office on all its decisions in the cases of corruption, which in the case of dismissal of criminal charges or a waiver of prosecution, must be made in the choral part of the mandatory participation of the public prosecutor, as well as to provide RPP with a copy of the first instance judgment and plaintiffs' appeal, if filed, and the appellate decision¹⁵³.

146 The Law on Criminal Procedure, articles 161-187

147 <http://www.pressonline.rs/info/politika/158003/ko-krade-ne-ide-u-zatvor-nagodba-za-odabrane.html>

148 <http://www.prva.rs/sr/vesti/drustvo/story/15233/De%C5%BEer%3A+nedovoljni+rezultati+u+borbi+protiv+korupcije.html>

149 Global Corruption Barometer, UNDP research

150 Results of the Ministry of Interior in 2010, data from Prosecutor's Office for Organized Crime

151 Results of the Ministry of Interior in 2010

152 Interview with RPP Deputy and APPS President Goran Ilic.

153 Interview with RPP Deputy and APPS President Goran Ilic.

LAW ENFORCEMENT

Key findings and recommendations

The police, as part of the **law enforcement** pillar, has a separate department for fighting against corruption, but it does not have enough staff, given the extent of corruption. During the prosecution of corruption in sensitive cases there is a strong indication that the police is subject to political influence. An internal control system does exist, but with a number of shortcomings. The prosecution, just like the judiciary, has gone through re-election, which has affected its independence and further enhanced “self-censorship” in its work.

1. Increase the number of prosecutors and police officers who investigate cases of corruption in order to conduct proactive investigations on the basis of identified patterns of corrupt behavior, which can be assumed or for which there are indications that occur elsewhere;
2. To resolve all disputed cases of election of prosecutors in 2009; the transparent procedure and the rationale for decisions should be available;
3. Provide access to information about work of public prosecutors and police in accordance with the Law on Free Access to Information, and to provide for certain information without request on the prosecution’s and police web-sites;
4. On web-sites of the police and prosecution authorities and in their premises, to post a clear explanation for persons that want to report corruption – what one needs to do, what to expect in further proceedings, when they can receive further notice of the proceedings and so on;
5. Commit the police and prosecutors to act on anonymous complaints if they are accompanied with the sufficient evidence;
6. Publish a regular overview of statistical information the prosecution and the police on the number of filed criminal complaints and indictments for criminal acts with elements of corruption;
7. Organize statistical evidence about criminal acts of corruption so that an area where there has been corruption (e.g. health, procurement, judiciary) could be identified;
8. Organize a targeted examination of possible corruption by the internal controls in connection with transactions that are most at risk of corruption;
9. Ensure the publication of decisions of public prosecutors on waiver of prosecution;
10. Provide a separate control for the concluded plea bargaining agreements;
11. Based on experience in the implementation of the confiscation of assets and the provisions of Article 20 of the UN Convention Against Corruption, to examine options for the introduction of the “illicit enrichment” criminal offence into the legal system;
12. Consider measures that would best serve the increasing number of reported crimes of corruption (e.g., release of liability of participants in the illicit transaction, awards for whistleblowers etc.).



ELECTORAL MANAGEMENT BODY

NATIONAL INTEGRITY SYSTEM

Summary: The Republic Electoral Commission (REC) is neither an independent state body, nor a working body of the Parliament, but something in between. REC is in charge of conducting elections. Its members are lawyers elected on the proposal of political parties' parliamentary groups. Inter-party control and the achieved level of democratic political culture ensure the fair conduct of elections, but the modality of functioning of REC does not allow any further progress in the organization of the election process. Work of REC is transparent, although that body does not have the obligation to submit reports. It does not have its own budget, staff nor premises, but uses the capacities of the Parliament instead. There are neither special mechanisms nor regulations that should protect the integrity of the REC. Members of the REC are not individually accountable for their work because REC is a collective body.

ELECTORAL MANAGEMENT BODY			
Overall Pillar Score: 48			
	Indicator	Law	Practice
Capacity 50/100	Resources	/	100
	Independence	25	25
Governance 50/100	Transparency	50	100
	Accountability	50	50
	Integrity	25	25
Role 38/100	Campaign regulation	0	
	Election Administration	75	

Structure – The REC is a body tightly linked to the Parliament, consisting of 17 representatives of political parties (a president and 16 members) and two expert members, without voting rights – a Secretary of REC and a representative of the Statistical Office. In the process of calling for elections, REC acts in its extended structure - one representative of each election list enters REC at that moment, or one representative of each proposer of a presidential candidate. REC doesn't have its own professional services nor employees, but employees from the professional services of the Parliament work for REC when needed¹. REC has jurisdictions only in the direct conduct of the election process, but not in the area of running party registers, voters' registers or party financing, which are under the jurisdiction of the Ministry for Public Administration and the Anti-corruption Agency.

The Law on the Election of Deputies stipulates the existence of a Supervisory Board, a body that should monitor the work of parties and media during election campaigns and warns on the violation of regulations and ethical norms². That body has not been elected since December 2000.³

1 Law on Election of Deputies, article 8

2 Law on Election of Deputies, articles 99-100

3 <http://www.politika.rs/rubrike/Politika/l-ovi-izbori-bez-nadzornog-odbora.lt.html>

ASSESSMENT

CAPACITY

Resources (Practice)

To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

Score: 100

REC has satisfying resources available for regular work and conducting elections⁴ although it doesn't have employees, premises nor their own property of any other kind. However, it has sufficient facilities to conduct its work.⁵ The budget for regular work of REC is part of the parliamentary budget, while for special elections the Government disburses money from the budget reserve, and for conducting regular elections there is a special item in the budget of Serbia, available for REC needs⁶. REC uses the premises of the Parliament. Members of REC must be bachelors of law⁷. They are appointed for the period of four years. Neither political party nor coalition can have more than half of the members in the permanent structure of REC⁸.

REC has in its structure, but without voting rights, a secretary, civil servants from the Parliament's service (most often the parliamentary secretary) and a representative of the Statistical Office of Serbia. All members, except for the representative of the Statistical Office, have their deputies⁹. For the needs of REC, employees of the professional service of the Parliament are engaged. In the non-election period it is about ten employees, while during the elections around 150 employees are engaged¹⁰. REC has enough human resources and operational structures (administrative, financial and technical) to manage the electoral process¹¹. These are persons experienced in their jobs¹², that perform their activities professionally. Members of REC do not need to have any experience or previous knowledge of election procedures and regulations, but most members have plenty of experience, since there are no limitations in the number of mandates. The staff has regular trainings on election-related matters, organized either by the Government's HR Management Service or NGOs. The Law doesn't prescribe any provisions that discriminate, nor provisions that favor certain groups – gender or minority groups.

Assets for regular work are provided by the budget of Serbia in the lines of the budget of the Parliament of Serbia, assets for organizing special elections are provided by the Government from the budget reserve, while assets for organizing regular elections are a special line in the budget for election years. In 2009, RSD 23 million (USD 300.000) was planned and approved for the regular

4 Based on interviews with president of the REC Predrag Grgić, secretary of REC Veljko Odalović and representatives of non governmental organizations specialized for monitoring of elections and election activities „Centar za slobodne izbore i demokratiju“ Marko Blagojević and Đorđe Vuković, February 2011.

5 Joint estimation from separate interviews with president of the REC Predrag Gagić, and secretary of REC Veljko Odalović, February 2011.

6 Law on Election of Deputies, articles 33-35

7 Law on Election of Deputies, article 33

8 Law on Election of Deputies, article 29

9 Law on Election of Deputies, article 33

10 Interview with secretary of REC Veljko Odalović that is at the same time secretary of the National Assembly, February 2011

11 Joint estimation from separate interviews with president of the REC Predrag Grgić, and secretary of REC Veljko Odalović, February 2011.

12 Joint estimation from separate interviews with president of the REC Predrag Grgić, secretary of REC Veljko Odalović and representatives of non governmental organization specialized for monitoring of elections and election activities „Centar za slobodne izbore i demokratiju“ Marko Blagojević and Đorđe Vuković, February 2011

work and RSD 19.7 million (USD 250.000) for elections in several municipalities in Kosovo, for which REC is in charge. REC spent a total of RSD 34.5 million (USD 430.000)¹³. The budget is regularly received in a timely manner and it is sufficient for REC to perform its duties¹⁴.

REC submits requests to the Government for awarding the assets for organizing elections, with specifications of total expenses¹⁵.

Stenographic notes and minutes on the work are prepared at REC sessions. Minutes contain the main data from the session, especially on the proposals that were discussed, with the names of the participants in the discussion, on decisions, conclusions and other acts that were adopted at the session, as well as on the result of voting regarding certain issues. REC keeps election acts and reports on election results with the election material and handles those materials, in accordance with the law¹⁶.

Independence (Law)

To what extent is the electoral management body independent by law?

Score: 25

REC is, by Law, independent in its work. It means that REC decides on its own, without interfering from any other authority¹⁷, although its members are chosen by the Parliament upon the proposal of, or as representatives of political parties. The Law prescribes that all state and other bodies and organizations are obligated to provide assistance to REC and to deliver data necessary for its work¹⁸.

REC is in charge of conducting elections, protection of electoral rights and confirming of MP mandates. It independently adopts its Rules on Procedure. The Constitution of Serbia doesn't contain provisions that refer to REC or the body for conducting of elections, which means that REC can be dismissed through the amendment of the Law on the Election of Deputies.

Legal framework enables impartial and transparent functioning of REC¹⁹. On the other hand, the structure of REC reflects the structure of the Parliament and has no legal obstacles for that body to exclusively implement the parties' political will. Out of 19 members of REC, 17 (president and 16 members) with voting right are chosen as representatives of parliamentary groups. Since REC doesn't have its own administration, but uses the services of the Parliament, it is impossible to talk about the division between part of REC that creates policy, or manages that body and the administration. Due to the same reason, criteria and the method of recruitment of employees is out of question, since REC has none. This, however, does not influence its independence in practice. Members of REC are not fully employed there and they may perform other duties. REC members and their deputies (elected in a similar way) receive "compensation" for their engagement (app. USD 350 per month)²⁰. Dismissal of members of REC is exclusively a matter of the will of parliamentary parties²¹.

13 . <http://REC.parlament.gov.rs/cirilica/propisi/REC-INFORMATOR.doc> page 57

14 Joint estimation from separate interviews with president of the REC Predrag Grgić, and secretary of REC Veljko Odalović, February 2011.

15 http://rik.parlament.gov.rs/cirilica/sednice_frames.htm

16 Interview with secretary of REC Veljko Odalović, February 2011, Rules on procedure, http://rik.parlament.gov.rs/cirilica/propisi_frames.htm

17 Law on Election of Deputies, article 28 and 33

18 Law on Election of Deputies, article 28

19 Law on election of Deputies, article 33

20 Interview with secretary of REC Veljko Odalovic, February 2011

21 Law on election of Deputies, articles 33-34

Independence (Practice)

To what extent does the electoral management body function independently in practice?

Score: 25

REC adopted several times in the past politically motivated decisions with doubtful legal grounds²², that reflected the majority of the political will in the Parliament. In 2003 REC passed a decision by which the census is calculated on the basis of the number of voters that voted and not on the basis of valid ballots²³; in 2007 REC refused to give consent to the embassies of USA and Great Britain for monitoring elections, although deciding on that wasn't under its jurisdiction at all²⁴. The same year REC decided not to repeat elections in 14 polling stations where irregularities were discovered, "because they cannot affect the result of parliamentary elections"²⁵; in 2008 REC ruled voting to be repeated in one out of 8.500 polling stations, although that couldn't change the result of elections for the President of Serbia²⁶.

These are, according to the estimation of experts from CESID Marko Blagojevic and Djordje Vukovic²⁷, some of the characteristic examples of direct influence of parties to REC. Because of the modality of elections and the work of this body – being the Parliament's working group rather than an independent body - representatives of CESID consider that there can be no question on independency, impartiality and responsibility of REC. It lacks substantial features of independent electoral bodies working in other countries, or independent authorities in Serbia, such as ACA or SAI. The only positive factor in the current model is the mutual control of parties – all parties have representatives in REC and they control each other to a certain extent²⁸.

The President of REC claims, however, that this body in its current mandate, since 2009, operates in a professional and impartial way²⁹ and that 98 percent of the decisions are adopted unanimously after several hours' of consultations, regardless of party affiliation of the members of REC. It is important to mention, however, that since REC is operating in a new session there were no national elections held to check this claim in practice.

REC was elected in November 2007. In January 2009 part of the members were changed, after the division in one party and change of ratio of representation of parliamentary parties³⁰. New changes occurred in July 2009 when the president, five members and seven deputies resigned because they were in conflict of interest and because the media published that they received extremely high compensations for their work in REC³¹.

22 Estimation of representative of CESID, interview, February 2011

23 http://www.b92.net/info/vesti/index.php?yyyy=2003&mm=12&dd=03&nav_category=11&nav_id=126379

24 <http://www.politika.rs/vesti/najnovije-vesti/VRHOVNI-SUD-PONISTIO-RESENJE-REC-A-O-AMBASADAMA-SAD-I-BRI-TANIJE-i11044.it.html>

25 http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=01&dd=24&nav_category=418&nav_id=228956

26 <http://www.blic.rs/Vesti/Tema-Dana/29880/Julovac-odlaze-zakletvu-Tadica->

27 Interview with representatives of CESID, February 2011

28 Interview with representatives of CESID, February 2011

29 President of REC Predrag Grgić, interview, February 2011

30 http://rik.parlament.gov.rs/cirilica/sednice_frames.htm <http://www.parlament.gov.rs/akti/ostala-akta/doneta-akta/doneta-akta.1039.html>

31 http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=07&dd=08&nav_category=11&nav_id=370070

GOVERNANCE

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

Score: 50

Regulations ensure transparency of the work of REC in regards to the organization and conduct of elections. There are no obligations regarding financial reporting nor for reporting about activities outside of election periods. The Law on Free Access to Information of Public Importance³² stipulates obligations of creating an Information Directory where state bodies are obligated, among other things, to publish data on their budget.

The Law on the Election of Deputies stipulates that the work of bodies for organizing elections is public³³, while the Rules on Procedure of REC³⁴ prescribe that REC provides transparency of its work with the presence of accredited journalists, by issuing press releases and organizing press conferences.

Upon the call for elections, REC adopts Guidelines for Conducting Elections, forms, rules and deadlines for conducting election activities and publishes them in the Official Gazette³⁵. REC publishes in the Official Gazette election lists, or lists of candidates in elections, lists of polling stations, with addresses, the total number of voters, as well as the results of the elections, or the report on the final results of the elections³⁶.

By October 1st 2009 political parties delivered to REC reports on election campaign expenses, but this responsibility has since been transferred to the newly established Anti-corruption Agency³⁷. REC did not have the duty to publish received party reports on its web-site.

Transparency (Practice)

To what extent are reports and decisions of the electoral management body made public in practice?

Score: 100

Decisions and reports of the REC are fully publically available, in accordance with regulations. REC publishes in the Official Gazette all its decisions and reports regarding the organization and conduct of elections and distribution of mandates. That information is published in regular press conferences in the time of elections, and is available on the web-site of REC³⁸.

Sessions of REC are open to the public. They can be attended by journalists accredited in the press service. During the elections, activities of REC can be monitored only by accredited domestic or

32 FOI, article 39

33 Law on Election of Deputies, article 32

34 Rules on Procedure of REC, article 16

35 Law on Election of Deputies, article 34

36 Law on Election of Deputies, article 85

37 Law on changes of Law on Financing Political Parties

38 http://www.REC.parlament.gov.rs/cirilica/propisi_frames.htm

foreign monitors. The web-site of REC has data on the structure of REC, regulations for the work of REC, and press releases from the sessions³⁹.

The Information Directory of REC contains data on the sessions and a number of adopted decisions, by categories – reports, guidelines, decisions, rules and explanations. Detailed data on some of those decisions cannot be found in the Information Directory or in press releases. Since REC doesn't have the obligation to draft annual reports on its work, this data can be obtained through a request for free access to information of public importance only⁴⁰. In 2009 REC received 16 requests, 8 were completely or partially adopted, one was rejected and seven were unresolved because of "difficulties in functioning by the beginning of 2009 after the president, five members and seven members' deputies resigned". In 2010 REC received three requests, and answered all three, while there was only one in 2011⁴¹.

REC doesn't have the obligation to submit a financial report, since its budget is part of the Parliament's budget. Data on income and outcomes, for regular work and for conducting elections, as well as the financial plan for REC needs can, however, be found in the Information Directory of REC⁴².

REC doesn't have a special call-center for providing information, but during the election representatives of REC organize their work 24 hours a day in the premises of REC, i.e. in the premises of the Parliament used by REC⁴³.

Accountability (Law)

To what extent are there provisions in place to ensure that the EMB has to report and be accountable for its actions?

Score: 50

REC is obligated to submit reports on election activities, but it is not accountable for its decisions. Decisions could however be disputed before a court. REC is not obligated to report on its activities outside of the election period or to submit financial reports. A financial audit of REC could be conducted by the State Audit Institution as part of the financial audit of the Parliament's report only.

REC publishes in the Official Gazette reports on conducted elections. Those reports contain data on the total number of voters, the turnout, the number of voters that voted outside polling stations, the number of invalid and the number of valid ballots, as well as the number of votes won by each individual party or presidential candidate⁴⁴.

REC is in charge for objections against decisions, activities or omissions of electoral committees. Objections should be submitted within a 24 hour deadline. REC adopts decisions within a 48 hour deadline and delivers it to the submitter of the objection and to all the proposers of the election lists. If REC adopts an objection, it will annul the decision or the activity of a lower level electoral body (i.e. municipal electoral committee). If REC doesn't adopt decisions in the anticipated deadline, it is considered that the objection has been adopted. Against every decision of REC an appeal can be submitted to the court, which is obligated to adopt decisions within a 48 hour deadline⁴⁵.

39 Rules on Procedure of REC, article 16 and 27-30, <http://www.rik.parlament.gov.rs/>

40 Research done by TS

41 Directory on work of REC.

42 http://www.rik.parlament.gov.rs/cirilica/propisi_frames.htm

43 Interview with Zlata Đorđević, editor in Beta News Agency, april 2011

44 Law on Election of Deputies, articles 85-86

45 Law on Election of Deputies, articles 95-97

Decisions adopted in the process of appeal are in force. Neither a request for “emergency re-assessing of court decisions”, nor a request for repeating the process, envisaged by the Law on Administrative Procedures can be submitted⁴⁶. If the court adopts the appeal or annuls an election activity or elections, it will be repeated within ten days.⁴⁷

Accountability (Practice)

To what extent does the EMB have to report and be accountable for its actions in practice?

Score: 50

REC regularly publishes reports on activities regarding the organization and conduct of elections in the Official Gazette and on their web-site. REC sessions are open for the media and there are regular press conferences⁴⁸. Members of REC independently determine the compensation for their work, as well as the compensation for engaging professional services of the Parliament. They decide themselves on the compensations for members of electoral committees. So far, the matter of high compensations for members of REC was initiated once, but REC itself determined that there was no violation of the regulations by members of REC. However, the president, five members and seven deputy members of REC resigned, after their parties asked them to resign⁴⁹. The new session of REC adopted a new decision on compensations that is available to the public in the Information Directory of REC⁵⁰.

Reports on conducted elections and assets spent for organizing elections are of appropriate quality and scope and provide an insight into implemented activities of REC and to election activities and results of the elections. Members of REC are not responsible for individual decisions they made. REC decisions can be disputed before the court, which happened in practice⁵¹. Only once, after the elections in 2000, when the regime of Slobodan Milošević was replaced, the process of determining criminal liability of members of the election commission for their decisions was initiated, but that court procedure was never finalized⁵². In terms of possible criminal liability of REC members, whether for illegal actions or omissions, there is one problem of practical nature that is applicable for all collective bodies in Serbia – responsibility for actions is depersonalized, it lays on the body and not the member⁵³. The Prosecutor would therefore have to provide evidence not only about the abuse of power of one member, but also on the abuse of power of others that were accomplices⁵⁴.

According to the law, and in practice, each voter, candidate or proposer of an election list has the right to submit an objection to REC because of a violation of the election right during the elections or irregularities in the process of proposing or elections. Deadlines are respected in practice - REC effectively decides on objections, and the court effectively decides on complaints⁵⁵.

46 Law on Election of Deputies, articles 95-97

47 Law on Election of Deputies, articles 95-97

48 Interview with Zlata Đorđević, editor in Beta News Agency, april 2011, Rules on Procedure of REC, article 16 and 27-30

49 http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=02&dd=09&nav_id=344104

http://www.b92.net/info/vesti/index.php?yyyy=2009&mm=03&dd=04&nav_id=348121

50 <http://www.REC.parlament.gov.rs/cirilica/propisi/REC-INFORMATOR.doc> page 73

51 http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=01&dd=20&nav_category=418&nav_id=281303

http://vesti.krstarica.com/?rubRECa=aktuelno&naslov=Vrhovni+sud+Srbije+ponistio+resenje+REC-a&lang=0&dan=1&mesec=2&go_dina=2007&sifra=24c815bb060e38e92fbde64d7ff503c2

52 http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=12&nav_category=16&nav_id=135044

53 Based on discussion with Appellate court judge, Miodrag Majic, February 2011.

54 Based on discussion with Appellate court judge, M. Majic, February 2011.

55 Law on Election of Deputies, article 95

Integrity (Law)

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

Score: 25

There are neither special mechanisms nor regulations that should protect the integrity of REC. The Law on the Election of Deputies⁵⁶ stipulates only that members and deputy members of the body for conducting elections⁵⁷ cannot be persons that are related or married. If that rule was violated, the body would be dismissed and voting would be repeated.

There is no special Ethical Code that would refer to REC and that would comprehend specifics of the work in the election processes. For employees of the Parliament that are hired as professionals for the purposes of REC, the Code of Conduct of Civil Servants is valid. The Code stipulates that work of civil servants must be such to contribute to increase public trust in the integrity of state bodies, to abide the law, to work impartially, politically neutral, protect public interest and to take care of conflict of interest. The Code also prohibits accepting gifts⁵⁸.

The president and members of REC belong to the category of “public officials”, in accordance with the Anti-corruption Agency Law⁵⁹. Therefore, the rules on conflict of interest and proceeding with gifts of that law refer to them⁶⁰, as well as the obligation of reporting the property and income⁶¹. According to provisions of the Law, members of the REC are obligated to create and maintain citizens’ trust in a conscious and responsible performance of their public function, to avoid creating a relation of dependency with persons that could influence their impartiality in performing this public function and must not use this public function for obtaining any benefit for themselves or related persons⁶². They are obligated to notify the Agency on unhallowed influence they were exposed to⁶³. The Anti-corruption Agency Law also forbids public officials to accept gifts related to performing public functions, except for protocol or appropriate gifts that have to be listed. Limitations on initiating business cooperation after the expiring of the function are stipulated (obligation of the officials to ask for Agency’s consent)⁶⁴.

Regulations envisage that the Supervisory Board should be authorized for the integrity of the election process, besides the REC. The Supervisory Board should take into consideration the political parties’ procedures, candidates and media during election activities. It should have ten members out of which 5 are appointed by the Parliament, based on a proposal of the Government of Serbia, and 5 based on the proposal of parliamentary groups among “prominent public figures”, that are not members of bodies of political parties participating in the elections⁶⁵.

56 Law on Election of Deputies , article 30

57 Organs for conducting of elections are Republic Election Commission, Provincial, city and municipality election commissions and electoral committees at voting locations

58 Code of Conduct of State Servants, articles 3-9

59 ACA Law, article 2

60 ACA LAW, articles 27, 37-41

61 ACA LAW, articles 39-42

62 ACA Law, article 27

63 ACA Law, article 37

64 ACA Law, article 38-39

65 Law on Election of Deputies, article 99,100

Integrity (Practice)

To what extent is the integrity of the electoral management body ensured in practice?

Score: 25

The only protection of integrity of the REC in its activities regarding election processes is the inter-party control conducted by other members of REC. Members of REC are representatives of all parties from the Parliament and they control each other to a certain extent.

Members of REC submitted reports on their property and income, in accordance with the Anti-corruption Agency Law and part of this data is available on the web-site of the Agency⁶⁶. Members of REC don't have any formal or practical obligations regarding impartiality, transparency, efficiency, besides the legal obligations on public disclosing of decisions (which is respected⁶⁷) and respecting legally prescribed deadlines (which is also respected⁶⁸).

Even when an external body identifies misconduct in the work of REC (e.g. decision of REC annulled by the Administrative Court), there is no practice to discuss this issue and to look for possible personal liability.

The Supervisory Board that should protect the integrity of the election process and oversee the proceedings of political parties, candidates and media during election activities has not been elected since December 2000. The opposition claimed that the ruling parties simply never wanted to elect members of the Supervisory Board which could point to unjustified treatment of candidates in the media⁶⁹. Representatives of REC publicly invited⁷⁰ the Government and Parliament in 2007 and 2008 to propose, or elect a Supervisory Board, but that wasn't done.

66 http://acas.rs/sr_cir/aktuelnosti/114.html

67 http://www.rik.parlament.gov.rs/cirilica/sednice_frames.htm

68 http://www.rik.parlament.gov.rs/cirilica/sednice_frames.htm

69 <http://www.snagasrbije.com/predsednicki-izbori-opet-bez-nadzornog-odbora/>

70 http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=04&dd=17&nav_id=294446

<http://www.blic.rs/Vesti/Politika/23463/REC-formira-nadzorni-odbor-za-predizborne-aktivnosti>

ROLE

Campaign regulation (law and practice)

Does the electoral management body effectively regulate candidate and political party finance?

Score: 0

REC is authorized only for the technical organizing of voting, application of candidates and determining of results of the elections, as well as financing the organizing of voting, but not for financing and control of financing of election campaigns⁷¹.

By October 1st 2009 parties delivered to REC reports on collected and spent assets in election campaigns. That jurisdiction has been transferred to the Anti-corruption Agency⁷².

During 5 years of the jurisdiction of REC, none of the parties was punished for failure to deliver the report, for late submission or for irregularities in the report. REC, which is made of representatives of political parties from the Parliament, engaged in that period employees from the Parliamentary service to control the reports. After the elections in 2008, REC for five months refused to publish reports on the campaign although they should be made public in accordance with the Law, justifying it with the fact that control of the reports is still in progress. After the 2004 and 2007 elections irregularities in the reports were uncovered, even through a rather basic control of parties' financial reports, but no sanctioning procedure was initiated. REC claimed that it has no legal powers to file a complaint against a political party⁷³. This competence is now given to ACA⁷⁴. At the same time REC refused the initiative of Transparency Serbia to change its Rules on Procedure of REC and to precisely define the method of control of the reports and initiating misdemeanor procedures⁷⁵.

Election Administration (law and practice)

Does the EMB effectively oversee and administer free and fair elections and ensure the integrity of the electoral process?

Score: 75

REC effectively organizes and supervises elections⁷⁶ and provides integrity of the process, provides public trust in stated election results. According to the estimation of CESID experts Marko Blagojevic and Djodje Vukovic⁷⁷, elections are "legal and legitimate", but credits for that go to the fact that society reached since 2000 a higher "level of political culture". A modality of REC activities, although it doesn't allow progress of the election process as it would with an independent authority in charge of organizing elections, still secure an honest election process because of inter-party balance and control⁷⁸.

71 More detail in chapters 10.2.3. and 10.2.4.

72 Law on changes of Law of financing political parties, articles 1-7

73 Ministry of Finance took a stand on 28 April 2006 that REC is authorized to submit complaint http://www.transparentnost.org.rs/aktivnosti/monitoring_fh/1505-s06-dopis.html

74 the Law on ACA, article 5

75 http://www.transparentnost.org.rs/aktivnosti/monitoring_fh/2112-s06.html http://www.danas.rs/danasrs/hronika/neoportun_efikasan_revizor_i_prekrasjni_postupci.3.html?news_id=80392&action=print

76 Mission of ODIHR stated after final elections in 2008 that they were free, fair and democratic, in accordance with standards of CoE and OSCE http://www.danas.rs/danasrs/hronika/izbori_bili_fer_i_demokratski.3.html?news_id=90951

77 Interview with representatives of CESID, February 2011

78 Interview with representatives of CESID, February 2011

Parties, however, through REC protect both parties' and public interests. There is no progress on the matter of media campaign, media reporting during the campaign, education of candidates, media and voters, as well as in the methods of voting (like electronic voting)⁷⁹.

REC doesn't influence the enlisting of voters into voters' lists, since it is done automatically, according to data from the parish register⁸⁰. Voters have the possibility to check in the municipality administrations whether they are listed and to ask to be enrolled. During the call for elections, municipality administrations are obligated to inform the citizens whether they are enrolled in voters' lists⁸¹. REC is authorized for changes in the voters' list after the list is finalized, from 15 days before the elections till 48 hours before the election, when changes are made only on the basis of a decision of the court⁸². Cases where voters were unable to vote due to a mistake in voters' list or because of technical problems at the polling station are individual and very rare⁸³.

Programs of voters' education, as well as candidates' education or education of the media, do not exist. REC publishes the final number of voters 48 hours before the elections⁸⁴. In the Official Gazette REC publishes, 20 days before the elections, the number and addresses of all polling stations⁸⁵. The Law stipulates that municipality administrations should deliver to all voters, at the least 5 days before the elections, a notification on the elections that has the address of the polling station. Electoral Committees are obligated to enable persons that cannot reach polling stations to vote by sending representatives of the Committee to that person.⁸⁶

REC provides the printing of ballots and candidate lists in multilingual areas, in several languages⁸⁷. Parliamentary elections in 2008 had ballots only in Serbian, and combinations with one to four languages⁸⁸. Ballots are printed on paper protected with a water stamp, REC supervises the printing and representatives of candidates and election list proposers have the right be present during the printing, counting and packing of ballots and their delivering to REC. The complete process of distribution of election material is secured from abuse⁸⁹.

REC is able to quickly and efficiently collect election results and to publish results of the elections⁹⁰. The Law⁹¹ stipulates that electoral committees are obligated to deliver to REC in an 18 hour deadline from the closing of polling stations minutes and election material, while REC is obligated to determine the number of votes for all election lists within a 96 hour deadline from the closing of the polling stations. In the meantime REC publishes preliminary data on election results. In practice, members of REC, the representative of Statistical Office releases the first data on the results of the elections 3 to 4 hours after the closing of polling stations and during the election night REC regularly publishes results as they are being processed⁹².

All stages of the election process, from the printing of the voting material, voting, counting of votes and collecting results can be monitored by representatives of the parties that are directly involved in electoral committees, REC and observers. The Law enables the presence of observers through a provision that stipulates that the work of bodies conducting elections is public and that observers are obligated to proceed in accordance with the rules prescribed by the REC⁹³.

79 Interview with representatives of CESID, February 2011
 80 Law on Election of Deputies, article 14
 81 Law on Election of Deputies, article 19
 82 Law on Election of Deputies, article 20-22
 83 Interview with representatives of CESID, February 2011
 84 Law on Election of Deputies, article 20-22
 85 Law on Election of Deputies, article 34
 86 Law on Election of Deputies, article 54
 87 Law on Election of Deputies, article 60
 88 http://www.rik.parlament.gov.rs/cirilica/sednice_frames.htm
 89 Joint estimation of REC representatives and CESID, separate interviews, February 2011
 90 Joint estimation of REC representatives and CESID, separate interviews, February 2011
 91 Law on Election of Deputies, article 77, 78
 92 Interview with Zlata Đorđević, editor in Beta News Agency, april 2011
 93 Law on Election of Deputies, article 32

REC defines this matter more precisely with the Guidelines for the implementation of the Law on the Election of Deputies⁹⁴. The last guidelines from March 2008 determined that REC "can issue" authorizations to domestic organizations registered for monitoring elections or foreign observers – "representatives of foreign countries, international organizations and nongovernmental organizations, that wish to monitor the work of the bodies conducting elections". In the elections in May 2008 authorization was issued to ten organizations and wasn't issued to one, publicly unknown, organization that wasn't registered for monitoring elections⁹⁵. According to the Guidelines that were in force until March 2008 REC "issued authorizations" and wasn't able to refuse foreign observers that obtained consent from the Government of Serbia⁹⁶. In spite of this REC refused to give consent to representatives of embassies of the USA and Great Britain. However, the Supreme Court annulled the decision and issued consent. It was merely a political decision at the time, related to the independence of Kosovo, not to the elections in Serbia⁹⁷.

94 <http://www.elitsoft.co.rs/Protxt/T17796.html>

95 http://REC.parlament.gov.rs/cirilica/Sed_arhiva/sednice1-53.htm

96 <http://www.elitsoft.co.rs/Protxt/T17796.html>

97 http://REC.parlament.gov.rs/cirilica/Sed_arhiva/sednice54-140.htm

<http://www.naslovi.net/2008-01-16/b92/vss-ponistio-odluku-REC-a/546703>

ELECTORAL MANAGEMENT BODY

Key findings and recommendations

The electoral management body is not an independent body, but a body that consists of parties' representatives. Despite that fact and due to inter-party control, this body ensures the maintenance of fair elections. The electoral management body's work is mostly transparent.

1. Adopting the Law on the State Election Commission, as it was already envisaged by strategic documents;
2. Provide a special budget line for financing REC, for greater transparency of its spending and efficient control;
3. Clearly define the legal status of REC (Parliament body or independent state body);
4. Introduce the practice of REC to submit work reports and for the Parliament to review these reports.



OMBUDSMAN

NATIONAL INTEGRITY SYSTEM

Summary: The Ombudsman acts independently from the executive authority. One threat to its independence was the provision in the Rules of Procedure of the Parliament which envisaged the possibility of dismissing the Ombudsman if the Parliament simply considers its annual report “unsatisfactory”. One of the largest obstacles in its work is the lack of appropriate permanent premises. Communication with the Government of Serbia, the body in charge of implementing many of the Ombudsman’s recommendations, was improved in 2010, but the results are yet to be seen. The Ombudsman’s work is transparent and the results are visible, although they are confidential where necessary to protect citizens whose rights are endangered. Investigations of the Ombudsman are comprehensive, although there are objections because of the lack of appropriate staffing in the professional service, certain areas are neglected.

OMBUDSMAN			
Overall Pillar Score: 75			
	Indicator	Law	Practice
Capacity 67/100	Resources	/	50
	Independence	75	75
Governance 83/100	Transparency	100	100
	Accountability	75	75
	Integrity mechanisms	75	75
Role 63/100	Investigation	75	
	Promoting good practice	50	

Structure – The Ombudsman was established according to the Law on the Ombudsman from 2005. The Constitution recognized it in 2006, as an independent state body¹. The Ombudsman is elected for a five year mandate, by the Parliament, with a qualified majority², after the nomination by the Parliamentary Committee for Constitutional Affairs. However, candidates are nominated by the parties, i.e. by their MP groups. The Ombudsman can be dismissed, within conditions prescribed by the Law³, by a majority of deputies. The Ombudsman answers to the Parliament for its work. The Ombudsman’s budget proposal (financial plan) is delivered to the Ministry of Finance and constitutes part of the budget of the Republic of Serbia that is adopted by the Parliament upon the proposal of the Government⁴.

The Ombudsman is authorized to monitor the respect of civil rights, determine violations of regulations in the implementation of official duties or failure to conduct official duties by authority bodies. It is authorized to control the legality and regularity of the work of administration bodies. The Ombudsman is not authorized to control the work of the Parliament, the President of the Republic, Government, Constitutional Court, Courts and Public Prosecutors⁵. The Ombudsman may directly propose amendments to the laws from its competency and may submit an initiative for changes of other laws, by-laws and general acts to the Government or Parliament⁶. It is authorized to initiate procedures before the Constitutional Court for the evaluation of the constitutionality and legality of laws, regulations and of general acts⁷. The Ombudsman has four deputies that are in charge of children’s rights, national minority rights, gender equality and rights of disabled persons⁸ and for the protection of rights of prisoners.

Besides the national Ombudsman, in January 2004 a provincial Ombudsman of the province of Vojvodina was established and there are 14 local ombudspersons in Serbia⁹.

1 Constitution of Serbia, article 138

2 By majority of overall number of MP’s.

3 “If one practices his function unprofessionally and dishonestly, if one performs other functions that can influence independency or if one is charged with a criminal act which makes him unworthy of the position.”

4 Law on Ombudsman, article 37

5 Constitution of the Republic of Serbia, article 138. Law on Ombudsman, article 1-2 and 17

6 Law on Ombudsman, article 18

7 Law on Ombudsman, article 19

8 Deputy of Ombudsman in charge of gender equality and rights of disabled persons submitted his resignation in December 2010

9 Belgrade, Subotica, Bečej, Zrenjanin, Kragujevac, Šabac, Niš, Bačka Topola, Kraljevo, Smederevska Palanka and Belgrade Municipalitys - Grocka, Voždovac, Vračar i Rakovica

ASSESSMENT

CAPACITY

Resources (Practice)

To what extent does an ombudsman have adequate resources to achieve its goals in practice?

Score: 50

The Ombudsman does not have sufficient resources, the most pressing issues being the lack of appropriate premises. The Ombudsman's budget, on the other hand, is satisfactory. Since the establishment of the institution and election of the first ombudsperson (in 2007), the Ombudsman works in temporary premises. Permanent premises were awarded to the Ombudsman in 2007¹⁰ - office space where the institution never moved into. The premises were already occupied by the Supreme Court and from the beginning of 2010 by the High Judicial Council, so the Government finally annulled the decision on awarding premises to the Ombudsman¹¹. From 2007 to May 2010 the institution was settled in two premises, physically separated (about a 1 km away), which complicated work and internal communication of employees. This space was "not nearly enough for accommodating employees and for receiving citizens".¹² In May 2010 the Ombudsman moved to the new temporary premises, shared with the Commissioner for Information of Public Importance and Protection of Personal Data. According to the Ombudsman's statements, the lack of appropriate premises represents the most significant limitation in the Ombudsman's work¹³.

This was the primary reason why, in 2009, a large number of employees left the service of the Ombudsman¹⁴. The Rulebook on the internal regulation and organization of positions in the professional service of the Ombudsman foresees a total of 63 employees. During 2009, 26 persons were recruited, 8 left, so that on 31st December 2009 there was a total of 57 employees.¹⁵ Problems with staff leaving continued in 2010. On 31st December 2010 there was a total of 58 employees. This is not enough for fully effective work of the Ombudsman.¹⁶ "Staff drain" represents 18 percent on the annual level. Employees leave the service also due to "the imbalance of obligations and rights accomplished on the basis of work". They can often move to better paid and less responsible working positions elsewhere in the public administration or in the private sector¹⁷.

The Ombudsman's budget satisfies the basic needs to conduct anticipated activities. Planning is restrictive and still relies on significant assistance from international and foreign partners. According to the Law¹⁸, the Ombudsman creates a budget proposal for the following year and delivers it to the Government to be included in the budget proposal of the Republic. The Budget for 2010 was RSD 125.678.000 RSD (USD 1.5 million), and for 2011, it is RSD 149.000.000 RSD (USD 1.8 million).

The Ombudsman's service is almost completely electronically equipped and the working process has been digitalized. That was, according to statements of the Ombudsman, accomplished through

10 Decision of the Commission for distribution of official buildings and office space of the Government of Serbia from 16 November 2007

11 Ombudsman claimed that that decision of the Government is illegal http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=04&dd=16&nav_id=424814

12 Regular annual report of ombudsman for 2009

13 Regular annual report of Ombudsman for 2009

14 Regular annual report of Ombudsman 2009

15 Regular annual report of Ombudsman 2009

16 Regular annual report of Ombudsman 2010, Interview with Ombudsman Sasa Jankovic, December 2010.

17 Data and evaluation received from Ombudsman in the Interview, December 2010.

18 Law on Ombudsman, article 37, Official Gazzete 79/2005 and 54/2007

”economic disposing with the budget, appropriate cooperation with the Administration for Joint Services of the Republic Bodies”¹⁹ and “significant donations of international and foreign partners”. The staff of the Ombudsman is considered to have appropriate skills, knowledge and experience²⁰. They are chosen by their expertise and their post-graduate education through trainings in areas related to the Ombudsman’s work. International cooperation and financial assets from donor sources are used for further education of staff as well.²¹ Representatives of the non-governmental sector that monitor activities of the Ombudsman consider that the Ombudsman’s services still don’t have enough experts for all areas needed, such as labor law. They also claim that the lack of human resources can be an obstacle for the work of this institution²².

Independence (Law)

To what extent is the ombudsman independent by law?

Score: 75

According to the Constitution of Serbia, the Ombudsman is an independent state body that protects civil rights and controls the work of state administration bodies and of other bodies and organizations, enterprises and institutions with public competencies²³. The Ombudsman is not authorized to control the work of the Parliament, the President of the Republic, Government, Constitutional Court, courts and public prosecutors’ offices. The Ombudsman is elected and dismissed by the Parliament, after the motion of the Parliamentary Committee for Constitutional Affairs²⁴. Deputy groups in the Parliament can submit their proposals to the Committee. The Ombudsman is elected by the majority of all deputies’ votes. The Ombudsman is responsible for its work to the Parliament. The Ombudsman enjoys the same immunity as a member of the Parliament. The same person cannot be chosen more than twice in a row, and his mandate is five years.²⁵

The Law²⁶ additionally provides that the Ombudsman is independent in performing its duties by the law and that no one has the right to influence his work and proceedings. Criteria for the election of the Ombudsman is that he or she must be a citizen of Serbia, a bachelor of law, with ten years of working experience in a relevant position, have high moral and expert qualities and significant experience in the protection of civil rights²⁷.

The Ombudsman cannot hold other functions or perform a professional activity, duty or work that could influence his independence. He cannot be a member of political parties, and he cannot give political statements.²⁸

The Ombudsman has the right to a salary that is the same as the salary of the President of the Constitutional Court, and the deputies have the same salaries as the judges of the Constitutional Court²⁹. In 2010 that was around RSD 190.000 RSD (USD 2.400), which is app 5.5 of average salaries in Serbia³⁰.

19 Regular annual report of Ombudsman 2009

20 Interview with Ombudsman, December 2010. Representatives of nongovernmental sector that monitor Ombudsman’s activities also consider that majority of employees dispose with appropriate expert qualities and that „vast majority puts efforts beyond expected“, interview, December 2010.

21 Interview with Ombudsman, December 2010.

22 Interview with two representatives of NGOs that monitor activities of Ombudsman, They both insisted on anonymity, December 2010.

23 Constitution of the Republic of Serbia, article 138

24 Constitution of the Republic of Serbia, article 138, Law on Ombudsman, article 1, 2

25 Constitution of the Republic of Serbia, article 138, Law on Ombudsman, article 1, 2 and 4

26 Law on Ombudsman, article 1 and 2

27 Law on Ombudsman, article 5

28 Law on Ombudsman, article 9 and 10

29 Law on Ombudsman, article 36

30 Information directory, <http://www.zastitnik.rs/index.php/lang-sr/component/content/article/132>

The Ombudsman proposes to the Parliament candidates for four deputies. They are chosen for the same period as the Ombudsman and according to the same conditions, besides the experience which is in this case five years³¹.

According to the Law³², employees are chosen through publically announced competition. The Commission, comprised of three Ombudsman staff's employees, carries out interviews and capability tests, lists the most successful candidates, and the Ombudsman chooses between the top three candidates suggested by the Commission.

Regarding the dismissal of employees, relevant provisions of the Law on Civil Servants are implemented (Labor Law for appointees which are not considered civil servants)³³. The work of employees in the professional service is evaluated according to provisions of the Law on Civil Servants. According to these rules civil servants can be dismissed, although such cases have not occurred since the establishing of the Ombudsman³⁴.

The provisions for the dismissal of the Ombudsman are reasonable. The Ombudsman can be dismissed if he performs his function incompetently or unprofessionally, performs other functions, engages in a professional activity, duty or work that can influence his independence, if he is in conflict of interest or charged for a felony which makes him unsuitable for performing the function³⁵. The Proposal can be submitted by the Parliamentary Committee for Constitutional Affairs or at least 1/3 of the deputies. The removal decision has to be supported by a majority of votes of the overall number of deputies³⁶.

However, the Rules on Procedure of the Parliament, adopted in July 2010, opened the way for the potential dismissal of the Ombudsman if the annual report submitted to the Parliament is not deemed "acceptable". That disputable article prescribes that the competent Parliamentary Committee reviews the report and then forwards it with a proposal for a conclusion and recommendation. In these documents the Committee can suggest to the Parliament "to accept the report, to commit the Government and other state bodies to undertake appropriate measures and activities from their competence, to ask for a supplement of the report, to undertake appropriate measures or not to accept the report and to initiate a procedure for determining the responsibility of officials in the state body, organization, authority"³⁷. According to the Ombudsman, the adoption of the new Rules on Procedure of the Parliament is positive because reports will be considered by the Parliament and not only by the Parliamentary Committee for Constitutional Affairs. However, the fact that there must be voting on the report, this sends the message to independent institutions that the reports should respect the authorities' will in order to gain the necessary majority of votes³⁸. The Parliament's Rules of Procedure were amended in February 2011, to avoid the possibility of a dismissal procedure based solely on the dissatisfaction with the annual report³⁹.

The Ombudsman cannot enforce the implementation of his recommendations. In cases of disputes, the Ombudsman can only inform the public, the Parliament and the Government that a certain body hasn't proceeded according to a recommendation and can recommend responsibility of the official to be determined for that failure⁴⁰.

The Ombudsman itself is protected from criminal prosecution that can be raised as a result of his work because he and his deputies are granted immunity. According to the Law, the possible

31 Law on Ombudsman, article 6

32 Law on Civil Servants, article 50-57

33 Law on Civil Servants, articles 76-81, Labour Law, articles 175-191

34 Data from the interview with Ombudsman, December 2010.

35 Law on Ombudsman, article 12

36 Law on Ombudsman, article 12

37 Rules on Procedure of the National Assembly of the Republic of Serbia, article 237 and interview with Ombudsman, December 2010.

38 <http://www.novosti.rs/vesti/naslovna/aktuelno.69.html:313824-Skupstina-sada-stiti-zastitnika> http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=08&dd=05&nav_id=449913

39 <http://www.emportal.rs/vesti/srbija/148524.html>

40 Law on Ombudsman, article 31

waiving of immunity is decided by the Parliament with a majority of MP's votes⁴¹. The Ombudsman can be, among other things, dismissed if he performs his job unprofessionally or incompetently. In such cases, criminal prosecution is possible as well⁴².

The Ombudsman cannot ask for court assistance for the enforcement of recommendations. The legal system, on the other hand, does not anticipate legal remedy against the Ombudsman's recommendations and evaluations⁴³. The Ombudsman's acts do not have legal power and they formally do not impose obligations for state bodies. They are merely an evaluation of state bodies conduct in the area of civil rights and good governance⁴⁴.

Independence (Practice)

To what extent is the ombudsman independent in practice?

Score: 75

The Ombudsman performs its function in a professional manner. Complaints can be filed to the Ombudsman without fear of retaliation, although there have been some disputable events and situations. For example, when the Ombudsman determined that data from secret services was not used in the judges' re-election process, despite claims made by judges that were not re-elected⁴⁵, it has not endangered his independence⁴⁶. The Ombudsman states that "there are no obvious examples" of efforts of political influencing the Ombudsman's work⁴⁷. The Ombudsman's annual report for 2009 states that "during 2009 there was no illegal influence and pressure to the Ombudsman's work".

Relevant committees and the Parliament are reviewing the Ombudsman's annual report.⁴⁸ After the removal of problematic provisions of the Parliamentary Rules of Procedure in 2011, the Parliament discussed the report for 2010, and concluded that the Ombudsman's report "covered comprehensively the state of affairs in his area of work, pointed out the necessary changes of the public sector work for improvement of the situation and Ombudsman's own activities"⁴⁹. Furthermore, the Parliament stressed the duty of all state bodies to follow the Ombudsman's recommendation and to act in line with good governance principals⁵⁰. Finally, the Parliament concluded that the Legislative body would follow the work of the Executive and other public authority holders in order to establish whether they are following the Ombudsman's recommendation.⁵¹

There is no complete financial independence of the institution of the Ombudsman, i.e. there is no substantial difference in budget planning between independent state bodies and the executive authority bodies. All of them have to comply with budget policies of the Government of Serbia. The Ministry of Finance, Government and Parliament approve the budget for both the independent authorities and executive authorities⁵².

During the election of the Ombudsman and recruitment of employees there were no recorded attempts of political influence⁵³.

41 Law on Ombudsman, article 10

42 Law on Ombudsman, article 11-12

43 Law on Ombudsman, article 31

44 Interview with Ombudsman, December 2010.

45 http://www.danas.rs/danasrs/dijalog/ombudsman_dao_alibi_bia.46.html?news_id=185265

46 Interview with representatives of NGO that monitor Ombudsmans activities, December 2010.

47 Interview with Ombudsman, December 2010.

48 Changes of Rules on Procedure of National Assmely introducing that innovation were adopted in 2010 and 2011 and for the first time report of Ombudsman will be considered and adopted.

49 <http://www.parlament.gov.rs/narodna-skupstina-872.html?SearchText=za%C5%A1titnika>, Conclusions of Committee for judiciary and administration., June 2011, accepted by the Parliament in July 2011.

50 Conclusions of Committee for judiciary and administration., June 2011, accepted by the Parliament in July 2011.

51 Conclusions of Committee for judiciary and administration., June 2011, accepted by the Parliament in July 2011.

52 Interview with Ombudsman, December 2010.

53 Interview with Ombudsman, December 2010 and interview with representatives of NGO that monitor activities of Ombudsman, December 2010

In the work of the Ombudsman several cases were recorded that could indicate pressure, but not necessarily to question his independence. One representative of the NGO sector that monitors activities of the Ombudsman, however, claimed that the Ombudsman is a "political figure and to maintain his position he must properly weigh sides"⁵⁴.

Examples of political engagement of the Ombudsman were not recorded nor were there any cases of him performing other activities or other functions that could endanger his safety⁵⁵. The current Ombudsman is at the same time the first one, and there was no re-election so far. Four Ombudsman's deputies were elected in October 2008⁵⁶. One of them resigned in December 2010 (the Parliament approved that decision)⁵⁷. There were no cases of employees' dismissals, nor did they complain in the public of any pressures⁵⁸.

54 Interview with one representative of NGO that monitor Ombudsmans activities, December 2010

55 Interview with representatives of NGO that monitor Ombudsmans activities, December 2010, research done for purposes of NIS

56 <http://www.parlament.gov.rs/akti/ostala-akta/doneta-akta/doneta-akta.1039.html>

57 <http://www.parlament.gov.rs/akti/ostala-akta/doneta-akta/doneta-akta.1039.html>

58 Interview with representatives of NGO that monitor Ombudsmans activities, December 2010, research done for purposes of NIS

GOVERNANCE

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ombudsman?

Score: 100

The public can obtain all relevant information on the activities and decision-making processes of the Ombudsman.

The Ombudsman and deputies are obligated to keep the personal data they obtain in performing of function confidential after resigning from the duty⁵⁹. The obligation of confidentiality also applies to employees in the professional service of the Ombudsman⁶⁰. The Ombudsman, however, complains that procedures before this body are not exempt from provisions of the Law on Free Access to Information of Public Importance, which is sometimes the case in other countries⁶¹. The Ombudsman should submit an annual report, by March 15th of the current year to the Parliament. The report should contain a description of activities conducted in the previous year, noticed omissions in administration bodies' work, as well as proposals for improving their work. The report is to be delivered to the media and published in the Official Gazette⁶².

The Ombudsman and its deputies, being officials chosen by the Parliament, are obliged to deliver by January 31st to the Anti-corruption Agency reports on changes in their property and income⁶³.

Transparency (Practice)

To what extent is there transparency in the activities and decision-making processes of the ombudsman in practice?

Score: 100

Overall, the activities of the Ombudsman institution in Serbia are transparent and the public has regular access to its work. The web-site of the Ombudsman presents plenty of detailed information on the work of the institution⁶⁴. Recommendations, reports and the budget of the Ombudsman are published on the official web-site⁶⁵. The budget is also published in the Official Gazette⁶⁶. An Information Directory, with all the information on the work of the Ombudsman, is available online, as well as all individual answers to requests for free access to information⁶⁷. The Ombudsman regularly releases press statements⁶⁸. Individual Ombudsman's cases are presented on the web-site and anonymized⁶⁹.

Reports of the Ombudsman contain details on the methodology of work and the method of passing final recommendations or conclusions⁷⁰. The annual report⁷¹ of the Ombudsman is comprehensive,

59 Law on Ombudsman, article 21

60 Law on Ombudsman, article 21

61 Interview with Ombudsman, December 2010.

62 Law on Ombudsman, article 33

63 Law on Anticorruption Agency, article 2 and 43-46

64 www.zastitnik.rs and www.ombudsman.rs

65 <http://www.ombudsman.rs/index.php/lang-en>

66 <http://www.mfp.gov.rs/pages/issue.php?id=1578>

67 <http://www.ombudsman.rs/index.php/lang-en/2010-10-20-09-21-00/informator-o-radu>

68 <http://www.ombudsman.rs/index.php/lang-en/aktivnosti/iz-medija>

69 <http://www.ombudsman.rs/index.php/lang-en/misljenja-preporuke-i-stavovi>

70 <http://www.ombudsman.rs/index.php/lang-sr/izvestaji/posebni-izvestaji/992-2010-08-03-12-03-30>

71 http://www.ombudsman.rs/attachments/800_Izvestaji%20ZG%202009%2011%20lat.pdf page 66-77 http://www.ombudsman.rs/attachments/1306_Redovan%20godisnji%20izvestaji%20za%202010.pdf page 130-151

containing detailed statistics on contacts with the citizens – on telephone conversations, the number of citizens that came to a meeting, number of received complaints and number of legal initiatives. Complaints are classified according to the type of law that was violated and according to the bodies to whose work they refer to⁷². The Ombudsman notifies submitters of complaints on initiating and finalizing the procedure, as well as the administrative institution against which the complaint was filed⁷³.

During 2009 the Ombudsman worked on 1.980 cases that were initiated either through complaints or the Ombudsman's own initiative in 2009, as well as in the previous period. Ombudsman finalized during that year a total of 1.040 cases⁷⁴:

Finalized actions of the Protector of Citizens (Ombudsman) upon complaints in 2009	Number
Complaints dismissed	653
Complaints rejected as unfounded	178
Complaints withdrawn by complainants	51
Procedure on complaint discontinued – administration authority has eliminated deficiencies in its operation	74
Recommendations issued by Ombudsman – total (upon complaints and at its own initiative.)	44
Opinions given by Ombudsman – pursuant to Article 24, paragraph 2 of the Law	8
Other (different legal documents of the Protector of Citizens on the finalization of the procedure)	32
Total:	1,040

A list of state bodies that have not implemented recommendations as well as to what recommendation this referred to, is also in the annual report of the Ombudsman⁷⁵.

Thirteen rights to information requests were submitted to the Ombudsman during 2009, out of which 12 requests by individuals and one by a legal entity (the National initiative for restitution of seized property and human rights). All requests were answered by the Ombudsman's office, entirely and within the legal deadline, so no requestor appealed.⁷⁶

In 2010, the Ombudsman proceeded in 2.545 cases and finalized its proceedings in 1.929 cases:

Finalized actions of the Protector of Citizens (Ombudsman) upon complaints in 2010	Number
Complaints dismissed	952
Complaints rejected as unfounded	574
Complaints withdrawn by complainants	39
Procedure discontinued – administration authority has eliminated deficiencies in its operation	134
Recommendations – total (upon complaints and at its own initiative)	229
Opinions – pursuant to Article 24, paragraph 2 of the Law	1
Total:	1,929

72 <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33>

73 <http://www.zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33>

74 http://www.ombudsman.rs/attachments/1306_Redovan%20godisnji%20izvestaj%20za%202010.pdf

75 http://www.ombudsman.rs/attachments/1306_Redovan%20godisnji%20izvestaj%20za%202010.pdf

76 http://www.ombudsman.rs/attachments/1306_Redovan%20godisnji%20izvestaj%20za%202010.pdf

The Ombudsman and his deputies submitted their income reports⁷⁷. Part of that data is public on the web-site of the Anti-corruption Agency⁷⁸.

The Ombudsman established permanent professional councils for children's rights, gender equality, rights of disabled persons, rights of persons deprived of freedom, national minority rights and a Panel of young advisors (made of children). The Ombudsman establishes ad hoc advisory groups and engages experts for providing opinions within the competency of the Ombudsman⁷⁹. In 2010 more than 70 external advisors were engaged by the Ombudsman. The Ombudsman maintains permanent consultations with representatives of civil society⁸⁰.

Accountability (Law)

To what extent are there provisions in place to ensure that the ombudsman has to report and be accountable for its actions?

Score: 75

The Ombudsman is responsible for his work and for activities of his employees to the Parliament⁸¹. The Ombudsman submits to the Parliament an annual report on work⁸². The report is made available to the public at the same time it is delivered to the Parliament⁸³. The report is then taken into consideration by the competent Parliamentary Committee (for judiciary and administration) which then delivers it to the Parliament with a proposal of a conclusion or recommendation⁸⁴.

The Law on the Ombudsman does not prescribe specific details regarding the content of the annual report, but only states that it should contain "activities from the previous year, data on noticed imperfections in the work of administration bodies, as well as recommendations for improving the status of the citizens in regards to administration bodies"⁸⁵. The Ombudsman can submit extraordinary reports if there is a need for them⁸⁶.

The Information Directory published by the Ombudsman is in compliance with regulations – Law on Free Access to Information of Public Importance⁸⁷ and with the Instructions for the creation and publication of the Information Directory (Information Booklet) on Public Authority Work.⁸⁸

The legal system does not envisage any legal remedy against activities of the Ombudsman – evaluation, recommendation, opinion on irregularities in the work of authority bodies damaging civil rights. There is no explicit prohibition to challenge an act of the Ombudsman before a court.

77 http://www.acas.rs/sr_cir/registri.html

78 <http://www.acas.rs/en/aktuelnosti/114.html>

79 http://www.ombudsman.rs/attachments/1306_Redovan%20godisnji%20izvestaj%20za%202010.pdf

80 Data from the interview with Ombudsman and interview with representatives of nongovernmental organizations that monitor activities of Ombudsman, Decembar 2010

81 Law on Ombudsman, article 33

82 Law on Ombudsman, article 33

83 Law on Ombudsman, article 33

84 Rules on Procedure of Assembly of the Republic of Serbia, article 237 http://www.parlament.gov.rs/content/lat/akta/poslovnik/poslovnik_9.asp

85 Law on Ombudsman, article 33

86 Law on Ombudsman, article 33

87 <http://www.poverenik.org.rs/index.php/en/doc/laws.html>

88 <http://www.poverenik.org.rs/index.php/en/doc/bylaws-documents-.html>

Accountability (Practice)

To what extent does the ombudsman have to report and be accountable for its actions in practice?

Score: 75

There were no disputable activities of the Ombudsman, employees in the service of the Ombudsman or his deputies. The Ombudsman submits regular reports on his activities, according to the Law on the Ombudsman, by March 15th for the previous year⁸⁹. The report on the Ombudsman for 2009 was considered at the session of the Parliamentary Committee for Judiciary and Administration on March 25th 2010⁹⁰. It was elaborated by the Ombudsman and deputies. Members of the Committee did not vote on the report, having in mind the Rules of Procedure of the time⁹¹. In 2011, on the basis of new Parliamentary Rules on Procedure⁹², the Committee adopted recommendations and opinions and delivered it to the Parliament for adoption.⁹³ However, both discussions in the Committee and the one in the Parliament were organized later than the Rules of Procedures envisages. Discussion in the Committee was organized in May and June, while the deadline is April 15th. Discussion in the Parliament was in July instead of June 2011.⁹⁴

The annual report contains information on the general state of human and minority freedoms and rights in Serbia, with special attention to the rights of persons with disabilities, gender equality, good administration, rights of persons deprived of freedom, children's rights and rights of national minorities. Besides that, the report contains basic information on the Ombudsman, on its professional service, premises and resources for work, method of initiating procedures before the Ombudsman and advice that the Ombudsman gave to citizens⁹⁵. The report contains a review of disruptions in performing the Ombudsman's function, information on the relation with other independent state bodies, institutions and bodies with competencies in the area of protection of human rights and the fight against corruption⁹⁶.

Results of its work are described in detail. There are also proposals on how to promote human rights and freedoms, as well as proposals to the Parliament in which way to improve the status of citizens in regards to administration bodies. Data on budget spending is also detailed⁹⁷.

During 2010 the Ombudsman published six special reports. One such report, created in the case of "missing babies"⁹⁸, suggested to the Parliament to pass the law that would allow to determine the truth on this matter. All reports are available to the public on the web-site of the Ombudsman. Annual reports are published in the Official Gazette of the Republic of Serbia, and released to the media⁹⁹.

A special mechanism of protection of whistleblowers inside the Ombudsman's office does not exist. However, the Ombudsman is very active in this area. In 2009 he submitted an amendment¹⁰⁰ to the Government proposal of the Law on Free Access to Information of Public Importance. The amendment aimed to allow the protection of whistleblowers, persons that publish information of

89 http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-25-10-17-15/2011-12-25-10-13-14/1304-a-2010-

90 http://www.parlament.gov.rs/%C4%8Cetrdeset_%C5%A1esta_sednica_Odbora_za_pravosu%C4%91e_i_u.4473.941.html

91 http://www.parlament.gov.rs/%C4%8Cetrdeset_%C5%A1esta_sednica_Odbora_za_pravosu%C4%91e_i_u.4473.941.html

92 Rules on Procedure of National Assembly, article 237 http://www.parlament.gov.rs/content/lat/akta/poslovnik/poslovnik_9.asp

93 http://www.parlament.gov.rs/Sedamdeset_sedma_sednica_Odbora_za_pravosu%C4%91e.13028.941.html

94 http://www.parlament.gov.rs/Sedmo_vanredno_zasedanje_Narodne_skup%C5%A1tine_Republike_Srbije_u_2011_godini.13532.941.html

95 http://www.ombudsman.rs/attachments/1306_Redovan%20godisnji%20izvestaji%20za%202010.pdf

96 http://www.ombudsman.rs/attachments/1306_Redovan%20godisnji%20izvestaji%20za%202010.pdf

97 http://www.ombudsman.rs/attachments/1306_Redovan%20godisnji%20izvestaji%20za%202010.pdf

98 <http://www.ombudsman.rs/index.php/lang-sr/izvestaji/posebni-izvestaji/992-2010-08-03-12-03-30>

99 http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

100 <http://www.portalargus.org/sr/izdvajamo/dostupnost/10479.html>

public importance in good faith, particularly if that information indicates corruption, abuse of official power, other criminal acts, economic offences, irrational disposal of public resources or similar illegal acts and irregularities in the work of authority bodies. At the same time, this amendment strived to a more comprehensive constitutional guarantee of the right of citizens to access data possessed by state bodies and organizations with public authorities. However, the Parliament did not accept the Ombudsman's amendment. It voted for the amendment of the ruling coalition MP, which provided considerably narrower protection¹⁰¹. The Ombudsman clearly expressed his standpoint on the need and necessity to guarantee the protection of "whistleblowers". The Ombudsman also claims that he is implementing protection principals for the people whistleblowing in that institution¹⁰².

There is no mechanism of legal refuting of decisions of the Ombudsman, since the acts of the Ombudsman are merely recommendations and they do not represent direct legal basis for realizing civil rights, nor do they determine citizens' obligations. They merely evaluate the work of other bodies in respect to civil rights and good governance. There is no prohibition of refuting the acts, but such examples have not been recorded¹⁰³.

Integrity mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the ombudsman?

Score: 75

The Ombudsman does not have a special Code of Conduct, but proceeds according to regulations that contain rules on ethical behavior (the Constitution of Serbia, Law on the Ombudsman, Law on General Administrative Procedure, Law on the Anti-corruption Agency), and according to the Code of Good Management, and Ethical Code of European and International Institutions of the Ombudsman¹⁰⁴.

The Code of Good Management, written by the Ombudsman, contains basic rules of ethical behavior that the Ombudsman controls in his work¹⁰⁵. The Ombudsman also proceeds in accordance with the Ethical Code of European and International Institutions of the Ombudsman that he is a member of¹⁰⁶. Those regulations and codes cover issues of independence, conflict of interest, confidentiality, objectivity, legality, prohibition of discrimination, passing decisions purposefully, prohibition of abuse or exceeding of authorizations and impartiality¹⁰⁷.

The Ombudsman and his deputies are public officials and have to comply with related conflict of interest rules¹⁰⁸, including the Law on the Anti-corruption Agency¹⁰⁹. That Law regulates the prohibition of receiving gifts, with the exception of appropriate and protocol ones, obligation of reporting on the received appropriations and protocol gifts and delivering of the copy of that record to the Anti-corruption Agency¹¹⁰. The Law on the Anti-corruption Agency also regulates that officials

101 <http://www.poverenik.rs/yu/pravni-okvir-pi/zakoni-pi/849-zakon-o-izmenama-i-dopunama-zakona-o-slobodnom-pristupu-informacijama-od-javnog-znacaja-izmene-sl-glasnik-10409.html>

102 Interview with Ombudsman, December 2010.

103 Interview with Ombudsman, December 2010 and interviews with representatives of NGOs that monitor activities of Ombudsman, December 2010.

104 <http://www.ombudsman.rs/index.php/lang-sr/aktivnosti/informacije/913--e-e->

105 www.ombudsman.rs/attachments/-01_KODEKS%20tekst%20finalni.DOC

106 <http://www.ombudsman.rs/index.php/lang-en/vazni-pravni-akti/eticki-kodeks-medjunarodnog-udruzenja-ombudsmana>

107 www.ombudsman.rs/attachments/-01_KODEKS%20tekst%20finalni.DOC, <http://www.ombudsman.rs/index.php/lang-en/vazni-pravni-akti/eticki-kodeks-medjunarodnog-udruzenja-ombudsmana> <http://www.acas.rs/en/zakoni-i-drugi-propisi/the-mayor/law-on-agency.html>

108 Law on Ombudsman, article 9

109 <http://www.acas.rs/en/zakoni-i-drugi-propisi/the-mayor/law-on-agency.html> Law on General Administrative Procedure, articles 6-8 Constitution of Serbia, article 6

110 Law on ACA, articles 39-41

(among which the Ombudsman and four deputies are) have to report property and income, as well as to report possible changes in property and income¹¹¹.

The Law on General Administrative Procedure proclaims principles of the protection of human rights and the protection of public interest, the principle of efficiency and the principle of truth¹¹². The Constitution of Serbia forbids conflict of interest¹¹³.

Integrity mechanisms (Practice)

To what extent is the integrity of the ombudsman ensured in practice?

Score: 75

The Ombudsman's asset declarations are published¹¹⁴. Since the Ombudsman's inception in 2009, there were no cases of public complaints against the Ombudsman because of a possible breach of rules on confidentiality, neutrality, impartiality, nor breach of the rules on conflict of interest, or its own endangering of independency¹¹⁵. According to the Ombudsman, there were examples of acting contrary to the rules inside the service and that in such cases the Ombudsman warned employees, in accordance with the severity of failures¹¹⁶; in two cases employees were transferred to working positions where tasks are less complex and in three cases the Ombudsman's associates were advised to resign because of violations, which they did. These cases were not mentioned in annual reports¹¹⁷.

Employees are regularly trained in the area of integrity, by participating in trainings organized by the Human Resource Management Service, internal trainings and regular meetings of employees. Ten internal trainings for a total of 32 employees were held in 2010; according to the Ombudsman 12 employees in service participated in three trainings that were organized externally¹¹⁸.

111 Law on ACA, articles 43-47

112 Law on General Administrative Procedure, articles 6-8

113 Constitution of Serbia, article 6

114 http://www.acas.rs/sr_cir/registri.html

115 Insight into press-clipping and interviews with representatives of NGOs that monitor activities of Ombudsman, December 2010.

116 Interview with Ombudsman, December 2010

117 Interview with Ombudsman, December 2010

118 Interview with Ombudsman, December 2010

ROLE

Investigation (Law and Practice)

To what extent is the ombudsman active and effective in dealing with complaints from the public?

Score: 75

Overall, the Ombudsman is rather effective in dealing with citizens' complaints, although the lack of specialized staff have led to neglect some areas. Citizens have the possibility to address the Ombudsman on several phone numbers and talk directly with the employee that deals with their case. Also, the Ombudsman introduced a SOS mobile phone which is available to the citizens for emergency cases outside working hours as well¹¹⁹.

Besides his office in Belgrade, in December 2009, the Ombudsman established local offices in three municipalities in the south of Serbia - Preševo, Bujanovac and Medveđa to increase availability of the institution and to accomplish more efficient protection and promotion of human and minority freedoms and rights on that territory¹²⁰.

In the three years of the work, the Ombudsman received more than 5700 complaints¹²¹, out of which 1774 in 2009¹²². In 2010 there were 2,656 complaints.

Contacts of the Protector of Citizens with citizens	In 2008	In 2009	Increase in percentages	In 2010	Increase in percentages
Complaints received	1,030	1,774	41.9%	2,656	50.2%
Received law-related initiatives	25	55	54.5%	75	64.5%
Interviews with citizens	1,395	1,741	18.9%	2,865	36.4%
Telephone interviews with citizens	2,232	5,044	55.7%	5,058	0.3%
Different applications submitted by citizens	89	160	44.4%	571	261.4%
Total	4,771	8,774	45.6%	11,225	28.1%

The most numerous are the cases of violation of economic, social and cultural rights and provisions of "good governance". The number of reported cases of violation of civil and political rights is significantly smaller. Most complaints refer to work of representatives of the executive authority, especially of ministries, as well as to the work of various organizations, agencies and enterprises with entrusted public authorizations¹²³.

During 2009 the Ombudsman from 1.980 cases where he proceeded, finalized proceedings in 1.040 cases: In 2010 the Ombudsman finalized proceedings in 1.929 out of 2.545 cases¹²⁴. During 2009 the Ombudsman issued 44 recommendations to administrative bodies. In 2010 there were

119 Interview with Ombudsman, December 2010, research for purposes of NIS

120 http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

121 Data from interview with Ombudsman, December 2010

122 http://www.ombudsman.rs/attachments/793_Izvestaj%20ZG%202009%2011.pdf

123 http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

124 http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

140 recommendations (based on 229 complaints). Approximately 60% of Ombudsman's recommendations, administration bodies proceeded within the deadline or before the expiration of the deadline¹²⁵. The law prescribes that an administrative body is obliged to notify the Ombudsman within 15 to 60 days whether it proceeded on a recommendation and removed the shortcoming. When a body does not proceed on a recommendation, the Ombudsman is entitled to notify the public, the Parliament and the Government. The Ombudsman may also recommend determining the responsibility of officials of an institution that failed to comply. Such an initiative will be submitted to the body that oversees the work of the non-complying institution¹²⁶. The web-site of the Ombudsman contains the example where the Ombudsman notified the Government that it's Administration for Joint Services did not follow up on a request of the Ombudsman¹²⁷. In 2009, there were 12 cases of institutions not implementing recommendations and 5 cases from the previous year where institutions had not implemented recommendations. By the end of 2010, 69 out of 140 recommendations were implemented, 35 were not, while in 36 cases the deadline given by the Ombudsman for the implementation had not expired yet¹²⁸.

The Ombudsman also initiated procedures independently, i.e. without previous complaints of citizens. The most prominent example was that of initiating of a procedure in the case of "missing babies" that followed extensive investigation of the Ombudsman¹²⁹. Representatives of NGOs¹³⁰ single out, as an example of a case initiated by Ombudsman, the investigation and recommendation on employing national minorities' members in the state administration. Recommendations were not accepted and the number of minorities' members was not significantly increased. There are accusations by some representatives of NGOs that the Ombudsman, since he can initiate investigation independently and without a complaint, insufficiently investigates violations of rights in certain areas, like labor law and economic-social rights¹³¹. This is most likely due to the lack of appropriate professional staff in the service that is specialized for that area¹³².

The annual report, however, shows that a large number of citizens that turn to the Ombudsman did not recognize properly his authorities. Out of 1.040 complaints that the Ombudsman processed in 2009, 366 were dismissed because they weren't in the Ombudsman's scope of work¹³³. At the same time, awareness on the existence of the Ombudsman and on his significance is increasing: there is significant increase of addressing the Ombudsman (46%), especially through telephone calls (56%)¹³⁴.

Promoting good practice (Law and Practice)

To what extent is the ombudsman active and effective in raising awareness within the government and the public about standards of ethical behavior?

Score: 50

The Ombudsman's activities are mainly focused on bad governance¹³⁵, i.e. non-transparent, illogical and slow procedures by public officials and civil servants. Breaching of human rights comes as a consequence of such procedures. The Ombudsman's reports, evaluations and recommendations in such cases therefore could affect standards of ethical behavior. The Ombudsman's recommenda-

125 http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

126 Law on Ombudsman, article 31

127 http://www.ombudsman.rs/index.php/lang-sr_YU/2012-02-07-14-03-33

128 http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

129 Interview with Ombudsman, December 2010

130 Interview with representatives of NGOs that monitor activities of Ombudsman, December 2010

131 From the interview with two representatives of NGOs that monitor activities of Ombudsman, December 2010

132 From the interview with two representatives of NGOs that monitor activities of Ombudsman, December 2010

133 http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

134 http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

135 http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=01&dd=03&nav_id=483477

tions promote good practice and its annual reports include recommendations for wider, systemic measures for improving good governance¹³⁶. The media and the public are informed on what proper behavior and proper standards should be. However, refusal of some bodies, including the Government, to accept recommendations diminishes the Ombudsman's achievement in that field.

According to data from the annual report¹³⁷, in 2009 administrative bodies implemented around 65% recommendations of the Ombudsman, due to a drastic decrease in the second half of 2009. That percentage in 2008 and in the first half of 2009 was around 90%. The Ombudsman considers the reasons for decreasing the percentage are in the fact that the number of procedures is increased, that controls include "a wider scope of administration bodies", and that in 2009 it wasn't followed by political support of the executive body that is most influential and most competent to correct their work – the Government of Serbia¹³⁸. On the occasion of non-proceeding according to decisions, the Ombudsman released statements, submitted an initiative for changing the Law and instructed citizens about the further procedure¹³⁹. In 2010 35 out of 140 recommendations were not implemented. In 18 cases (51%) it was the ministries who ignored the Ombudsman's recommendations¹⁴⁰.

According to the Law, the Ombudsman cannot perform the control of work of the Government of Serbia, which includes the Government as a collegial body and its commissions¹⁴¹. All the other executive bodies are under the Ombudsman's competences.¹⁴² That includes the republic bodies, agencies that the Government establishes, as well as individual ministries. A large number of initiatives, recommendations and opinions by the Ombudsman are directed at the Government of Serbia, which is in charge of implementing recommendations concerning ministries or other state bodies¹⁴³.

136 http://www.ombudsman.rs/index.php/lang-sr_YU/2012-02-07-14-03-33, http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

137 http://www.ombudsman.rs/attachments/800_Izvestaj%20ZG%202009%2011%20lat.pdf page 64

138 http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

139 Data on further proceedings received from Ombudsman's office

140 http://www.ombudsman.rs/index.php/lang-sr_YU/izvestaji/godisnji-izvestaji

141 Law on Ombudsman, article 17

142 Law on Ombudsman, article 17

143 <http://www.ombudsman.rs/index.php/lang-sr/component/search/?searchword=%D0%B2%D0%BB%D0%B0%D0%B4%D0%B8&ordering=&searchphrase=all>

OMBUDSMAN

Key findings and recommendations

The Ombudsman is independent from the government, works transparently, and is involved in the prevention of corruption through the promotion of good governance. The biggest problem is the lack of capacity and the unsolved problem of permanent accommodation.

1. Providing permanent and adequate premises for the work of the Ombudsman
2. Increase the number of employees that deal with the protection of citizens from malpractice of administrative bodies in order to have more efficient proceedings in a large number of requests and even greater engaging of the Ombudsman on the basis of its own initiative
3. Proposing new and changes of existing laws on the basis of constitutional powers of the Ombudsman, and having in mind that corruption leads to serious threats of human rights
4. Ensuring full implementation of the Ombudsman's recommendations from the annual report.
5. To enlist the "right to good management" as a basic civil right.



SUPREME AUDIT INSTITUTION

NATIONAL INTEGRITY SYSTEM

Summary: The State Audit Institution (SAI) has existed for three years but suffers serious resource issues, including lack of appropriate premises for work, staffing problems and insufficient capacities for comprehensive audit of the budget of the Republic of Serbia and audit of the work of all public bodies. There are formal preconditions for full independence of the SAI. In two reports that are produced, SAI pointed out to numerous omissions in the work of ministries, including current ministers and state officials, and initiated misdemeanor procedures. SAI regularly submits reports on its work to the Parliament. It is not easy for the media and public to access other information on the work of SAI, since their annual report on the work and the Information Directory are not published on their web-site. Having in mind that SAI so far produced two reports, none of which contained recommendations for further proceeding, it is not possible to assess the effects of auditing users of public assets.

SUPREME AUDIT INSTITUTION			
Overall Pillar Score: 69			
	Indicator	Law	Practice
Capacity 58/100	Resources	/	50
	Independence	75	50
Governance 83/100	Transparency	100	50
	Accountability	75	75
	Integrity mechanisms	100	100
Role 50/100	Effective financial audits	25	
	Detecting and sanctioning misbehavior	75	
	Improving financial management	50	

Structure – SAI is an independent institution and the highest state body for the revision of public assets in the Republic of Serbia. The Law on SAI was adopted in November 2005; SAI was introduced into the Constitution of Serbia from 2006; the Parliament of Serbia elected members of the first SAI Council only in 2007. SAI answers for its work to the Parliament of Serbia¹. The Council of SAI is the highest body of the Institution and the President of that Council is at the same time the President of SAI and General State Auditor. Members of the Council are elected upon proposal of the Finance Committee of the Parliament². The budget of the SAI is provided from the overall budget of Serbia on the basis of a financial plan determined by SAI, with the consent of the Parliamentary Committee for Finances³. Audit reports of the SAI are considered by the Parliamentary Committee for Finances and the Parliament of Serbia⁴. Because of irregularities determined in the process of auditing, SAI can submit misdemeanors or criminal reports⁵. The Committee and Parliament also consider annual reports of the SAI⁶.

1 Law on SAI, article 3
 2 Law on SAI, articles 12, 13 and 19
 3 Law on SAI, article 51
 4 Law on SAI, articles 43 and 48
 5 Law on SAI, article 41
 6 Law on SAI, article 45

ASSESSMENT

CAPACITY

Resources (Practice)

To what extent does the audit institution have adequate resources to achieve its goals in practice?

Score: 50

The SAI has faced from the outset the problem of a lack of appropriate premises. That, coupled with the lack of appropriate quality personnel, is the reason for the lack of auditors, which completely destabilizes the work of the institution. Since the election of the Council of SAI in September 2007 until September 2009, SAI used inappropriate premises of the Parliament for its work. One of the members of the Council of SAI submitted his resignation to that function because of "personal reasons, but also because of bad work conditions in the institution"⁷. SAI has from September 2009 been in the premises rented from the National Bank of Serbia, while the building where it should be permanently accommodated is still under reconstruction, and the deadline for the finalization of work is uncertain⁸. Because of the lack of space and low salaries, which could not attract experts, at the end of 2010, SAI had only 38 employees⁹. By March 2011 SAI had 70 employees (54 of them auditors) while the Work Organization Act¹⁰ foresees 159 employees¹¹. The situation in terms of premises remained the same in May 2011.¹²

The Administration for Joint Services of the Republic Bodies refurbished and equipped with office furniture and communication equipment the above-mentioned space, and enabled internet connections for all computers¹³.

In the previous year SAI had the problem with employing auditors because of relatively low wages, so there were not enough good quality candidates in the competition¹⁴. In May 2010 the Parliament accepted a proposal of SAI and changed the Law, so that wages were doubled¹⁵. The Law¹⁶ prescribes that a person elected as a supreme state auditor must have a university degree and the status of a certified state auditor, 10 years of working experience, out of which at least eight years on the positions related to competencies of the Institution. According to the Law, also, a state auditor and certified state auditor must have the certificate issued by SAI, professional knowledge of auditing and appropriate working experience¹⁷.

The program of certification was adopted by the SAI Council and has been in force since 1st January 2011, so that auditors have a deadline of 18 months¹⁸ from the date of their recruitment to pass

7 <http://www.ekapija.com/website/sr/page/194911>

8 Interview with vice-president of Council of SAI Ljubica Nedeljković, January 2011

9 Interview with vice-president of Council of SAI Ljubica Nedeljković, January 2011

10 Internal act which defines number of employees and their qualifications

11 Data provided by SAI, March 2011.

12 http://www.dri.rs/images/pdf/informator_o_radu_2011_cir.pdf

13 Interview with vice-president of Council of SAI Ljubica Nedeljković, January 2011

14 <http://www.rts.rs/page/stories/sr/story/13/Ekonomija/498471/Revizori+tra%C5%BEe+ve%C4%87e+plate.html>

15 Before changes, the wage of state auditor was around 500 Euros, certified state auditor 630, supreme state auditor 750 and President of Council of SAI 950 Euros. After changes wages are around 1250 Euros, 1.400 Euros, and 1.470 Euros that is 1.820 Euros, with the possibility to be additionally increased for 30 percent because of special complexities in work. Data delivered by SAI.

16 Law on SAI, article 27

17 Transitional provisions of the law envisages that until the establishment of an exam and certification program, persons that have no certificate, but fulfill all other conditions can be employed as state auditors.

18 Law on SAI, article 62

the professional exam. Training for the certificate is done in SAI. Besides that employees have the possibility of additional training in seminars organized as part of the cooperation with the General State Auditor of Norway, based on the agreement that is valid from 2008 until 2013¹⁹.

Financing SAI is provided from the budget of the Republic of Serbia in a separate budget chapter²⁰. A proposal of the financial plan of SAI is determined by the Council of SAI, and is delivered to a Committee of the Parliament for Finances to give consent, and then sent to the Ministry of Finance²¹. The SAI's financial plan for 2009, 2010 and 2011 was approved without amendment²². In the first year of work, 2008, half of the demanded budget was approved (150 million of RSD instead of 298 million of RSD), but even then the SAI was unable to spend its budget due to the failure to employ the amount of staff foreseen in the budget²³. The budget of SAI for 2011 was 425 million RSD (4.05 million Euros) and significantly higher than the budget for 2010 (155 million of RSD – 1.48 million Euros)²⁴ because multiple increase of the number of employees is planned²⁵. With the current 38 employees in 2011 it should be increased to 155²⁶. The biggest problem that the SAI faces since its establishment was the problem of accommodation or rather premises. According to the Law on SAI, office space, equipment and necessary means for the work of SAI should be provided by the Government²⁷. The premises have still not been provided by the Government. SAI partly resolved this problem through several bilateral agreements with the National Bank of Serbia that provided to SAI premises in Belgrade, Novi Sad and Nis (in total 519 square meters).²⁸

Independence (Law)

To what extent is there formal operational independence of the audit institution?

Score: 75

SAI, which is established in the Constitution²⁹, is formally independent, which is ensured through an impartial method of election and conditions for dismissing the president and members of the Council of SAI³⁰. According to the Law on SAI, SAI is an independent state body and acts that enable the institution to perform its competences of auditing cannot be the subject of dispute before courts and other state bodies. The principle of autonomy of the SAI is enshrined in the Constitution. The Constitution also stipulates that SAI controls the execution of the budget of the Republic, Province and local self-governments.³¹

Financial independence of SAI is safeguarded through independent dispensing with the budget and independent adoption of a financial plan with the consent of the Parliamentary Committee, and approved by the Ministry of Finance, which becomes part of the budget of the Republic of Serbia³². Office space, equipment and means for work of SAI are provided by the Government of Serbia, and the beginning of the work of the Institution can be financed from donations of domestic legal entities which are not subject to audit, as well as from international donations intended strictly for the development of independent audit of the public sector³³.

- 19 Interview with vice-president of SAI Council Ljubica Nedeljković, January 2011.
- 20 Law on SAI, article 51 http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?Id=293&t=Z
- 21 Law on SAI, article 51
- 22 Interview with vice-president of SAI Council Ljubica Nedeljković, January 2011.
- 23 Interview with vice-president of SAI Council Ljubica Nedeljković, January 2011.
- 24 <http://www.parlament.gov.rs/content/lat/akta/zakoni.asp>
- 25 Interview with vice-president of SAI Council Ljubica Nedeljković, January 2011
- 26 Interview with vice-president of SAI Council Ljubica Nedeljković, January 2011.
- 27 Law on SAI, article 51
- 28 Annual report of SAI for year 2010. page 24 and 25.
- 29 Constitution of Serbia, article 92 and 96
- 30 Interview with economic expert monitoring work of SAI
- 31 Law on SAI, article 3
- 32 Law on SAI, article 51
- 33 Law on SAI, article 51

The auditing plan for the following year is determined by the Council of SAI and other state bodies cannot impact that program³⁴. The Law prescribes that the SAI should decide independently on subjects of auditing, topics, scope and type of audit, start time and duration of the auditing, as part of what the law prescribed, that the audit program should mandatorily comprehend the budget of Serbia, organizations of obligatory social insurance, appropriate number of municipality units, work of the National Bank of Serbia that refers to using public assets, appropriate number of public enterprises, business associations and other legal entities established by direct and indirect users of public assets and with the participation in capital that is in management³⁵. The independence of SAI in defining its tasks can be in conflict with provisions of other laws. That was the case with the draft Law on Financing Political Activities that envisaged the possibility of the Anti-corruption Agency to request SAI to perform an audit of political party reports³⁶.

Recruitment of SAI staff is regulated by the Law on SAI, that defines general and expert criteria and experience, as well as with the Law on Civil Servants³⁷. The Supreme State Auditors are appointed for the period of 6 years, a year longer than the mandate of the members of the SAI Council. Supreme State Auditors can be re-elected, without limitations to how many times, while members of the Council of SAI can be re-elected twice³⁸. The Constitution does not stipulate provisions with regard to the independence of the members of SAI Council, except that it prescribes that the SAI is an autonomous state body³⁹. Members of the SAI Council, among which is the president of the SAI Council that is at the same the time president of SAI, is elected for a period of 5 years by the Parliament⁴⁰, after nomination by the Parliamentary Finance Committee. Such a mandate, as well as well as the legal provision enabling less than 10% of MPs (20) to initiate the initiative to dismiss a SAI Council member⁴¹, are sometimes considered as incompatible with INTOSAI standards of public sector audit related to the independence of such institutions.⁴²

Members of the Council are elected by a majority of deputies⁴³. The law prescribes that they are chosen by a majority of deputies that attend the session, but that provision was changed in 2007, before the election of the first convocation of the Council, due to the new Constitution, setting the majority of the total number of MPs for election of officials as a rule⁴⁴. The current method of election is in accordance with the solutions implemented in most countries of the EU⁴⁵.

In order to prevent conflict of interest, members of the Council are restricted in their activities, through provisions forbidding holding other functions and limiting both paid and unpaid duties.⁴⁶ There are also regulations about the current conflict of interest declaration: e.g. a member of the Council cannot participate and decide in the procedure of auditing, if it was engaged with persons that are subjected to auditing or perform certain jobs for subjects of the auditing, if a five year period hasn't passed after finalizing these duties⁴⁷.

The dismissal of the president and members of the Council of the SAI requires a majority of deputies initiating the dismissal only requires 20 out of 250 deputies⁴⁸. Dismissal is possible if the member of the Council was sentenced unconditionally to prison to at least six months, or for the

34 Law on SAI, article 14 i 35, Rules on Procedure of SAI, article 10

35 Law on SAI, article 35

36 Draft Law on Financing of political activities, article 34.

37 Law on SAI, articles 27,28, 31, 32 and 33, Law on State Servants, articles 36-43

38 Law on SAI, articles 12-22

39 Constitution of Serbia, article 96

40 Law on SAI, article 13-20

41 Law on SAI, article 23

42 Based on comments to draft NIS report provided by vice-president of Council of SAI Ljubica Nedeljković, March 2011.

The remark is mostly based on discussions SAI representatives do have within the INTOSAI and with representatives of SIGMA, while Serbian SAI does not have official standpoint about this issue yet.

43 Law on SAI, article 19

44 http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?id=398&t=Z

45 Estimation of economic expert that monitors the work of SAI

46 Law on SAI, article 17

47 Law on SAI, article 18

48 Law on SAI, article 23

act that makes him unworthy of performing a function, if he is, by a court decision, deprived of his working ability, if he accepts a job or function that is incompatible with the function of the member of Council and if it doesn't proceed in accordance with the Constitution and Law⁴⁹. The general provisions of the Law on Civil Servants and Labor Law apply to employees in SAI.⁵⁰

Members of the SAI Council enjoy immunity during their mandate, that is, a member of the Council cannot "be held responsible for an opinion stated in the audit report and in the proceeding initiated for a criminal act in performing their competencies and cannot be detained without approval of the Parliament"⁵¹.

Independence (Practice)

To what extent is the audit institution free from external interference in the performance of its work in practice?

Score: 50

SAI functions independently from external involvement and the only problem that endangers its operation is the lack of permanent accommodation, because of which it is forced to rent premises from the National Bank of Serbia which is subject to audit of SAI⁵². According to the Vice-president of the SAI Council, the SAI does not experience direct pressure from the authorities or attempted obstruction, but also SAI "is not a state priority"⁵³. The President of the Council of SAI Radoslav Sretenović suggests that the "relation of the executive authority with SAI is inappropriate" that the executive authority "does not respect (SAI) in a manner adequate to its significance"⁵⁴. The media, experts and analysts reports⁵⁵ that the state wants to disrupt the work of SAI and to disable control of public finances.

No direct attempts of influence by politicians in appointments and election of members of the SAI Council and employees, nor political interventions to activities of SAI⁵⁶ have been recorded, but members of the SAI Council were proposed to the Parliamentary Finance Committee (which is the formal proposer of candidates to the Parliament) by political parties⁵⁷. This gave the public the impression that members of the Council, although they are not members of political parties, are representatives of political parties⁵⁸. The President of the Council Radoslav Sretenovic stated that members of the Council are chosen by nomination of parties because the Law on SAI does not specify the method of election⁵⁹. After the resignation of one of the members of SAI, in September 2008, a new candidate for that position was proposed by the same party and he was elected in May 2009⁶⁰. The election was delayed for several months because the Parliamentary Committee opened a debate on whether "Councils should have non-party members and experts or candidates of political parties", but the

49 Law on SAI, article 22

50 Law on SAI, article 56

51 Law on SAI, article 53

52 Assessment of the vice-president of SAI Council from the interview with the author of the report, January 2011

53 Assessment of the vice-president of SAI Council from the interview with the author of the report, January 2011

54 Magazine "Bankar", 1 June 2009

55 http://www.cev.eu.com/read_more.php?newsid=236 http://www.transparentnost.org.rs/ts_mediji/

http://www.transparentnost.org.rs/ts_mediji/stampa/2009/08AVGUST/06082009.htm

http://www.transparentnost.org.rs/ts_mediji/stampa/2009/06JUN/11062009.htm <http://www.blic.rs/Vesti/Politika/221608/Tuzba-za-svakog-ministra-koji-krsi-zakon>

56 Claim of the vice-president of SAI Council from the interview with the author of the report January 2011

57 Law on SAI, article 19

58 Media reported on elected members of the Council as party "personnel" <http://www.blic.rs/Vesti/Politika/22906/Drzavni-revizori-bez-uslova-za-rad->

59 "Members of the Council were proposed by the parties as best connoisseurs of activities from the SAI competences. We are professional and independent team that has for goal to establish first independent institution of public sector", stated Sretenović for magazine Bankar, June 2009

60 <http://www.vesti.rs/Vesti/Odlozen-izbor-clana-Saveta-Drzavne-revizorske-institucije.html>

prevailing standpoint was that the candidate “is not a party member, but should complete the position of the member that was previously elected at the proposal” of the party⁶¹.

There were no cases recorded where members of the SAI Council were politically engaged or that they performed jobs that are illegal or were in positions that could endanger the independence of the institution⁶². The Council is still in its first term and therefore there has been no re-election of the President of the Council yet. One of the five members of the SAI Council was re-elected, after the resignation of a member originally elected. There was no case of dismissal of employees in SAI⁶³.

The President of the SAI Council explicitly denied several times that there was pressure from the Government related to the audit that the SAI performed,⁶⁴ although such pressure was suspected in the public, in particular in relation with the publishing of the first audit report in late 2009 and the fact that SAI submitted initiatives for misdemeanor procedure against ministers only a few months later.⁶⁵

61 MP Zoran Kasalovic, and MP Vljako Senic, <http://www.vesti.rs/Vesti/Odlozen-izbor-clana-Saveta-Drzavne-revizorske-institucije.html>

62 Research done for purpose of NIS

63 Data from the Interview with vice-president of the SAI Council Ljubica Nedeljković, January 2011

64 <http://www.studion.rs/info/vest.php?id=49430>

65 http://www.pressonline.rs/sr/vesti/vesti_dana/story/90472/Polako,+bi%C4%87e+i+ka%C5%BEnjavanja.html

GOVERNANCE

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?

Score: 100

In general the regulations to ensure that the work and activities of the SAI is available to the public are comprehensive. SAI is obliged to upload to its web site an Information Directory on its work⁶⁶ and to regularly update the data from the Directory. This Directory, besides others, should contain data on the organizational structure, description of competencies, authorizations and obligations and description of proceedings, rules regarding the transparency of work, a list of the most common information of public importance requested, data on income and expenditure, on public procurements, data on salaries, and other income, on means for work on the method of keeping information, on the type of information they possess, the type of information that state bodies enable access to and information on submitting requests for free access to information⁶⁷.

The Rules on Procedures of SAI prescribe that press releases "should be published in the media determined by the President of the SAI"⁶⁸.

SAI is obligated to publish an annual work report, and to submit it to the Parliament⁶⁹. As soon as it is submitted to the Parliament, it is available to the public. The annual work report contains data on implementing the annual audit program, provided and spent assets and final account of SAI, on the work of the SAI Council, on cooperation with international professional and financial institutions, selection of consultants for training, trainings and exams for becoming auditor⁷⁰, the deadline for submitting the work report for the previous year is 31st March of the current year⁷¹.

The work report is taken into consideration by the Parliamentary Finance Committee, who then forwards it to the Parliament with a proposal of a recommendation. The Parliament votes on the adoption of annual work report, that is, on the recommendation of the Parliamentary Committee⁷².

Reports on auditing submitted to the Parliament by SAI, are also taken into consideration by the Parliamentary Finance Committee. The Committee then delivers its recommendations to the Parliament as a report which then decides on the proposed recommendations, measures and deadlines for their implementation⁷³.

SAI delivers to the Parliamentary Committee a financial plan for the following year, in order to gain consent and with that consent to deliver it to the Ministry of Finance⁷⁴.

66 Law on Free Access to Information of Public Importance, article 39

67 Guidelines for creating and publishing of Directory on work of state organ <http://www.poverenik.org.rs/index.php/en/doc/bylaws-documents-/947-2010-09-22-09-11-08.html>

68 Rules on Procedure of SAI, article 48

69 Law on SAI, article 45

70 Rules on Procedure of SAI, article 45

71 Law on SAI, article 45

72 Rules on Procedure of Parliament, article 237 http://www.parlament.gov.rs/content/lat/akta/poslovnik/poslovnik_9.asp

73 Law on SAI, article 48

74 Law on SAI, article 51

Transparency (Practice)

To what extent is there transparency in the activities and decisions of the audit institution in practice?

Score: 50

SAI significantly improved the transparency of its work during 2011, including publishing the Information Directory, relevant legislation and by-laws as well as reports prepared by SAI on their web-site, which is still in the “process of being tested”⁷⁵. This information is made public in proper time and they provide adequate details on the SAI’s activities. The SAI states that the failure to keep the web-site up to date in the past was caused by the lack of personnel⁷⁶.

According to data from the annual report⁷⁷, “SAI provided transparency of work through cooperation of the President of the SAI Council with representatives of the media through various notifications and releases. In that way the public was informed on the conditions the institution works in, activities in providing office space, other conditions necessary for the operation of the institution, planned programs of work and activities, competencies in auditing, organizational structure of the Institution, employment dynamics in audit and support services, as well as on other significant matters”.

The SAI presented to the public at press conferences published reports on finalized audit procedures. The President of SAI was available to the media during the parliamentary debate on reports at sessions of the Parliamentary Finance Committee, as well as through press releases⁷⁸. The annual report for 2009 and 2010 contains detailed data on implementing the annual program of auditing, provided and spent assets and final account of SAI, with detailed elaboration of expenses, on the work of SAI Council, on the cooperation with international professional and financial institutions, selection of consultants for training, training and exams for auditors⁷⁹. SAI respected legal obligation on delivering annual work reports in 2009 and in 2010 to the Parliamentary Committee by 31st March.⁸⁰ The Committee took into consideration the work report for 2009 on 11th May 2010⁸¹ and for 2010 in June 2011. In July 2011, the Parliament issued the conclusion on accepting the SAI annual report⁸².

Reports on budget auditing for 2008 were delivered to the Parliament on 27th November 2009 and then presented to the public at a press conference. The Committee on 7th December 2009 took into consideration the report and proposed to Parliament to take into consideration one more time the report of SAI and to consider changes of the Law on SAI, on the basis of conclusions from the report⁸³. The Parliament took the report into consideration on 25th March 2010 at the session attended by representatives of SAI and the Government, led by the Prime Minister. The Parliamentary Committee for Finances discussed the SAI audit of the 2009 budget at three sessions, in December 2010, January and February 2011.⁸⁴ This report was presented at the press conference and published on the SAI web-site in proper time, in December 2010⁸⁵.

75 <http://www.dri.rs/>

76 Assessment of the vice-president of SAI Council from the interview with the author of the report, January 2011

77 Report was delivered to Transparency Serbia by the request for free access to information of public importance

78 <http://www.naslovi.net/2009-12-02/rts/drzavni-revizor-brani-izvestaj/1434958> http://www.pressonline.rs/sr/vesti/ves-ti_dana/story/102144/Sretenovi%C4%87%3A+Ne%C4%87e+biti+krivi%C4%8Dnih+prijava.html <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/541051/Kontrola+javnih+nabavki.html?email=yes> <http://www.prva.rs/sr/vesti/ekonomija/story/3108/Na+javnim+nabavkama+gubitak+800+miliona+evra.html> http://www.rtv.rs/sr_lat/drustvo/-SAI:-dve-presude-ministrima-nepri-avosnazne_223441.html <http://www.blic.rs/Vesti/Politika/229574/Do-sredine-februara-izvestaj-o-reviziji-javnih-preduzeća>

79 Report delivered to Transparency Serbia

80 Law on SAI, article 45

81 http://www.parlament.gov.rs/content/lat/aktivnosti/skupstinske_detalji.asp?Id=2303&t=A

82 http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2011/RS38-11.zip

83 <http://www.parlament.gov.rs/narodna-skupstina-871.html>

84 http://www.parlament.gov.rs/%C5%A0ezdeset_%C4%8Detvrta_sednica_Odbora_za_finansije_5056.941.html

85 <http://www.dri.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

Accountability (Law)

To what extent are there provisions in place to ensure that the SAI has to report and be accountable for its actions?

Score: 75

The SAI is obliged to report to the Parliament by submitting an annual work report and report on the audit of the final account of the budget of the Republic, final accounts of financial plans of the organizations of obligatory social security and consolidated financial reports of the Republic⁸⁶. The SAI is obliged to deliver to the Parliament, as well as to municipality assemblies, reports on audits that refer to entities under the municipalities' competences⁸⁷.

The report submitted to the Parliament, among other things, contains data on executing the annual plan of audit, secured and spent assets and the final account of SAI, work of the Council of SAI, realization of exams for auditors and training of auditors⁸⁸. SAI can submit to the Parliament during the year special reports on significant or urgent matters, that shouldn't be delayed until the regular report according to the opinion of the Council of SAI⁸⁹. SAI is also obligated to deliver reports upon the request of the Parliament with information and data that the Parliament asks for⁹⁰. Reports are considered by the Parliamentary Committee for Finances which then delivers its standpoints and recommendations to the Parliament. The Parliament decides on proposed recommendations, measures and deadlines for their implementation⁹¹. The deadline for delivering the work report for the previous year is March 31st of the current year⁹².

The SAI must deliver a financial plan to the Parliamentary Finance Committee, which should then be forwarded with the consent of the Committee to the Ministry of Finance⁹³. Deadlines for delivering the financial plan were prescribed by the Budget System Law that is a Memorandum on the budget. The deadline for submitting a financial plan to the Ministry of Finance is September 1st.⁹⁴

One clear accountability gap is that the SAI does not perform audit of its own final accounts. Data on final accounts are part of the annual work report of SAI⁹⁵. There is no obligation of auditing the final account, but the Parliament can entrust an audit of the final account of SAI to enterprises that conduct auditing, in accordance with the Law on Accounting and Auditing⁹⁶.

Administrative bodies audited by the SAI cannot challenge or appeal to the final audit results. In the process of audit, they are given the opportunity to challenge preliminary findings and draft audit reports by appealing to SAI⁹⁷.

86 Law on SAI, article 43

87 Law on SAI, article 44

88 Rules on Procedure of SAI, article 45 http://SAI.rs/images/pdf/dokumenti/akti/Poslovnik_SAI.pdf

89 Law on SAI, article 46

90 Law on SAI, article 46

91 Law on SAI, article 48

92 Law on SAI, article 45

93 Law on SAI, article 51

94 Budget System Law, article 37 and 78

95 SAI rules of procedures, article 9

96 Law on SAI, article 52

97 Law on SAI, article 39

Accountability (Practice)

To what extent does the SAI have to report and be accountable for its actions in practice?

Score: 75

SAI submits to the Parliament an annual work report that contains information on the published audits, provided and spent assets and final account of SAI, on the work of the Council of SAI, on cooperation with international professional and financial institutions, selection of consultants for training, training and exams for auditors and other activities of SAI. The Parliamentary Finance Committee adopted reports of SAI both for 2009 and 2010. The report was presented to deputies by the President of the SAI Council. However, the Committee poorly discusses the report, meaning that it did not deal with it in detail and provided only basic information about such discussions.⁹⁸ The annual work report for 2009 stated detailed data on income and expenditure of SAI, with elaboration of all items in expenditures⁹⁹.

The Law on SAI leaves the possibility for the Parliament to request an independent audit enterprise to perform an audit of the final account of SAI, but that never happened so far. In practice that should be initiated by the Finance Committee of the Parliament¹⁰⁰.

Integrity mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

Score: 100

State auditors and employees are obliged to respect and implement the Code of Ethics of the SAI¹⁰¹, as well as the International Organization of Supreme Audit Institutions (INTOSAI) Code of Ethics¹⁰². The SAI Code of Ethics contains provisions on respecting ethical principles, rules on acting and professional standards that assume integrity, respect, independence, objectivity, impartiality, political neutrality, preventing conflict of interest, confidentiality of data, competency and professional behavior. For violating the Code "liability according to law" is prescribed, without precise elaboration of the meaning of that provision, and the SAI Council is in charge of interpreting the Code provisions¹⁰³.

Certain rules for preventing conflict of interest are regulated by the Law on SAI¹⁰⁴. So that a person who was a member of the Government two years before the election cannot be a member of the SAI Council¹⁰⁵. Also, the role of the member of the Council, Supreme State Auditor, Authorized State Auditor and Auditor is incompatible with positions in a state body, municipality bodies and functions in political parties or unions. Furthermore, a member of the SAI Council and the auditor cannot have property shares in enterprises that are under SAI jurisdiction, nor can they perform other business activities that could have negative influence on its independence, impartiality and social reputation as well as to the trust in SAI and its reputation¹⁰⁶.

98 <http://www.parlament.rs> Minutes from 74. session of Finance Committee.

99 <http://dri.rs/cir/dokumenti.html>

100 Research done for purposes of NIS, Law on SAI, article 52

101 http://www.SAI.rs/images/pdf/dokumenti/kodeks/Eticki_kodeks_SAI.pdf

102 International Organization of Supreme Audit Institution's Code of Ethics <http://intosai.connexcc-hosting.net/blueline/upload/1codethaudstande.pdf> Most of the Serbian SAI Code of Ethics is identical with INTOSAI's Code of Ethics

103 SAI Code of ethics, articles 27 and 28

104 Law on SAI, article 16

105 Law on SAI, article 16

106 Law on SAI, article 17, 30

The members of the Council and auditors are subjected to prohibitions and obligations from the Law on Anti-corruption Agency, that regulates the status of all public officials, and that regulates matters of conflict of interest and gifts.¹⁰⁷ SAI is obligated to run records on gifts received by the members of the Council and to deliver a copy of the records for previous year to the Anti-corruption Agency by 31st March of the current year¹⁰⁸.

Members of the SAI Council are obliged to report property to the Anti-corruption Agency and part of this data is public¹⁰⁹. They are obliged to report changes in income and property for two years after the expiration of their function¹¹⁰. In that period members of the Council and auditors are obligated to ask for consent from the Anti-corruption Agency if they wish to be employed by or to establish business cooperation with a legal entity, entrepreneur or international organization engaged in activities relating to the office the official held¹¹¹.

It is forbidden for members of the Council and auditors to be relatives or spouses¹¹². A member of the Council and auditor cannot participate or decide in the process of auditing, if he was employed by the person that is a subject of an audit or one performed certain work for entities being audited, in the five year period from the termination of such engagements¹¹³.

It is prescribed that data from the audits is an official secret and can be used only for writing the report, and members of the Council, employees and external experts that SAI possibly engaged are obligated to keep this data confidential after the expiration of employment or hiring¹¹⁴.

Integrity mechanisms (Practice)

To what extent is the integrity of the audit institution ensured in practice?

Score: 100

There were no procedures for the violation of the Code of Ethics in SAI¹¹⁵. The media also has not recorded any proceedings of the auditors and members of the SAI Council that could indicate a breach of standards from the Law on SAI and Anti-corruption Agency Law¹¹⁶. The Anti-corruption Agency has not undertaken any measures against members of the SAI Council or auditors¹¹⁷. Employees in SAI do not have special trainings on matters of integrity, but they are, according to the Vice-president of the SAI Council, all familiarized with the Code of Ethics and obligation of its implementation. Training for obtaining the certificate that starts in January 2011 and has one part that is dedicated to integrity matters¹¹⁸.

Although, after the first report on the revised budget for 2008 that SAI published in December 2009 certain Ministers were unsatisfied, because of irregularities found in their ministries, the integrity of the members of the SAI Council and auditors was not questioned in public¹¹⁹.

107 <http://www.acas.rs/en/zakoni-i-drugi-propisi/the-mayor/law-on-agency.html>

108 Anti-corruption Agency Act, articles 39-42

109 Anti-corruption Agency Act, articles 43-47

110 Anti-corruption Agency Act, article 44

111 Anti-corruption Agency Act, article 38

112 Law on SAI, article 18

113 Law on SAI, article 18, 30

114 Rules on Procedure of SAI, article 49 and Law on SAI, article 42

115 Interview with vice-president of the SAI Council, January 2011.

116 Press clipping

117 Data from ACA, January 2011.

118 Data from the interview with vice-president of the SAI Council, January 2011.

119 <http://www.naslovi.net/2009-12-04/mondo/ministri-razlicito-o-trosenju-budzeta-u-2008/1438740>

ROLE

Effective financial audits

To what extent does the audit institution provide effective audits of public expenditure?

Score: 25

Audits done by SAI are regular and up to date, but the range of public spending audits conducted by SAI is limited primarily “due to human resource capacities limitations or rather an insufficient number of auditors, despite the recent improvements, and by the lack of training for other types of audit¹²⁰. SAI primarily does financial auditing and checks the regularity of business conduct¹²¹. There was no audit of the purposefulness of spending the assets until now and the number of audited entities is limited¹²². Reports on the regularity of spending assets is therefore inappropriate in “depth” and “comprehensiveness”¹²³.

According to the Law, the SAI¹²⁴ has a wide scope of powers, sufficient for performing f their functions. SAI can perform audits of income and expenditure in accordance with the regulations on the budget system and regulations on public income and expenditure, financial reports, financial transactions, accounts, analysis and other records and information of the entities under audit, regularity of business conduct of the entities under audit in accordance with regulations and competencies, purposefulness of disposing with public assets completely or in certain part, the system of financial administration and control of the budget system and system of other bodies and organizations that are subject to audit, the system of internal controls, internal audit, accounting and financial proceedings within subjects of the audit, acts and activities of entities under audit that produce or can produce financial effects to income and expenditure, property, borrowing as well as for purposeful use of assets that entities under audit dispose with, and regularities of the work of administration and management bodies¹²⁵.

Since its establishment, SAI published two audits of the final budget accounts of the Republic – for 2008¹²⁶ and for 2009¹²⁷. The audit of the budget for 2008 does not contain the auditor’s opinion because of, among other reasons the insufficient number of auditors, which lead to auditing on a small sample of total expenditure. Instead of that, SAI “drew attention” to the facts determined with auditing¹²⁸. The report revealed that SAI did not use all the powers laid down in the law. The report covered issues related to the accounting system, existence of internal control and internal audit of users of budget assets, work of the Treasury, the lack of evidence of state property, selected contracts of ministries¹²⁹.

The audit of the budget for 2009 was done according to a changed methodology of work of SAI¹³⁰, so auditors started from financial reports of budget users¹³¹, towards the final budget account. Budget control for 2009 made up approximately 70 percent of budget expenditure and an audit was carried out on the Treasury, National Bank of Serbia in the part that refers to disposing with

120 Statement of SAI Council Vice president, March 2011.

121 Interview with vicepresident of the SAI Council, January 2011., <http://dri.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

122 <http://dri.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

123 Interview with economic expert that monitors the work of SAI

124 Law on SAI, article 9

125 Law on SAI, article 9

126 http://www.SAI.rs/images/pdf/revizija/izv_o_reviziji_zr_budzeta_rs_za_08.pdf

127 <http://www.SAI.rs/images/pdf/revizija/izvestaj2009-1.pdf>

128 <http://dri.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

129 <http://dri.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

130 Data from the interview with vice-president of SAI Council, January 2011

131 Seven Ministries, Treasury and report on management of National Bank of Serbia in the part that refers to business with state budget

the budget, as well as seven Ministries - Finances, Education, Labor and Social Affairs, Agriculture, Infrastructure, Science and Youth and Sports. SAI positively assessed only the financial reports of the National Bank of Serbia¹³². Only one audit of regularity of business conduct was performed, or rather the legality and regularity of spending money and accounting, but not auditing of the purposefulness, or rather validation of whether the assets were used according to the principles of economy, efficiency, effectiveness and according to planned goals¹³³. Training for auditors for that kind of validation begins in 2011 and it was announced by the Vice-president of the SAI Council that auditing of the purposefulness of management can begin in 2013¹³⁴.

The SAI did make a progress in the second audit, covering a wider scope of public expenditure¹³⁵. Reports also revealed a certain progress in some controlled areas. For example, among 18 entities that were checked for the year of 2008¹³⁶ only 7 established internal audit, and only five created reports on internal auditing and delivered them to the Central Unit for harmonization within the prescribed deadline. For the next year, 10 out of 19 users had internal audits¹³⁷. SAI stressed the irregularities in work of internal audits in certain Ministries, but in a joint conclusion stated that "internal audit is not organized to appropriate and reliable way, to allow consistent implementation of the law and respect rules of internal control"¹³⁸. On the other hand irregularities in certain areas, such as public procurement were repeated in 2009¹³⁹.

Both reports, on audit of the budget for 2008 and 2009, were presented to the Parliament¹⁴⁰.

In order to make a larger impact on controlling public expenditure, SAI is expected to start auditing public enterprises regularly, especially public procurements by public enterprises. Between March and August 2011, SAI published five audit reports of that kind and initiated several sanctioning procedures¹⁴¹. In 2011 SAI is expected to also perform the audit of certain municipalities and funds for social insurance.¹⁴²

The quality of SAI's work related to their first report was opposed by some audited entities, claims that SAI did not interpret laws or facts properly and that it also interpreted it in an indirect way¹⁴³, by the Director of the Anti-corruption Agency¹⁴⁴ and indirectly by misdemeanor courts that did not convict accused ministers in certain cases¹⁴⁵. However, in general, their work could be assessed as good, but still insufficient in terms of the scope and depth to ensure the necessary level of effectiveness of audit of Serbian public finances¹⁴⁶. SAI is not to be blamed for this, but rather the weakness of other oversight mechanisms in area of public finances as well.¹⁴⁷

132 <http://dri.rs/images/pdf/revizija/izvestaj2009-1.pdf>

133 <http://dri.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

134 Interview with vice-president of SAI Council, January 2011

135 <http://www.SAI.rs/images/pdf/revizija/izvestaj2009-1.pdf>

136 17 Ministries and Security Information Agency

137 <http://www.SAI.rs/images/pdf/revizija/izvestaj2009-1.pdf>

138 <http://www.SAI.rs/images/pdf/revizija/izvestaj2009-1.pdf>

139 <http://www.SAI.rs/images/pdf/revizija/izvestaj2009-1.pdf>

140 http://www.parlament.gov.rs/Dan_za_odgovaranje_na_poslani%C4%8Dka_pitanja_u_vezi_sa_aktuelnom_temom.4474.941.html

141 <http://www.dri.rs/poslednji-revizorski-izvesta.html>

142 Interview with vice-president of the SAI Council, January 2011

143 <http://www.naslovi.net/2009-12-01/borba/ministarstvo-rada-negiralo-navode-u-izvestaju-dri/1432480>

144 http://www.rtv.rs/sr_lat/drustvo/markovic-mnogo-propusta-u-izvestaju-revizora_169523.html

145 <http://www.kurir-info.rs/vesti/voja-brajovic-osudjen-sloba-milosavljevic-oslobodjen-84277.php>

146 Interview with economic expert that monitors the work of SAI.

147 Interview with economic expert that monitors the work of SAI.

Detecting and sanctioning misbehavior

Does the audit institution detect and investigate misbehavior of public officeholders?

Score: 75

SAI has authorization to access all records of financial management, including documents that are secret¹⁴⁸. Institutions where audit is performed are obliged to deliver to auditors all requested information and documents, including confidential data and documents that are necessary for planning and performing the audit¹⁴⁹.

When SAI determines that the subject of audit has not removed the noticed irregularities, and if that represents a more severe form of breaching the obligation of good management, the law provides that the SAI should notify the Parliament on this issue and issues a recommendation for dismissing the responsible person and notifies the public on this matter¹⁵⁰. SAI has the possibility and the obligation to submit to the court a request for initiating misdemeanor procedures or rather files criminal charges, if it discovers during auditing significant activities that indicate the existence of the elements of a misdemeanor or criminal act¹⁵¹. SAI is obliged to notify the public defender of cases when activities of the subject of auditing, legal entity that works with the subject of the audit, damages public property¹⁵².

In practice, SAI consulted on all irregularities discovered during the two audits undertaken so far, with the public defender¹⁵³. After conducting the audit of the final budget account for 2008, SAI submitted misdemeanor charges against 11 then active and former Ministers, four state secretaries and four more state officials¹⁵⁴ and thereby showed positions of political power, strength and independence to identify responsibility of officials¹⁵⁵. Requests for the dismissal of responsible persons were not submitted. Out of 19 misdemeanor charges submitted to the Misdemeanor Court, one was resolved by punishing the current Minister with 50.000 RSD (app 500 Euros), another Minister was liberated of accusations and in most of the cases the procedure is still in progress¹⁵⁶. Offences that Ministers are charged with include approving payments without bookkeeping documentation, inappropriate payment of catering services, payments for contracts without evidence that the agreed job was performed, approving payment of expenditure that was not approved by the budget and conducting public procurement of services without respecting the Public Procurement Law¹⁵⁷.

The President of SAI announced in January 2011 that charges on irregularities noticed in the audit of the final budget account for 2009 will be submitted, emphasizing that this time there is a basis for criminal charges.¹⁵⁸ In February 2011 12 misdemeanor charges were submitted against 3 ministers and 11 more public officials for irregularities detected in the 2009 budget auditing. In August 2011, SAI submitted also the first criminal charge against managers of local public utility enterprise in the city of Nis¹⁵⁹.

After the audit of the budget for 2008 and 2009, SAI did not file any criminal charges, but on the basis of findings from that report, a group of nongovernmental organizations that advocates more transparent planning and spending of the budget submitted criminal charges against 4 Ministers and one state official¹⁶⁰. There is still no response from the prosecutor.

148 Law on SAI, article 36 and Law on Secrecy of Data, article 38

149 Law on SAI, article 36

150 Law on SAI, article 40

151 Law on SAI, article 41

152 Law on SAI, article 41

153 Data from the interview with vice-president of SAI Council

154 2008 was election year so it comprehended work of present and former Ministers

155 Assessment from the interview with economy expert that monitors work of SAI

156 Research done for purpose of NIS

157 Data from the interview with vice-president of SAI Council

158 <http://www.vesti.rs/Vesti/Uskoro-prekrsajne-prijave-ima-osnova-i-za-krivicne-2.html>

159 <http://www.blic.rs/Vesti/Hronika/270332/DRI-podnela-krivicnu-prijavu-protiv-rukovodilaca-Mediane>

160 http://www.nadzor.org.rs/krivicne_prijave_protiv_ministara_lat.htm

There are several problems with sanctioning mechanisms related to the work of SAI. First, it is the fact that public prosecution does not have the practice to conduct further investigations on the basis of SAI reports, after their publishing (e.g. to establish whether there are elements of criminal liability besides misdemeanor liability)¹⁶¹ while SAI itself does not have sufficient powers to establish *dolus* of the responsible person, which is a necessary element for criminal prosecution¹⁶². The second problem is the statute of limitations for initiating misdemeanor procedures (one year) that prevented SAI to initiate charges for several public procurement related offences¹⁶³. Finally, there is a problem, that SAI cannot be blamed for, that Serbia lacks institutions capable enough to perform ad hoc control of suspicious transactions¹⁶⁴, while SAI is working on the basis of a pre-defined annual plan.

Improving financial management

To what extent is the SAI effective in improving the financial management of the government?

Score: 50

Ranges in promotion of financial management of the Government are limited as much as audit itself, its depth and comprehensiveness. Reasons lie in the limited human resources of SAI¹⁶⁵. Audit procedure envisages discussion on the draft report of audit where a representative of the audited entity can dispute findings of the auditor through explanations and additional evidence. The entity can also appeal to the SAI Council on the draft report¹⁶⁶. The final report is delivered to the audited entity and to the person responsible in the audited entity during auditing¹⁶⁷. If the audit determines irregularities that are not removed during the process, the entity under audit is obligated to submit a report on their removal within a deadline from 30 to 90 days from receiving the SAI report¹⁶⁸. If irregularities are not removed and if it's a more severe violation of the obligation of good management, SAI issues a recommendation for dismissing the person in charge and notifies the public on that¹⁶⁹. After auditing the final account for 2008 and 2009 there were no such measures.

The report on auditing the final budget account for 2008, did not contain a summary of recommendations for proceeding for the audited entities. During the audit of the final account of the budget for 2009 findings from the report for the previous year were not individually analyzed, and because of a lack of auditors, it wasn't checked whether irregularities were removed¹⁷⁰. Merely by comparing the reports, a certain progress can be noticed in some areas (establishing of internal controls and internal audits in public assets users) but also that irregularities, especially in the area of violating the Public Procurement Law are continuing¹⁷¹.

The President of the SAI Council stated at the presentation of the report on auditing for 2009 that results of the auditing "are not so disturbing", but that budget users didn't make only accounting mistakes but also violated the regulations¹⁷². He then added that results of the audit were decreasing the budget deficit by 4.2 billion RSD (50 million USD) by correcting financial statements of the Budget Accounts¹⁷³.

161 Interview with deputy public prosecutor from Belgrade, July 2011.

162 Interview with deputy public prosecutor from Belgrade, July 2011.

163 Interview with deputy public prosecutor from Belgrade, July 2011.

164 Assessment from interview with economy expert that monitors work of SAI

165 Assessment from interview with economy expert that monitors work of SAI

166 Law on SAI, articles 38 and 39

167 Law on SAI, article 39

168 Law on SAI, article 40

169 Law on SAI, article 39

170 According to statements of vice-president of SAI Council reason was lack of human resources

171 Research done for purpose of NIS

172 http://www.b92.net/biz/vesti/srbija.php?yyyy=2010&mm=12&dd=16&nav_id=479841

173 http://www.b92.net/biz/vesti/srbija.php?yyyy=2010&mm=12&dd=16&nav_id=479841

In the report on auditing the final budget account for 2009, 16 recommendations were issued to budget users, ranging from individual recommendations to, for example, the Ministry of Finance to show the state of the Revolving Credit Fund in the Main Treasury Book, to recommendations on introducing internal control units and internal audit and harmonization of certain laws and regulations.

Since this is the first package of recommendations and that they are published on 16th December 2010, it is impossible to determine at this moment how much SAI will continue on insisting on their implementation, checking whether they were implemented and how much will the Government abide the recommendations. On the basis of published reports¹⁷⁴ it is also not clear to which extent will Parliament monitor that process.

174 http://www.parlament.gov.rs/%C5%A0ezdeset_%C4%8Detvrta_sednica_Odbora_za_finansije_.5056.941.html

SUPREME AUDIT INSTITUTION

Key findings and recommendations

After three years of work, **the State Audit Institution** has not solved the problem of permanent accomodation, does not have enough staff, and therefore has a limited scope of audits. Previous audits did not include the most important aspects of control - checking the appropriateness of spending money. Audit and annual reports of SAI do not include recommendations for improving the system of work in areas that SAI is dealing with.

1. Resolving of problems of premises for the work of the State Audit Institution permanently;
2. Changes of the Rulebook on the work organization and employment, to increase the number of auditors, so all suspicions reported to the SAI could be checked;
3. To include in mandatory audit program of the SAI financing of political parties and to determine the scope of audit so that it doesn't overlap with the control performed by the Anti-corruption Agency, but also in the way that all important aspects of political party financing are covered;
4. To include in the audit program public procurement planning procedures as soon as possible;
5. Strengthening internal audits and budget inspections, so that SAI could focus on matters of appropriateness of public expenditures;
6. Introducing the practice that SAI submits misdemeanor charges even before it submits report on audit;
7. Introduction of checking the regularity and appropriateness of public procurement in the mandatory part of the annual work program of the SAI;
8. Opening a channel for citizens to report irregularities to SAI and determining precise criterion on which SAI makes its auditing plan, including explanations on whether information received from citizens or institutions (PPO, ACAS) were checked.



ANTI-CORRUPTION AGENCIES NATIONAL INTEGRITY SYSTEM

Summary: ACA began working in 2010. It is facing a lack of resources and political obstructions, while legal powers for the fulfillment of certain tasks are insufficient. The Agency has been successful in ensuring that a greater number of public officials submit their property reports, but the control of these reports was carried out in a small number of cases. There was no control over the party's financial reports. The Agency is actively involved in developing a new Strategy for fighting corruption.

ANTI-CORRUPTION AGENCIES			
Overall Pillar Score: 60			
	Indicator	Law	Practice
Capacity 69/100	Resources	75	50
	Independence	100	50
Governance 54/100	Transparency	75	25
	Accountability	75	50
	Integrity mechanisms	50	50
Role 58/100	Prevention	75	
	Education	75	
	Investigation	25	

Structure – The Anti-Corruption Agency was founded in accordance with the Anti-Corruption Agency Law, adopted by the Parliament in October 2008¹. The Agency is authorized for prevention and education, whereas punitive measures are in the hands of regular police and prosecutors’ offices. The Agency started operating on January 1st, 2010, when the law came into effect, and took over the operations and employees of the Board for resolving conflict of interest, the body in charge for implementation of the former Law on Conflict of Interest Prevention (2004-2009). The Law has, among other things, authorized the Agency to handle issues related to conflict of interest, control of the financing of parties and election campaigns, implementation of the National Strategy for Combating Corruption and the Action Plan for the Implementation of the National Strategy for Combating Corruption². The Agency can initiate amendments to regulations in the field of anti-corruption. The Agency is run by a director, who is elected by the Agency Board in a public competition (the first director was elected in July 2009)³.

Nine members of the Board are appointed by the Parliament (the first convocation was appointed in April 2009), at the proposal of nine nominators - the Administrative Committee of the Parliament; the President of the Republic; the Government; the Supreme Court of Cassation; the State Audit Institution, Ombudsman and Commissioner for Information of Public Importance, through joint agreement; the Social and Economic Council; the Bar Association of Serbia; the Associations of Journalists of the Republic of Serbia, in mutual agreement⁴. The Agency consists of four sectors – Sector for prevention, Sector for operations, Sector for general services, and Sector for international cooperation.

1 <http://www.parlament.gov.rs/akti/doneti-zakoni/u-sazivu-od-11-juna-2008.1526.html>

2 ACA law, article 5

3 ACA law, article 15

4 ACA law, article 9

ASSESSMENT

CAPACITY

Resources (Law)

To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?

Score: 75

As other budget beneficiaries, ACA drafts its own financial plan, which could be modified by the Finance Ministry⁵. The Agency's draft budget, as a special chapter, becomes part of the draft Serbian budget, which is made by the Government and forwarded to the Parliament for adoption. This budget is subject to changes in Parliament, by means of amendments submitted by MPs. There is no official, legal or systemic guarantee that the Agency's draft budget will not be modified by the Finance Ministry, Government or Parliament. The Agency, apart from budget funds, can also use funds from donations for concrete projects and its own revenues from activities such as the making of integrity plans in the private commercial sector⁶. The Agency autonomously disposes with funds from the budget and its own revenues⁷.

The Agency had problems with recruitment of people in its expert Service because the Law on Civil Servants had set quotas according to employee rank, which disabled the employment of a sufficient number of highly qualified and experienced employees. That problem was solved in line with a government regulation that stated which state bodies those limits refer to, i.e. through the adoption of a position that it does not refer to ACA⁸.

Resources (Practice)

To what extent does the ACA have adequate resources to achieve its goals in practice?

Score: 50

ACA resources are not enough to fulfill all of the Agency's tasks. The budget requested by the Anti-Corruption Agency for 2010, totaling about 160 million dinars (1.6 million euros) was accepted by the Finance Ministry, Government and Parliament without any changes⁹. Problems had occurred with the 2009 budget, as 2009 was the preparation year – the time of convening the Agency and appointing the Board and director, as well as misunderstandings after the unveiling of the Memorandum of the 2010 Serbian budget. However, these misunderstandings were probably more the result of slow work in state institutions, rather than of an intention to disable the Agency's work.¹⁰ It is much harder to find an excuse for Finance Ministry when they invited non-existing Board for resolving conflict of interest, which ceased to exist when ACA was founded, to submit its draft budget for 2011, while did not invite existing Agency to do that¹¹.

5 ACA law, article 3, Budget System Law, articles 28, 31 and 37

6 ACA Law, article 3

7 ACA Law, article 3

8 Interview with Agency's representatives, November 15th 2010

9 Interview with Agency's representatives, November 15th 2010

10 Interview with Agency's representatives, November 15th 2010

11 Ministry sent Instructions for drafting 2011 budget to non-existing Board <http://acas.rs/en/aktuelnosti/191-saopstenje-povodom-uputstva-za-prijemu-budzeta.html>

The Work Organization Act of the Agency was changed in 2010, hence 90 instead of 60 employees will now be working in the Agency's expert services¹². Even so, the projected budget for 2011 increased by just around 1.5%. A considerable portion of the 2010 budget had been planned for and was spent on the initial equipping of the Agency, procurement of technical goods, equipment and software, meaning that budget for 2011 would be sufficient for ACA work. In January 2011, the Agency employed a total of 54 people and that number was not enough for all activities to be carried out¹³. One cannot foresee whether the planned 90 civil servants would be enough, i.e. whether the Agency planned well the needs for its own human resources, because some aspects of its work are yet to be fully practiced. The problem with employment of additional staff was the lack of space in the temporary premises the Agency has been occupying since its founding¹⁴. The space inherited from the Board for resolving conflict of interest has been expanded to include former offices of the Justice Ministry, but the reconstruction of the building that is envisaged to be permanent headquarters of the Agency is running behind schedule¹⁵. Additional expansion of the temporary residence has been slowed down due to, as Agency officials put it, "the indifferent attitude of state bodies"¹⁶. Finally, a problem in employment is also the insufficient number of qualified candidates in competition. Eighteen candidates had applied for five posts in the competition, called in October 2010, and only three who had met the Agency's standards were employed¹⁷.

The Agency organizes public competitions for new employees. The candidates, who meet the demands regulated by the job description, which includes appropriate academic titles and working experience, pass interviews with the competition commission, additional testing and interviews with the sector directors and the Agency Director may be selected¹⁸. Those interviews, according to Agency representatives¹⁹, also include a review of the candidates' ethical norms. One of the formal terms of employment is also evidence that the candidate has no criminal record²⁰. Agency employees are constantly upgrading their skills and knowledge in courses for state employees and in courses and seminars organized by international and domestic organizations. In February-November 2010, 10 training courses were given to all employees on anti-corruption topics and the fight against corruption from the ACA jurisdiction, as well as five training sessions for all employees in communication skills²¹. Five employees attended a three-week program in the U.S. dubbed "The Efficient Implementation of the Law on Conflict of Interest," two attended a three-week university course in combating corruption at the University of Hong Kong, one employee obtained a certificate in "Integrity Manager," a certified program on anti-corruption, ReSPA, EIPA, DBB Akademie²². The plan for 2011 envisages 30 single-day seminars for employees, which will be organized by the Agency's training section²³.

Independence (Law)

To what extent is the ACA independent by law?

Score: 100

ACA is an "independent state body", established by the Anti-Corruption Agency Law. It is accountable to the Parliament²⁴. Mechanism of appointing Board members and ACA director protects ACA from direct political interference. The Parliament appoints members of the Agency Board.

- 12 Interview with Agency's representatives, November 15th 2010
- 13 Interview with Agency's representatives, November 15th 2010, Agency's Information Directory, January 2011.
- 14 Interview with Agency's representatives, November 15th 2010
- 15 Interview with Agency's representatives, November 15th 2010
- 16 Interview with Agency's representatives, November 15th 2010
- 17 Interview with Agency's representatives, November 15th 2010
- 18 Interview with Agency's representatives, November 15th 2010
- 19 Interview with Agency's representatives, November 15th 2010
- 20 Law on Public Servants, article 45
- 21 Data provided by the Agency's Training and education department
- 22 Data provided by the Agency's Training and education department
- 23 Data provided by the Agency's Training and education department
- 24 ACA Law, article 3

Candidates for nine members are proposed by: the Administrative Committee of the Parliament; the President of the Republic; the Government; the Supreme Court of Cassation; the State Audit Institution, the Ombudsman and Commissioner for Information of Public Importance, through joint agreement; the Social and Economic Council; the Bar Association of Serbia and Associations of Journalists of the Republic of Serbia, in mutual agreement. Potential political influence is further decreased by possibility of each nominator to propose one candidate for the function only²⁵. However, at least three nominators are clearly political bodies²⁶.

Politics cannot interfere directly with the dismissal of the ACA Director²⁷. The Board appoints the Director in a public contest and only the Board can dismiss him or her, in case of negligent performance of duties, if he/she becomes a member of a political party, discredits the reputation or political impartiality of the Agency, if convicted for a criminal offence making him or her unworthy of the function or if determined that he/she has committed a violation of the Anti-corruption Agency Law.

A member of the Agency Board can be dismissed by the Parliament, but only at the Board's proposal²⁸. According to law²⁹, members of the Board can be dismissed in case of dereliction of duty, if he/she becomes a member of a political party, discredits the reputation or political impartiality of the Agency, if convicted for a criminal offence making him/her unworthy of the function of a member of the Board or if determined that he has committed a violation of the Anti-corruption Agency Law. The procedure to determine whether there are grounds for dismissal of a member of the Board is conducted by the Board. The procedure may be initiated following the proposal of the Chairperson of the Board, at least three members of the Board, Director of the Agency, and/or the nominator of the relevant member. Decision on dismissal is passed by the Parliament at the motion of the Board³⁰.

The law sets formal conditions for the appointment of the Agency Director, including that he or she cannot be a member of any political party, while the Board, i.e. the competition commission comprising Board members, evaluates his or her level of expertise³¹. In the same manner the Agency carries out contests and employs other employees in expert services, as well as the deputy director. The Board members are appointed for a period of four years, one person can be appointed twice, whereas the director is appointed for five years³². The Agency also has a deputy director, who is appointed by the Director among three candidates chosen by the Agency Board after a public competition. The deputy director's mandate ends at the same time as the Director's³³. Other employees are civil servants and can be dismissed only in accordance with Labor Law and Law on civil servants³⁴.

Independence (Practice)

To what extent is the ACA independent in practice?

Score: 50

ACA's work indirectly depends on the political parties, which can amend the Law according to which it was founded and which regulates its work, as well as due to the fact that it is bound to cooperate with them in the making of the new law on party financing and other legislative reforms³⁵.

25 ACA Law, article 3, 6-10

26 ACA Law, article 9

27 ACA Law, article 13

28 ACA Law, article 13.

29 ACA Law, article 13.

30 ACA Law, article 20

31 ACA Law, articles 16, 17

32 ACA Law, article 10

33 ACA Law, article 21

34 ACA Law, articles 23, 24

35 Interview with ACA Board president Cedomir Cupic, January 2011.

During the first year of the Agency's work, officials put up strong resistance to the legal obligation of giving up multiple functions. Despite strong public pressure from the representatives of ruling parties, the Agency refused to take a stand according to which directly elected officials would be allowed to hold on to multiple functions until the end of their mandate, hence the parliament amended the law to enable them to do so³⁶. The amendment, despite having been voted for by all ruling coalition MPs, was formally not backed by either the government or the authorized Justice Ministry³⁷. The Agency submitted a request to the Constitutional Court to declare the amendment unconstitutional and the court is due to announce its decision³⁸. This conflict with MPs has given the Agency the image of a body acting independently from politics³⁹.

The Agency employees are placed on posts in tune with the work organization and over the course of the first year there have been no cases of transfer or dismissal⁴⁰.

The Agency has no investigative authority, except in the field of checking officials' property cards, reporting on the financing of parties and election campaigns and other reports submitted to it, which is part of the control function, and in that area the Agency cooperates with the authorized bodies. There is no data yet on cooperation or problems in cooperation with the authorized bodies⁴¹. The Agency cooperates with other bodies in the field of citizens' petitions, where certain cases can be transferred under the authority of the police and prosecutors' offices. That data for the first year of work is not available yet either⁴².

The Agency Director is appointed by the Agency's board in a public contest. The commission, comprising board members, talked with all candidates who had met the formal requirements set by the law, nominated five candidates to the board, with whom the whole board talked, after which the first director was appointed unanimously⁴³.

36 <http://www.naslovi.net/2010-07-30/vecernje-novosti/tadic-potpisao-agencija-najavljuje-zalbu/1888797> http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?id=937&t=Z

37 Statement by minister Snezana Malovic, Beta news agency July 21st 2010 .

38 http://acas.rs/sr_lat/aktuelnosti/190-predlog-za-ocenu-ustavnosti.html

39 <http://www.blic.rs/Vesti/Politika/200751/Cupic-Vlast-se-dogovorila-da-zadrzi-fotelje>

40 Interview with Agency's representatives, November 15th 2010

41 Interview with Agency's representatives, November 15th 2010

42 Interview with Agency's representatives, November 15th 2010

43 Interview with ACA Board president Cedomir Cupic, January 2011.

GOVERNANCE

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?

Score: 75

The Agency is obligated by the Freedom of Information Law (FOI Law) to put together and regularly update an Information Directory⁴⁴. The ACA Law stipulates that the process in which it is determined whether an official has violated provisions of the ACA Law is not public⁴⁵.

According to FOI Law, however, the Agency is obligated to submit data upon request for the access to information, including data on the processes it is running, unless that jeopardizes the control process itself or privacy of individuals. FOI Law stipulates that information should be given within 15 days. ACA publishes an annual report. The first report was published in a timely manner, in March 2011⁴⁶. Some other information should be public as well, i.e. portions of registries and the records kept by the Agency – registry of public officials, registry of property (of public officials), list of legal entities in which an official owns a share or stock in excess of 20%, catalogue of gifts and annual financial statements of political parties⁴⁷.

Transparency (Practice)

To what extent is there transparency in the activities and decision-making processes of ACA in practice?

Score: 25

Since the beginning of 2010, the Agency has received five requests for access to information of public importance, of which it has replied to four⁴⁸. It held 10 news conferences and the director and board representatives gave around 110 interviews and statements on ACA activities⁴⁹. The Information Directory was published on the ACA website in January 2011. In November 2010, the Agency unveiled data on the number of cases launched against officials, the measures issued and misdemeanor reports filed. In March 2011 ACA submitted the annual report to the Parliament and made it available to the public on its website. ACA publishes on its website all information required by law to be made publicly available⁵⁰.

However, ACA published a set of information about public officials with delay. Initial publishing of extracts from public officials' income and property declarations, after the deadline expired on January 31st 2010, took place few months later (for app. 700 top ranked public officials out of a total of more than 14 thousand that submitted such reports)⁵¹. The list is populated subsequently and currently covers data on about 2.700 public officials⁵². In general, there were many suspicions

44 <http://www.poverenik.rs/sr/pravni-okvir-pi/podzakonski-akti.html>

45 ACA Law, article 50

46 http://www.acas.rs/sr_lat/component/content/article/37/229.html

47 ACA Law, articles 47 and 68

48 Data provided by Agency's PR office

49 Data provided by Agency's PR office

50 www.acas.rs, http://www.acas.rs/sr_lat/component/content/article/37/229.html

51 Research done for purpose of NIS, www.acas.rs

52 http://acas.rs/sr_cir/aktuelnosti/199.html

in the public about the veracity of the published data, along with discontent because of the fact that no information about property of family members is publicized (not required by Law)⁵³. The Law provides for only limited access to the public officials declarations⁵⁴. Furthermore, the Agency interpreted a provision of the Law's article 47 in a rather narrow way. Namely, the Agency is publishing only information on whether a public official has or does not have a bank deposit (without info of value), whereas the Law provides for publishing of information about "savings deposits, without specifying the bank and account number"⁵⁵.

The Agency published the first list of public officials in November 2010⁵⁶. By the March 2011 there were around 7.000 public officials in the public officials' registry.⁵⁷ The list of commercial entities, possessed in part by public officials is not published on the Agency's web site, but it is public on request. The ACA Law does not specify whether it should be published on the web site⁵⁸. When publishing information about ongoing cases before the Agency or other bodies, no names are presented, which is reasonable and in accordance with the Law. On the other hand, there is no legal limitation that prevents the Agency to publish names of those people against whom misdemeanor procedure have been initiated.

Accountability (Law)

To what extent are there provisions in place to ensure that the ACA has to report and be accountable for its actions?

Score: 75

The Agency submits an annual report on its work to the Serbian Parliament, no later than March 31st of the current year for the previous year⁵⁹. The Agency can also submit extraordinary reports, at the Parliament's demand or at its own initiative⁶⁰. The report is also submitted to the Serbian Government⁶¹. The report is adopted by the Agency board and sent to the Parliament. It becomes public instantly, after its adoption by the board⁶². The Agency has no *stricto sensu* investigative authorities, but rather carries out control and reports on it in its annual work report⁶³. The Agency board adopts a report on expenditures and the report then becomes public⁶⁴. There is no obligation of independent financial review, but ACA is subject to control by the State Audit Institution, as all other public bodies⁶⁵.

There is the possibility of judicial protection from the decisions made by the Agency. The Agency passes measures in case of violation of the law at two levels – at the first the director decides, while the Agency board decides on the appeal⁶⁶. A case to the Administrative Court can be launched against the board's decision⁶⁷. This all relates to the cases where the Agency determines whether public official violated provision of the Law on the Anti-corruption Agency and whether some measures could, therefore, be imposed. For other situations, e.g. where the Agency establishes that there

53 http://www.b92.net/biz/vesti/srbija.php?yyyy=2010&mm=06&dd=12&nav_id=438246
<http://www.vesti-online.com/Vesti/Srbija/60007/Ko-skriva-imovinu-5-godina-zatvora>

54 ACA Law, article 46, 47

55 http://acas.rs/sr_cir/aktuelnosti/199.html ACA Law, article 47

56 http://acas.rs/images/stories/Registar_funkcionera.pdf

57 http://www.acas.rs/sr_cir/aktuelnosti/233-saopstenje-5-april.html

58 ACA Law, article 36, 68 and data provided by Agency's PR

59 ACA Law, article 26

60 ACA Law, article 26

61 ACA Law, article 26

62 ACA Law, article 7, http://www.acas.rs/sr_lat/component/content/article/37/229.html

63 ACA Law, article 5

64 ACA Law, article 7

65 Law on the State Audit Institution

66 ACA Law, articles 51-53

67 ACA Law, articles 50-53

is a violation of political party financing rules, whether there are elements of misdemeanor liability, the Agency does not issue formal decisions and subsequently, there is no legal remedy against it⁶⁸. The Agency does not issue misdemeanor or criminal sanctions defined by the law, but rather files misdemeanor reports to misdemeanor courts, i.e. criminal reports to public prosecution offices⁶⁹.

The Agency is obliged, by the law⁷⁰, to ensure protection of personal data when informing the general public. Also, when informing the public, or replying to complaints the Agency must restrict information that may affect privacy or any other interest protected by the law⁷¹. For damages caused by the Agency to an official, related person or other person or body through the violation of those articles, the Agency is accountable in accordance with the law governing contract law⁷².

There is no citizen oversight committee, because the Agency has no investigative powers. There are no provisions to protect whistleblowers who report misconduct in the ACA.

Accountability (Practice)

To what extent does the ACA have to report and be accountable for its actions in practice?

Score: 50

Due to the complicated structure of the Agency there are several levels of accountability – employees to the director, director to the ACA Board and accountability of the Agency to the Parliament⁷³. There were no any formal or informal reports submitted to the Board by the director, considering responsibility or accountability of the employees. The Board is regularly informed by the director about ACA' activities, but so far it did not ask for any specific report⁷⁴. The organizational units submit regular work reports to the director, which are then archived, and the ACA puts together⁷⁵ a work report that is archived. The annual report, which was submitted and accepted by the Parliament, is available to the public. It is clearly presented and with an appropriate level of details⁷⁶. There are no provisions to protect whistleblowers who report misconduct in the ACA and there have been no cases of whistleblowing within the ACA. Three court cases have been launched against the Agency's decisions, but have not wrapped up yet⁷⁷.

Integrity mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of members of the ACA?

Score: 50

For members of the Agency's Board, the Director and other officials of the Agency, the same integrity mechanisms are in place as for any other public official⁷⁸. However, integrity control is performed by the Agency's own bodies, not by external authority⁷⁹.

68 The Law on Financing Political Parties, article 18

69 According to Law on Misdemeanors and Criminal Procedure Code

70 ACA Law, article 70, 71

71 ACA Law, articles 69, 70

72 ACA Law, article 71

73 ACA Law, articles 3, 7, 15, 23 and 24

74 Interview with Board member Zlatko Minic, February 2011.

75 The report for the first year of work is in preparation. Interview with Agency's representatives, November 2010

76 http://www.acas.rs/images/stories/Godisnji_izvestaj_o_radu_Agencije_-_25_mart_2011.pdf

77 Interview with Agency's representatives, November 15th 2010

78 ACA Law, articles 8, 16 and 24

79 Interview with Agency's representatives, November 15th 2010

Integrity mechanisms and some Code of conduct provisions, such as provisions on gifts and other business interests, are regulated by the Civil Servants Law⁸⁰. Separate ACA's Code of Conduct have yet to be made⁸¹. Post-employment restrictions cannot apply to civil servants due to legal and constitutional limits and those provisions can refer only to public officials⁸². According to ACA representatives⁸³, in interviewing job candidates special attention is given to matters of integrity.

Integrity mechanisms (Practice)

To what extent is the integrity of members of the ACA(s) ensured in practice?

Score: 50

No case has been initiated in regards to the integrity of the Agency's officials yet⁸⁴. Several Board members which had multiple public functions resign to other functions⁸⁵. There were voices raised in public, even in parliamentary debates, whether some functions performed by Board members represent conflict of interest, such as being a lawyer and Board member, or teaching at a private and state university at the same time, but the Board concluded that those functions are not in conflict of interest⁸⁶.

There have been no cases of violation of ethical provisions defined by the Law on civil Servants reported. The employees receive training concerning issues of integrity⁸⁷. Generally, it is too early to draw any conclusion about the integrity of the Agency's employees. It seems that major concern might be handling sensitive data, i.e. information about property of public officials which is not published, information about complaints made by citizens to the Agency and other information about ongoing procedures before the Agency⁸⁸.

80 The Civil Servants Law, articles 25-31

81 Interview with Agency's representatives, November 15th 2010

82 The Civil Servants Law, article 31, ACA Law, article 36

83 Interview with Agency's representatives, November 15th 2010

84 Data provided by Agency's representatives. There is no publicly available data on any cases of such kind.

85 Interview with ACA Board president Cedomir Cupic, January 2011.

86 http://otvoreniparlament.rs/page/9/?s=odbora+agencije+za+borbu+protiv+korupcije&post_type=post&submit=Pretraga

87 Data on education provided by the Agency's Training and education department

88 Interview with Board member Zlatko Minic, February 2011.

ROLE

Prevention (Law and Practice)

To what extent does the ACA engage in preventive activities regarding fighting corruption?

Score: 75

One of the main jurisdictions of the Agency is preemptive action⁸⁹. The Agency consists of four sectors and one of them is the prevention sector, which includes the sectors of training, integrity plans, implementation of the National Strategy for Combating Corruption, a research group, media and civil society relations, and the section handling conflict of interest⁹⁰. The training section is authorized to prepare and carry out training programs for the prevention of corruption, with state bodies and organizations, territorial autonomy and local self-government, public services and other legal entities, journalists, elementary, high school and university students defined as the target group of training⁹¹.

The integrity plans section creates guidelines for the integrity plans of those entities who are obligated by the ACA Law to make and carry out those plans. The section is also authorized to monitor the adoption and implementation of integrity plans. In October 2010, guidelines were defined for the preparation of integrity plans, and according to the Agency's 2011 schedule, the integrity plans are to be complete by November 2011⁹².

The section assigned to implement the Strategy and regulations supervises the implementation of the Strategy, Action Plan and sector action plans through analysis and providing opinions regarding their implementation. The findings and recommendations referring to the implementation of these two documents are an important part of the Agency's annual report to the Parliament⁹³.

In accordance with the ACA Law⁹⁴, all state bodies and organizations are obligated to submit the information and documents requested by the Agency, based on which the section monitors, analyzes and offers guidelines for the implementation and amendment of the Action Plan. A draft amendment to the Action Plan, the implementation of which was not monitored from 2007 till the founding of ACA, is currently in the progress⁹⁵. However, the progress still depends largely on cooperation of other public institutions to provides information to the Agency which is not yet guaranteed⁹⁶.

Monitoring regulations and analyzing them in terms of their harmonization and consistency from the viewpoint of the battle against corruption is also under the jurisdiction of this section. The section, according to Agency representatives⁹⁷, has analyzed the laws and those activities will be included in the annual report that is now being prepared. However, in public, the Agency did not react to the draft bills or already existing legislation till early 2011, aside from reactions related to the changes of the Law on ACA and Law on Political Party Financing.

In 2011 the Agency suggested that some provisions of Law on Planning and Construction could lead to corruption⁹⁸. The Agency also announced that it was checking all procedures regarded

89 The Anti-Corruption Agency Law, Article 5

90 http://acas.rs/sr_cir/o-agenciji/nadleznosti/sektora.html

91 http://acas.rs/sr_cir/o-agenciji/nadleznosti/sektora.html

92 Interview with Agency's representatives, November 15th 2010

93 Interview with Agency's representatives, November 15th 2010

94 Article 62

95 Interview with Agency's representatives, November 15th 2010

96 http://www.acas.rs/images/stories/Aneks_1_-_Izvestaj_o_sprovodjenju_Strategije_i_Akcionog_plana-Spojen_sa_naslovnom.pdf

97 Interview with Agency's representatives, November 15th 2010

98 http://www.danas.rs/danasrs/ekonomija/i_krecenje_vodi_u_korupciju.4.html?news_id=209262

to disability pensions after the media reported on suspicion of corruption in that area.⁹⁹ Over the course of 2010, the ACA took part in preparing amendments to the Anti-Corruption Agency Act, but the harmonized text was altered by an amendment in Parliament, which led the ACA to launch a case before the Constitutional Court to determine whether that amendment is constitutional¹⁰⁰.

The ACA is part of a working group that has put together the new draft law on the financing of political entities and election campaigns¹⁰¹. The Agency is also authorized to monitor and organize the coordination of state bodies in the fight against corruption¹⁰². In reality that field has not been covered properly. At one point, when the Minister of Justice in May 2011 was appointed by the government as the coordinator of the Government's efforts in combatting corruption, she was recognized by the media and public as the national coordinator¹⁰³. ACA's reaction was lukewarm, "welcoming" her appointment as the coordinator of the "government's administration coordinator", not mentioning at all that ACA is, by the law, the national coordinator of all state bodies¹⁰⁴.

ACA receives and responds to anti-corruption advice requests from the public and from other government agencies, primarily considering the implementation of ACA Law and the Anti-corruption strategy. It is legally authorized to provide such opinions¹⁰⁵. Between April and November 1, 2010, the Agency issued 216 opinions on the implementation of the ACA Law¹⁰⁶. ACA receives and responds to anti-corruption advice requests from the public and from other government agencies, primarily concerning the implementation of ACA Law.

Education (Law and Practice)

To what extent does the ACA engage in educational activities regarding fighting corruption?

Score: 75

ACA is active in education regarding fighting against corruption. It works with public officials, public servants and it cooperates with civil society in this field. Between December 2009 and November 2010, the Agency organized 27 educational seminars in 12 Serbian towns, targeting officials and the public (the media, civil sector). At the seminars, officials became acquainted with the beginning of the law's implementation and their obligations, whereas the public was given a look at topics related to corruption, the Agency's jurisdiction, officials' obligation to report their property (assets declaration), conflict of interest, registering of gifts and implementation of the National Strategy for Combating Corruption¹⁰⁷. In May, Belgrade was the host to a training for journalists on basic anti-corruption topics under the Agency's jurisdiction, as well as on the Agency's organization and manner of operation. That kind of training for the media from three Serbian towns, in association with the OSCE Mission, has been scheduled for December 2010 in Novi Pazar¹⁰⁸. Prior to its launch, the Agency issued a leaflet for public officials on assets declaration in December 2009. In September 2010 it organized a competition for elementary and high school students in literary and visual work, amateur photography or short film and slogan on the subject of the fight against corruption, dubbed "I Don't Want to Go through a Connection." The winners were announced on the International Anti-Corruption Day, Dec. 9th, 2010¹⁰⁹.

99 http://www.b92.net/biz/vesti/srbija.php?yyyy=2011&mm=01&dd=27&nav_id=488713

100 http://acas.rs/sr_jat/aktuelnosti/190-predlog-za-ocenu-ustavnosti.html

101 <http://vesti.aladin.info/2010-07-01/274699-predstavljen-nacrt-zakona-o-strankama>

102 The Anti-Corruption Agency Law, Article 5

103 <http://www.vesti-online.com/Vesti/Srbija/138384/Snezana-Malovic-predvodi-borbu-drzave-sa-korupcijom>

104 http://www.acas.rs/sr_cir/aktuelnosti.html?start=130

105 ACA Law, article 5 and 62

106 Press conference by Agency's director, on November 26th 2010

107 Data provided by Agency's Training and education department

108 Data provided by Agency's Training and education department

109 Data provided by Agency's Training and education department and

http://acas.rs/sr_cir/aktuelnosti/201-konkurs-necu-preko-veze.html

Investigation (Law and Practice)

To what extent does the ACA engage in investigation regarding alleged corruption?

Score: 25

The Agency is not authorized to run investigations. However, there are several activities before the Agency that do have some elements of investigations.

First of all ACA can and should check officials' property reports. According to the Law on ACA¹¹⁰, the Agency checks due filing of reports and accuracy and completeness of reported information. In order to do this, the Agency has to check the accuracy of information in reports pursuant to the annual verification schedule "for a certain number and category of officials". Should a discrepancy be revealed in the oversight procedure of an official's property between the data presented in the report and actual situation or that there is a discrepancy between the increased value of an official's property and his/her lawful and reported income, the Agency shall establish the cause of such a discrepancy. In such cases, the Agency shall summon the official or an associated person in order to obtain information on the real value of the official's assets.¹¹¹

The second type of investigation-like authorities of ACA relates to political party financing. The Agency is in charge of receive annual financial reports of all registered political parties and all participants on the central, provincial and local elections¹¹². Duty to check the veracity of reports and scope of checking is not clearly defined by the Law on Political Party Financing¹¹³. However, there is a three month deadline for the Agency to perform the control of campaign finance reports and the possibility to hire auditors to perform some tasks related to this checking¹¹⁴. There is no legal obstacle for the Agency to use any available data to compare party reports with, but no clear authority exists to order the checking to be conducted by other bodies and not to summon party officials in that regard. The new Law on Financing Political Activities, adopted in June 2011 provided significantly greater powers for the ACA but also financial resources to perform such investigations¹¹⁵.

The third type of investigation might happen on the basis of an individual complaint related to the alleged corruption¹¹⁶. The issue is not regulated in detail in the Law on ACA. The general idea is for ACA to receive such complaints, to provide protection for civil servants and employees in the public sector reporting corruption and to forward the issue to the bodies with investigative powers (e.g. police, prosecutors), but it is not clear whether the Agency could perform any kind of investigation of its own in that regard. However, the Agency may later check the outcome of their work and inform the complainant¹¹⁷.

The Agency receives citizens' petitions and handles them in collaboration with another body, or, if there are grounds for that, transfers them under the jurisdiction of the prosecutors or police¹¹⁸. There is still no data available on the end results of certain cases, in which the prosecutor's office or police were contacted¹¹⁹.

According to data on the review of property reports from the annual report, the Agency checked 194 reports, and did not find any irregularity¹²⁰. The plan for checking is also made for 2011 and is implemented now, but its content is secret¹²¹.

110 ACA Law, article 48.

111 ACA Law, article 49.

112 The Law on Financing Political Parties, articles 14, 16-18

113 The Law on Financing Political Parties, articles 14, 16-18

114 The Law on Financing Political Parties, articles 14, 16-18

115 The Law on Financing of Political Activities, Official Gazette of Republic of Serbia, 43/2011.

116 The Anti-Corruption Agency Law, Article 65

117 Interview with Board member Zlatko Minic, February 2011.

118 ACA Law, article 65

119 Interview with Agency's representatives, November 2010.

120 http://www.acas.rs/images/stories/Godisnji_izvestaj_o_radu_Agencije_-_25_mart_2011.pdf

121 Interview with Agency's representatives, November 2010.

By November 2010, the Agency filed five misdemeanor reports for the violation of the former Law on Party Financing.¹²² The Belgrade Misdemeanor Court processed one of those in March 2011, by proclaiming it is not competent because the party that was charged has its headquarters in another city. The Agency also submitted 3 misdemeanor charges against public officials for not providing requested documents – one of them a minister and two of them MPs.¹²³

Thanks to the amendments to the Law made in July 2010, the Agency is now authorized to protect whistleblowers¹²⁴. The manner in which such protection will be provided, aside from keeping the complainant anonymous should be regulated through the Agency's Directors' by-law¹²⁵. This by-law has been in force since August 2011.¹²⁶ The Agency was working on several such cases during 2010 and 2011¹²⁷.

122 Press conference by Agency's director and Agency's Board president, November 26th 2010

123 Press conference by Agency's director and Agency's Board president, November 26th 2010

124 The Anti-Corruption Agency Law, Article 56

125 ACA Law, article 56

126 Rulebook on Protection of Individuals Reporting Suspicion on Corruption, Official Gazzete of Republic of Serbia, no. 56/2011.

127 Press conference by Agency's director and Agency's Board president, November 26th 2010

ANTI-CORRUPTION AGENCIES

Key findings and recommendations

The Anticorruption Agency began operating in 2010 and was immediately confronted with the obstruction and political resistance when it tried to implement provisions on conflict of interest. It was followed by a change in the law, which was canceled after one year by the Constitutional Court. In some areas the work of ACA has been slow due to lack of human resources. Number of cases where violation of the law is identified is still small.

1. Reassessing of current plan and structure of employees in the Agency in the sense of accomplishing of all tasks that Agency has to perform, and especially in the context of obligations from newly adopted regulations (Law on Financing of Political Activities, Rulebook on Protection of Whistle-blowers), future anticorruption strategy (currently drafted) and large number of regulations relevant for fight against corruption, where Agency may initiate changes;
2. Proponents of regulation should be obliged to ask for opinion of the Agency regarding norms that might influence corruption or fight against corruption; Agency should be more active in commenting legislation even before introduction of such duty;
3. Publishing at web presentation of the Agency greater number of opinions given to officials regarding performing of other functions or jobs and other matters, without stating of personal data;
4. Publishing in property and income register of officials data on the amount of savings deposits;
5. Publishing of information on data to which officials' verification of accurateness and completeness of data was made;
6. Linking of all public registers or parts of registers managed by the Agency for easier search of data;
7. Providing, through changes of the Law on Agency, accountability of authority organs' heads for fulfillment of obligations from Strategy and Action plan;
8. Initiating misdemeanor procedures against authority organs that didn't deliver data to the Agency and inform the public about that;
9. Publication of names of companies owned by public officials on the webpage of the Anti-Corruption and cooperation of such companies with Agency;
10. Include in the annual financial checks program of the Anti-corruption Agency a number of law enforcement officials; such control for prosecutors and members of police units working to combat organized crime to be carried out at least once every two years.



POLITICAL PARTIES

NATIONAL INTEGRITY SYSTEM

Summary: Conditions for political parties' registration are liberal. The Government cannot directly make an influence to remove or prohibit political parties and such an attempt has never been recorded. The Constitutional Court decides on possible ban on political party. Proposal for such ban could be issued by the Government, the State Prosecutor or the Ministry of Public Administration, on the Constitutional and the Law on Political Parties grounds. Only parties with deputies in assemblies can receive money from the public sources for their regular activities¹. Separate budget funds are available for all political parties who submit candidate lists for the election. The amount collected from private sources has some limits. Parties are obliged to publicly disclose the financing, but the law and regulations do not prescribe how detailed reports should be, nor leave the possibility for comprehensive control of the validity of the reports. It's no secret that all parties have been violating the Law when it comes to the financing of election campaigns. Clientelistic approach and secret lobbying are common. Although all parties have regulated democratic internal procedures, almost all of them are devoted to the leadership political style, decisions are made by the party's president and his closest associates. In addition to the strong leadership inter-party dialogue on program issues does not exist. In their campaigns parties exploit the corruption issue as one of the key topics, but mainly in the context of its suppression. Political parties are also demonstrating lack of knowledge about broader context of corruption and the necessity for systematic approach to restrain it.

¹ "Regular activities" are those not related to the electoral campaign. Election campaign periods in Serbian legal system are limited to the period between calling of elections and closing of campaign activities, 48 hours before the election day.

POLITICAL PARTIES			
Overall Pillar Score: 58			
	Indicator	Law	Practice
Capacity 75/100	Resources	100	50
	Independence	75	75
Governance 58/100	Transparency	75	50
	Accountability	75	25
	Integrity mechanisms	100	25
Role 25/100	Interest aggregation and representation	/	25
	Anti-corruption commitment	/	25

Structure: Serbia has 81 political parties registered. Out of them, 45 parties are registered as “parties representing political interests of the national minorities”. Status of national minority political party means that these parties need to reach lower election threshold and they also enjoy other benefits of positive discrimination². Twenty two political parties are represented in the Serbian Parliament. Thirteen of them have entered the Assembly independently by having their own election list or in coalitions with other parties. Nine parties seats by having their representatives on the lists of the major part.³ Out of 22 political parties in the Parliament, 16 participate in the present government or provide support to the government’s draft laws. Six political parties make an opposition.

Conditions for party registration are liberal, even though the new Law on Political Parties in 2009 made them stricter with the consensus of all major parties⁴. By then, the registry had more than 500 parties of which the majority was inactive for years, but there was no legal basis for their deletion. Upon the adoption of the law the parties were obliged to register again and those that didn’t do so have been deleted from the registry⁵.

2 Data from Ministry’s registry, <http://www.drzavnauprava.gov.rs/register-parties.php>

3 http://rik.parlament.gov.rs/cirilica/propisi_frames.htm

4 http://www.paragraf.rs/propisi/zakon_o_politickim_strankama.html

5 <http://www.drzavnauprava.gov.rs/register-parties.php>

ASSESSMENT

CAPACITY

Resources (Law)

To what extent does the legal framework provide a conducive environment for the formation and operations of political parties?

Score: 100

The Constitution of the Republic of Serbia guarantees freedom of political association, but it does not mention the role of political parties, beside other associations – such as unions or civil organizations.⁶

Associations can form without prior approval and enter the register, kept by the state body, in accordance with the law. Secret and paramilitary associations are prohibited⁷.

Constitution also stipulates that “Constitutional Court may ban only such associations whose activities aim to violently overthrow the constitutional order, or to violate guaranteed human and minority rights, or to incite racial, national and religious hatred⁸. Judges of the Constitutional Court, judges, public prosecutors, Ombudsman, members of police force and military personnel cannot become members of political parties⁹. The same terms and conditions on banning political parties are envisaged by the Political Parties Law¹⁰.

The Law on Political Parties prescribes that a party may be founded by a minimum of 10,000 adults i.e. citizens or 1,000 when the party represents political interests of national minorities.¹¹ After holding “the founding meeting” and when Founding Act, the Program and the Statute are proclaimed, party needs to submit the registration application to the Ministry. The Ministry then issues the decision on registration, within 30 days from the submission of a full application¹². If certain formal requirements¹³ are not met, the Ministry provides a deadline 15 to 30 days for the party to correct the deficiencies. If the decision of the Ministry is negative a legal dispute may be initiated. Appeal can be also initiated against the decision on registration¹⁴.

The Law stipulated the obligation where political party must submit an application for renewal of registration every eight years, with 10 000 certified signatures of the founders (1,000 for the minority parties). This rule does not apply to parties that have won at least one place in the local assembly, the assembly of the Autonomous Province or the Parliament of Serbia, in last eight years.¹⁵

There are no political parties which are explicitly forbidden by law.

Public funds for financing regular activities of political parties were around 6.2 million EUR for parties with MPs, in 2010¹⁶. Around 1.86 million are divided equally to all political parties with MPs,

6 Constitution of the Republic of Serbia, article 55

7 Constitution of the Republic of Serbia, article 55

8 Constitution of the Republic of Serbia, article 55

9 Constitution of the Republic of Serbia, article 55

10 Political Parties Law, articles 4 and 37

11 Political Parties Law, articles 8 and 9

12 Political Parties Law, article 26

13 Title identical to title of party that is already registered, haven't submitted appropriate documents (program, statute),

14 Political Parties Law, article 28

15 Political Parties Law, article 30

16 Research done for purpose of NIS, and The Law on budget for 2010, <http://www.parlament.gov.rs/narodna-skupstina-872.html>

and the remaining 4.14 million Euros (70%) are divided to the parties proportionally to the number of their MPs. In practice, this means that the party that has only one (out of 250) MP in the Serbian Parliament will receive about 110,000 Euros per year, a party with 20 deputies, about 450,000 Euros, and a party that would have half of total delegates (125) – would be given about 2.25 million EUR per year¹⁷. From July 1st 2012 the total amount of budget funds for political parties will be more than doubled. The provision of The Law on Financing of Political Activities, that will be effective than, provides for same percentage of budget subsidies, but now calculated on the basis of budget expenditure (not income) and on the basis of the whole budget (and not “budget after deduction of transfers”).¹⁸

This model of distribution favors very small parties and parties with a large number of deputies. To them, incomes from public sources are sufficient for their work¹⁹.

Representatives of all parties - small and large, the ruling and opposition – have agreed on that. This situation will change from July 1st 2012 on, as the provision of the new law, will introduce distribution of funds based on different calculation. The Law on Financing of Political Activities envisages the distribution of funds on the ground of number of votes won by the party, coalition or citizen group on elections. Votes up to 5% of total number of those participating in elections are calculated as 50% more valuable than the rest. In this way, the Law provision is only slightly disproportional in favor of smaller parties.²⁰

Not long ago (till June 2011), the Law set limits of the amount of funds coming from private sources (except funds from membership fees) which political party gathers for its regular annual activities.²¹

The law prohibits parties to accept funds from foreign citizens, foreign governments, foreign legal entities, anonymous donors, public institutions and public enterprises, institutions and enterprises with state capital, private companies who have been contracted for public services, enterprises and other organizations with public authority, trade unions, charities and religious communities²². It is also prohibited to promise or hold out the prospect of any privilege or personal gain to a donor of a political party²³.

Resources (Practice)

To what extent do the financial resources available to political parties allow effective political competition?

Score: 50

Financial resources available to political parties for funding their regular activities are mostly sufficient for the effective political competition. On the other hand, funding election campaigns only from the public budget sources and from legal private sources was impossible before recent changes of legal framework, thus leaving parties with two options: to act illegally or to significantly decrease the scope of their campaign activities. For example, the overall limit of funds that party could collect for local elections was determined by the size of the local budget. In municipalities of average size, this money value was extremely low, around 600 EUR per campaign²⁴. Such situation was in

17 Research done for purpose of NIS, and http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/zakoni_pdf/Zakon%20o%20finansiranju%20politickih%20stranaka.pdf

18 Law on Financing of Political Activities, article 16

19 In November 2010 separate interviews with 6 party representatives – ruling party with large number of deputies, ruling party with relatively small number of deputies, opposition party with relatively small number of deputies, opposition party that doesn't receive money for regular financing because it was established after the elections (deputies from other party went to newly established party), ruling party with very small number of deputies and newly established party without deputies. Interviewees were high party officials – the level of chiefs of deputy groups, members of presidency, vice presidents and presidents of parties.

20 Law on Financing of Political Activities, article 17

21 Law on Financing Political Parties (2003), articles 3-11

22 Law on Financing of Political Activities, article 12

23 Law on financing of political activities, article 13

24 Research done for purpose of NIS.

particular favorable for the political parties in power who are able to promote themselves through public officials in power and not necessarily through paid advertisement²⁵.

However, this situation might change significantly in the light of recently adopted Law on Financing of Political Activities and upcoming 2012 elections. Namely, this Law provides more than double increase of public subsidies, both for campaign and annual activities financing and does not limit the overall amount of funding from private sources. The Law only sets up limits for individual contributions²⁶.

For the regular financing of parties' annual activities, coming from private sources, most commonly used is membership fee and contributions by members or officials. A large number of political party members do not pay a regular fee²⁷. Major parties, however, claim that membership income is not negligible and can reach about 40,000 Euros a month²⁸. The most significant contribution to the regular funding²⁹ is by the party's officials. In most parties there is an obligation to give a part of the public official's salary (usually five percent) of those public officials who came to power by being dedicated activists and loyal members of the political party. According to the representatives of political parties, opposition parties can expect contributions and donations from the regular financing, from non-party activists if they are "seen" as a future government³⁰.

Representatives of the parties agreed that non-parliamentary parties should not receive money from the budget for their regular activities³¹. New parties are funded solely by membership fees and donations. Therefore it is easier to establish a new political party by someone who is rich enough to fund its work from the very beginning³².

During election period, the need for money and methods of fundraising change dramatically and public budget financing becomes less significant³³. Public funding for election campaign, according to 2010 and 2011 budget level would be around 4 million EUR. Fifth of that amount is shared by all election participants and the remaining amount is proportionally divided by parties who won seats in the Parliament³⁴. However, before the end of the election, parties do not know how much money they can get from public funds. Political parties, therefore, usually borrow money from the banks (officially) and/or from tycoons (unofficially)³⁵, hoping to restore debt (in money or political concessions) when they win enough seats in the Parliament. Otherwise they will try to return debts from regular funding sources.

Such loans were tolerated until now and the consequence of that is inequality of election competitors – those reasonably expecting greater support from voters could easily take big loans, knowing that they could reimburse them from public funds later. However, political parties who are struggling in the campaign to pass the over 5% threshold are under huge risk when taking such financial commitments³⁶.

One of the representatives of parties claims parties also receive money in order to initiate discussion on certain topic in the Parliament, regardless of not being able to influence voting for desired decision. These topics are presented in the Parliament weeks before sessions meant for posing deputy questions to the Government, during the debate on other, similar subjects, or through statements to journalists in the Parliament, presenting certain topic as an important state matter³⁷.

25 Evaluations, estimations and data on the basis of interview with representatives of 6 parties

26 Law on financing political activities, articles 16 and 20

27 Evaluations, estimations and data on the basis of interview with representatives of 6 parties

28 Interviews with representatives of ruling and opposition parties in November 2010

29 Judging on official party lists of biggest individual donors.

30 Interviews with representatives of ruling and opposition parties in November 2010

31 Interviews with representatives of ruling and opposition parties in November 2010

32 Interviews with representatives of ruling and opposition parties in November 2010.

33 Interviews with representatives of ruling and opposition parties in November 2010

34 Research done for purpose of NIS, and The Law on budget for 2010, <http://www.parlament.gov.rs/narodna-skupstina-872.html>

35 Interview with one of the parties representatives, November 2010.

36 Interviews with representatives of ruling and opposition parties in November 2010

37 Interview with one of the parties representatives, November 2010.

Finally, it should be mentioned that even political parties with the strongest voters' support and subsequently the biggest users of public funds for election campaign can hardly achieve³⁸ to cover at least half of their media advertisement costs from public funds, not to mention other campaign expenditures. All parties, however, have equitable access of time on public radio and TV for free during campaigns, and all parties are guaranteed to have equal rights to advertise on commercial TV and radio stations³⁹.

Independence (Law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

Score 75

Overall, there are sufficient legal safeguards in place to prevent unwarranted interventions in the activities of political parties. The Constitution of the Republic of Serbia stipulates that the Constitutional Court decides on banning a political party⁴⁰. The Constitution also stipulates that Constitutional Court may only ban a party which activity aims to violently overthrow of constitutional order, violation guaranteed human and minority rights, or to incite racial, national and religious hatred⁴¹.

Law on Political Parties deals in detail with the establishment and registration of political parties, and also with erasing political parties from the official register, stipulating however, that party can be erased only by decision of the Constitutional Court⁴².

In order for the Constitutional Court to decide on banning of political parties, the proposal must be submitted by the Government, the State Public Prosecutor and the Ministry of Public Administration and Local Self-Government. The proposal must contain reasons and evidence which support the prohibition request. If the Constitutional Court rules on the prohibition, a political party is deleted from the official register.⁴³

Authorities can control the work of political parties through mechanisms of financial control –such as inspection and control of the state budget conducted by the Supreme Audit Institution. However, there are no clearly defined criteria for eventual control conducted by inspections or Supreme Audit Institution and selection of parties to be controlled by government bodies. Therefore, there is possibility for authorities to apply uneven approach and to put pressure on some political parties. New Law on Financing of Political Activities provides protection for party donors from, threats, pressure, discrimination, violence and criminal liability for anyone who violates that ban.⁴⁴

Independence (Practice)

To what extent are political parties free from unwarranted external interference in their activities in practice?

Score 75

Although there are situations of unwarranted external interference in political parties' activities, they are not significant obstacle for regular work of political parties.

38 Conclusions from Transparency Serbia monitoring of election campaign costs in 2004, 2007 and 2008.

39 Broadcasting Law, articles 68 and 78

40 Constitution, article 167

41 Constitution, article 55

42 Law on Political Parties , article 37

43 Law on Political Parties , article 38

44 Articles 9 and 38.

In Serbia, since the restoration of the multiparty system, there were no examples of banning political parties, nor examples of responsible authority submitting a proposal to ban political party. Parties from opposite ends of the political spectrum often publicly seek on banning their political enemies. Ruling party G17 Plus sought in 2006 banning of the opposition Serbian Radical Party (SRS) because representative of that party insulted the minister from G17 Plus in the Parliament. They argued that the SRS promotes racial, religious and ethnic hatred. State Prosecutor stated that it would not submit a proposal because there is no legal grounds for that. Ban on SRS was triggered on several more occasions by the League of Social-Democrats of Vojvodina (LSV). In 2010, one citizen initiated ban of two parties claiming that they act against the Constitution, but the Constitutional Court rejected the initiative because it was submitted by an unauthorized applicant⁴⁵.

Although there are no clearly defined criteria by which inspections and the State Audit Institution control the work of political parties, representatives of the parties (including opposition parties) suggest that these mechanisms are not abused in practice. Parties' representatives claim, however, that there is indirect influence on parties through putting pressure on a party's donors, by frequent financial and tax checkups on companies which publicly revealed their financial support to one political party. According to statements given in interviews, now ruling and then party in opposition (G17 Plus), had such experience in 2003, when ruling party was Democratic Party (DS), their current coalition partner.⁴⁶

As another example of an indirect pressure on the opposition, representatives of opposition parties say that the media, whether public or private owned that are primarily government-controlled, are inaccessible for the opposition. Media, as they claim, do not allow opposition representatives to present program that is alternative to government's. Nonetheless ministers from the government, have daily access to media as part of their ministerial role. According to the opposition, it happens that representatives of opposition parties pay for their appearance on TV shows where they discuss important issues⁴⁷. Such practice is illegal because advertising political parties is banned (and buying media space) outside of election campaign, i.e. it is done in „grey zone“ with mutual consent to violate the Law⁴⁸.

There were no cases of detention or arrest of political parties' members for their activities. However, there were cases when the state authorities, particularly prosecutors, acted after hints given by pro-government media. Thus, the State Prosecutor's office published press releases regarding the statements of the opposition, on two occasion.⁴⁹

Representatives of the ruling parties claim that authorities in cases related to attacks on party's offices and activists have the same fair approach towards the ruling party as they have towards opposition parties. Ruling party representatives also suggests that authorities resolve cases of attacks on the representatives of the opposition even more efficiently⁵⁰. The leader of one of the opposition parties, Velimir Ilic, was attacked in February 2010 in the center of the city after holding public speech⁵¹. Passer-by, who hit him in the head, was immediately arrested and by October 2010 the legal process against him was completed by a final sentence of two years imprisonment. This is one of the few examples of attacks on representatives of the parties outside of election campaigns. In election campaigns, according to party representatives, attacks and accusations of attacks on activists who were putting up posters and distributing promotional material became “part of folklore” and such allegations in the campaign 2008 were almost daily.⁵²

45 <http://www.pressonline.rs/info/politika/139405/odbacene-inicijative-za-zabranu-ldp-a-i-lsv-a.html>.

46 Interviews with parties' representatives, November 2010.

47 Interviews with parties' representatives, November 2010.

48 Broadcasting Law, article 106

49 <http://www.rts.rs/page/stories/sr/story/9/Politika/44572/Tu%C5%BEila%C5%A1tvo+tra%C5%BEi+snimak+Ili%C4%87evog+govora.html>.

50 Interviews with representatives of ruling and opposition parties in November 2010

51 http://www.b92.net/eng/news/politics-article.php?yyyy=2010&mm=02&dd=06&nav_id=65027

52 Interviews with representatives of ruling and opposition parties in November 2010

GOVERNANCE

Transparency (Law)

To what extent are there regulations in place that require parties to make their financial information publicly available?

Score 75

The law ensures high level of transparency of information related to the financial data about political parties. Legal requests in terms of keeping the evidence and reporting still have some loopholes. That can be overcome mostly through expected new by-law, envisaged to be adopted by the end of 2011. One of the major loopholes is the fact there is no deadline for submitting annual report on political parties financing⁵³.

The Law on Financing of Political Parties in 2004- stipulated that political party is obliged to keep books of all incomes and expenditures⁵⁴. Bookkeeping is done according to the origin, amount and structure of revenues and expenditures, in accordance with the regulations related to accounting. Accounting records of incomes and expenditures of political parties are subject of an annual audit in accordance with regulations related to accounting, and may be subject of control by the authorized government body⁵⁵. Political party is obliged to keep separate records of money contributions it receives and its assets. The contents of these records, is determined by the Director of the Anti-Corruption Agency⁵⁶. Regulations adopted in March 2010, prescribes that parties should keep track of contributions and property records and to prepare a report on contributions which exceed the value of 6,000 RSD (60 Euros) and a report on the property and report on the origin, amount and structure of funds used for election campaign, which should also be certified by an auditor and submitted to the Anti-corruption agency⁵⁷. Provisions of June 2011 Law on Financing of Political Activities are almost the same, with some modifications: increase of threshold for reporting individual donors (more than one average salary in previous year, i.e. about 300 EUR); duty to publish data on income from one legal or natural person, that is higher than threshold during the year (i.e. not just in annual report)⁵⁸.

A political party is also obligated to submit annual financial report to the Anti-Corruption Agency (until April 15th), and to publish the report on their web-site and in Official Gazette⁵⁹.

The Law stipulates a deadline for submitting reports to the Agency on the origin, amount and structure of the funds raised and spent in the election campaign - 30 days after an official announcement of the election results is published by an election commission⁶⁰. This report has to be posted on web-site of Anti-corruption Agency⁶¹. The content of report is further regulated through the act of Agency Director.⁶²

53 Law on Financing Political Parties, article 16 and 22

54 Law on Financing Political Parties, article 16

55 Law on Financing Political Parties, article 16

56 Changes of the Law 2008, when Law on Anti-Corruption Agency was adopted. Changes became effective on October 1st 2009.

57 Law on Financing Political Parties, article 16

58 Law on Financing of Political Activities, article 10 and 27

59 Law on Financing of Political Activities, article 28.

60 Law on Financing of Political Activities, article 30

61 Law on Financing of Political Activities, article 29.

62 March 2010 act is still applied, till adoption of the new one.

Transparency (Practice)

To what extent do political parties make their financial information publicly available?

Score 50

Some information about political party financing is available, but they are not comprehensive, and the content of financial report has never been thoroughly checked.

Parties, especially those with MPs, representatives in the Vojvodina Assembly or councilors in local assemblies generally respond to the obligation to submit final accounts, reports on the property and collected contribution and reports on collected and spent funds during the election campaign. By October 1st 2009 all major parties submitted election campaign finance reports to the State Electoral Commission⁶³. After election for the National Assembly in 2008 the reports on expenses during the election campaign submitted 14 out of 22 parties and coalitions, among which were all larger parties and coalitions, i.e. all eight of which have passed the threshold and entered the Parliament⁶⁴.

After the Presidential elections in January 2008 and the elections for Parliament, Vojvodina and local elections in May 2008, only one party published in Official Gazette a report on campaign financing (the Democratic Party whose candidate won the Presidential election)⁶⁵. All parties and coalitions submitted their report to the Republic Electoral Commission (REC)⁶⁶. As for Vojvodina and local government elections, REC never published information about who submitted the report, even when it was requested. REC ignored request grounded on ``free access to information`` by Transparency Serbia and did not obey to the Commissioner's decision upon appeal either.

By the end of 2009 and the beginning of the 2010 early elections in five municipalities were held, as well as the additional election in one election poll for the seat in Vojvodina Assembly. According to the Anti-Corruption Agency, six parties did not submit their reports for for these campaigns. Anti-Corruption Agency press charges against all who did not submit report.⁶⁷ Afterwards representatives of different political parties have claimed that election campaign for additional elections in Zabalj was not run and consequently they did not have any expenses⁶⁸ and therefore there was no need to give in financial report.

Annual political party financial reporting till April 15th worked out for years as informal deadline and since June 2011 became legally recognized. By the end of April 2010 financial statements for 2009 are submitted by 15 out of 22 parliamentary parties and seven non-parliamentary parties⁶⁹. Until 10 December a report was submitted by 19 out of 22 parliamentary parties (not submitted by the three small parties - one with four deputies and two of them with only one), 10 non-parliamentary (one of which has no MPs but its leader is Minister) and one that had MPs but in the meantime, the party ceased to exist⁷⁰. Only two parties, the ruling Democratic Party (DS) and one of the smaller members of the ruling coalition - Bosniak Democratic Party of Sandzak - published financial statements for 2009 in the Official Gazette of the Republic of Serbia⁷¹ with reports on their contributions and donations.

None of political parties published any report on campaign financing in the Official Gazette, for the local elections campaign held in five municipalities in Serbia from December 2009 to June 2010,

63 Data published by The Finance Committee of the Assembly of Serbia and REC

64 Data published by The Finance Committee of the Assembly of Serbia and REC

65 Research done by TS

66 Data published by REC

67 http://www.acas.rs/sr_lat/finansiranje-politickih-subjekata.html

68 <http://www.kurir-info.rs/vesti/partije-na-sud-62027.php>

69 Data from ACA, http://www.acas.rs/sr_lat/finansiranje-politickih-subjekata.html

70 Data from ACA, http://www.acas.rs/sr_lat/finansiranje-politickih-subjekata.html

71 Available data from electronic base of Official Gazette of the RS

neither they did it for the additional elections in Vojvodina⁷². In the last elections, local elections in the municipality of Bor, 8 out of the 10 participants submitted their reports to the Anti-Corruption Agency⁷³. Annual financial report for 2010 were submitted by 32 political parties (out of 75 registered at the time), including 19 represented in the Serbian Parliament⁷⁴.

While there is relatively high responsive rate of the parties in terms of submitting their financial reports to the relevant bodies, the main problem remains the fact that the content of reports has never been thoroughly checked. In the past, content of the reports was not checked because the parliamentary committee and REC did not want to deal with it, since both bodies were composed out of political parties' representatives. After January 1st 2010 it was not done due to the lack of capacity of the ACA⁷⁵. Subsequently, the public has very little trust in these reports, although it is possible to get some financial information from political parties, including information on public and private donations and party expenditures.⁷⁶

Accountability (Law)

To what extent are there provisions governing financial oversight of political parties?

Score 75

There are strong provisions in place regulating oversight of political parties, in terms of duties of political parties and authorities of relevant control bodies.

According to the Law on Financing of Political Activities⁷⁷, Anti-Corruption Agency (ACA) has the right of direct and free access to bookkeeping records and other documentation related to financial reports of a political entities. ACA may work together with relevant experts and institutions. The Agency is also entitled to direct and free access to bookkeeping records and documents about endowment or foundation founded by a political party⁷⁸.

At the Agency's request a political entity shall and within the time frame set by the Agency which may not exceed 15 days, submit to the Agency all documents and information requested by the Agency in order to carry out further proceedings set forth under the Law⁷⁹. In the course of election campaign, a political entity is required upon the request and within the time frame set by the Agency, which may not exceed three days, to submit information necessary to the Agency⁸⁰.

Besides that, Agency is entitled to control budget funds, especially when it comes to the control of election campaign funding⁸¹. Furthermore, State Audit Institution is authorized as well to perform audit of political parties' finances.

While provisions are strict and clear in terms of who is authorized to control political party finance, the possible legal loophole is the fact that timeframe, goals and scope of control are not defined in the Law. There are, however, sanctions for not submitting financial reports to the ACA in full and in a timely fashion. Political parties can be fined up to 2 million RSD (25.000 USD) and they can lose between 10 and 100 % of their financial support from public sources next year.⁸²

72 TS research in electronic database of Official Gazette of the RS

73 Reports were delivered to the TS by the Agency

74 Data from ACA, http://www.acas.rs/sr_lat/finansiranje-politickih-subjekata.html

75 Research done by TS

76 http://www.b92.net/info/emisije/insajder.php?yyyy=2011&mm=05&nav_id=514269

77 Law on Financing of Political Activities, Article 32.

78 Law on Financing of Political Activities, Article 32.

79 Law on Financing of Political Activities, Article 32.

80 Law on Financing of Political Activities, Article 32.

81 Law on Financing of Political Activities, Article 33.

82 Law on Financing of Political Activities, articles 39 and 42

For the election campaign the parties are obliged to fill in a report on the origin, amount and structure of funds used for election campaign. All money intended for financing election campaigns has to go through bank account⁸³.

Thirty days after an announcement of the official election results, political parties are obliged to submit to Anticorruption Agency report on the origin, amount and structure of funds used for election campaign⁸⁴. The form that is prescribed in particular shows data about funds that are collected from legal entities and funds that are raised from individuals, data on expenditure of funds collected, especially for funds raised in cash and especially for the funds collected as gifts, and services that are given for free or paid less than it should be at the market. Political parties should also report in detail about amount of funds used for certain types of expenses⁸⁵.

Accountability (Practice)

To what extent is there effective financial oversight of political parties in practice?

Score 25

By October 1st 2009, before the Anti-Corruption Agency took over this jurisdiction⁸⁶, political parties delivered final accounts, reports on property, reports on contributions to the Finance Committee of National Assembly and reports on campaign financing to the Republic Electoral Commission. These state bodies were constituted of representatives of political parties. Only formal validity has been controlled, if anything - whether a report is made within limits prescribed by the Law, whether there is a discrepancy in the sum collected and funds spent⁸⁷. Reports, however, did not show real picture on regular financing of political parties nor electoral campaigns. One of the ruling parties' representative said in an interview that "everybody tune their reports" on campaign financing. He stated that data on donors are not stated because donors can experience problems with financial and tax inspection afterwards. Consequently, donors may think twice before finance political party again.⁸⁸ One of the opposition representatives stated on the issue of financial reports "that all is written in them, but without essential information". The official data on expenses of the election campaigns have been at odds with estimates of actual expenses in 2004 for the presidential elections⁸⁹, while for the elections for the national Parliament in 2008 one party official admitted that the campaign was funded in a way which violates the Law⁹⁰, but there was no adequate reaction of the authorized bodies, which are composed of parties representatives.

After Anti-Corruption Agency got jurisdiction over control on political parties funding and begun its mission⁹¹. New form for the reporting on campaign expenses was prescribed to enable quality control of the financial reports. This came after adopting the new Law on Financing of Political Activities⁹². The first elections where new application report form was used were the local elections in the municipality of Bor in May 2010. Reports submitted after these elections were not completed,

83 Law on Financing of Political Activities, Article 324

84 Law on Financing of Political Activities, Article 32

85 http://www.acas.rs/sr_lat/zakoni-i-drugi-propisi/ostali-propisi/pravilnici.html

86 Changes of the Law on Financing of Political parties adopted on 23 October 2008, at the same time as Anti-Corruption Agency Law

87 Law on Financing Political Parties, article 14 and 16, Research done by TS

88 Quotations from the interview with representatives of parties from November 2010.

89 "Financing of presidential campaign in Serbia 2004. Blow to the political corruption or maintaining status quo?", Transparency Serbia, 2004 page 94-95

90 <http://www.blic.rs/Vesti/Tema-Dana/56961/Miskovic-i-Beko-kriju-koliko-su-para-dali-radikalima>

91 Legislator prescribed in changes of the Law on Financing of Political Parties that the Agency should take over competences on financing of political parties on 1 October 2009, and Law on Anticorruption Agency prescribed that Agency will begin to work on 1 January 2010

92 Member of the Board of Anti-Corruption Agency Zoran Stojiljkovich <http://www.rts.rs/page/stories/sr/story/9/Srbija/770148/Nova+finansijska+kontrola+stranaka.html>

but they were much more detailed than the reports in 2008⁹³. One party (which won the most seats in the local assembly) submitted detailed report on expenses and account numbers which could, if the monitoring of the campaign was held, to serve as credible evidence for the submitted report. In the case of this party, as well as in the case of four other parties expenses were over the limits prescribed by law⁹⁴. Three opposition parties showed unrealistically low expenses since they had media promotions, public performances and/or rental of facilities for local electoral staff, which is not shown in a report⁹⁵.

Until now, Anti-corruption Agency carried out control of election campaign reports for five election processes (isolated local elections and elections for one Vojvodina deputy) and initiated thereafter total of 6 misdemeanor procedures⁹⁶. The process of control of annual parties' reports for 2010 is still ongoing and is performed "on the basis of submitted reports, documents and information collected from other state bodies, banks and other financial institutions"⁹⁷. Agency initiated also misdemeanor process against one opposition party, claiming that there was illegal funding from public enterprise or other public institution.⁹⁸ SAI did not deal with political party financing until now, and such activity is not foreseen to happen in 2011⁹⁹.

In general, it is difficult to assess whether the new Law that allows unlimited money to be raised from private sources will bring more transparency in financial reports. Representatives of the parties explained why so far the campaigns were financed in cash¹⁰⁰: fear of donors who support opposition that they would find themselves under disgrace from state authorities, the facts that the law stipulates limitations as to who should not fund parties, in particular for legal entities and low total limit. Therefore, the regular work of parties and election campaigns are financed by cash often obtained in illegal way¹⁰¹.

Integrity (Law)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

Score 100

The statutes of all major parties stipulate that the party leadership is elected in the democratic procedure along with the possibility to nominate several candidates¹⁰². President, that is the head of party, is to be elected at the party's election assembly¹⁰³.

Candidates for president of the party are being proposed usually by municipal councils. In the majority of political parties method of nomination and election is prescribed by the Statute and some parties regulate this in Rules of Procedures of the Party Assembly, party rules on party elections or direct decisions of the board before the convening the electoral assembly. One of the parties has stipulated that a candidate for president of the party should collect signatures of support directly from members of the party (20,000 signatures) without support of the municipal committees. In 2011, one other political party decided to hold direct election for party's president where all party members can vote¹⁰⁴.

93 Assessment of TS, based on reports delivered to the TS by the ACA

94 Research done by TS.

95 Interview with journalist from Bor, Sasa Trifunovic, December 2010.

96 All data in this paragraph are from the Directory of work of Anti-corruption Agency, August 5th

97 All data in this paragraph are from the Directory of work of Anti-corruption Agency, August 5th

98 All data in this paragraph are from the Directory of work of Anti-corruption Agency, August 5th 2011 version.

99 Interview with SAI Council vice-president Ljubica Nedeljković, January 2011

100 Interviews with representatives of the parties, November 2010.

101 Interviews with party representatives, November 2010.

102 Research of parties statutes, done by TS

103 Research done by TS

104 Research of parties statutes done by TS and interviews with representatives of the parties, November 2010.

Candidates for deputies are determined by head committees, based on the proposal of the municipal board (or based on recommendation of the Executive Board confirmed by the presidency). Other political parties follow the decision of highest-ranking authorities, most frequently presidency of the party. Program documents of the political parties are included in the program assemblies based on proposal of the head committees. Head committees decide on the election platforms¹⁰⁵.

Integrity (Practice)

To what extent is there effective internal democratic governance of political parties in practice?

Score 25

Decision making in political parties is done by a party's president and very narrow circle of his associates, often narrower than the presidency of the party¹⁰⁶. Open, democratic competition is possible only for the position of vice president of the party, but not for the president. High official of ruling Democratic Party (DS) was quoted saying that at the moment, it is possible but unrealistic to have more than one candidate for party's leader. "If we know that Serbia has no better president, if we know that (president of Serbia and president of Democratic Party) Boris Tadić is formal as well as informal leader in the region, then it is unrealistic to expect that Democratic Party could have any member who thinks there could be better candidate than Tadic".¹⁰⁷ In 20 year old history of renewed multiparty system in Serbia three times president was replaced in some of the major parties - two have resigned over disagreements with the main board¹⁰⁸, while one lost the intraparty elections¹⁰⁹ (in the Democratic Party). In all three cases former president left the party. The principle of loyalty to the president led to the fact that at one point, two political parties were led by their leaders from the Hague Tribunal's custody, and one of them even made decisions from a prison in telephone sessions with the presidency.¹¹⁰

In some parties, as their representatives claim, it is possible for members to run as candidates, but in practice they would not receive support from opportunistic municipal councils who usually follow the policy of the President and the leadership, although parties' documents prescribe opposite. All important program documents are also brought by a close circle of president's associates. The democratic procedure is used only to change the details, but not the essence¹¹¹.

Interest aggregation and representation (Practice)

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

Score 25

The vast majority of relevant political parties in Serbia is not oriented towards representation of specific social interests and groups. In public appearances, political parties are trying to win support over all social groups and categories, claiming to act in their interest¹¹². Social group that is the most directly represented and whose interests are most firmly protected are pensioners, represented by the Party of United Pensioners of Serbia - member of the ruling coalition. Ruling parties, especially

105 Research of parties statutes done by TS and interviews with representatives of the parties, November 2010.

106 Interviews with representatives of the parties, November 2010.

107 <http://www.kurir-info.rs/vesti/politika/trivan-tadic-i-u-sledecem-mandatu-na-celu-ds-51761.php>

108 <http://www.glasamerike.net/articleprintview/743491.html> <http://web.arhiv.rs/develop/KoJeKo.nsf/c9c629eb29aab07bc12570a500309ea0/d4bd9ea0a3fc4679c12570b40037359c?OpenDocument>

109 <http://www.politika.rs/rubrike/Tema-nedelje/Porodicno-stablo-demokrata/Osnivachi-Demokratske-stranke.lt.html>

110 <http://www.politika.rs/rubrike/Politika/Nikolic-ostaje-poslanik.lt.html>

111 Interviews with party representatives, November 2010.

112 Interviews with party representatives, November 2010.

before elections, turn to deprived citizens by increasing social benefits, “pouring of public money into expenditures”¹¹³. Minority parties represent specific interests of national minorities in Serbia, raising occasionally issues such as funding specific projects in specific minority populated municipalities or regions, or addressing specific culture or education related problem¹¹⁴. In other issues minority parties act the same way as “majority” parties with which they are in coalition. There are also several parties with strong regional character (LSDV, JS, ZZS). None of the above mentioned “profiled” parties has more than 2.5 % seats in Serbian Parliament¹¹⁵.

There is opinion that political parties represent the most interests of tycoons¹¹⁶, and informal centers of power gathered around the “big money” and business interest. “Big money” has entered all political parties and by an opinion of experts, political parties do not represent different social groups, neither “left” or right “ but rather political parties look more like one organized group consist of big money.”¹¹⁷ All political parties, in different periods of time were in fact primarily protectors of business interests¹¹⁸.

An example of this is when serious doubt was expressed in media that representatives of big business tried to directly influence some political parties. When one of the largest Serbian cigarette companies was sold to American company “Philip Morris” in 2003, the government agreed on tax politics which was beneficial to the same company. Tax politics was raised as an issue six years later, when new domestic cigarette producer appeared. Several MPs of the ruling and opposition parties voted together an amendment which drastically changed the tax in favor of the company whose directors were seen before voting visiting deputy’s clubs in Parliament¹¹⁹.

Another “common knowledge” is that political parties are serving mostly to the interest of their own members, officials or donors, thus providing them opportunity to find jobs in the public administration and public services or to develop and/or boost their own businesses through various forms of public-private partnership¹²⁰. In particular, the issue of parties’ control over public enterprises is matter of public concern and stands as serious problem¹²¹.

This situation has led to low public trust in political parties and political party system. In the poll for the Global Corruption Barometer 2010, citizens rated political parties the worst among six categories, with 4.2 on scale 0-5 (0.1 worse than in previous year and by 0.2 worse than two years earlier)¹²². And in the poll of Balkan monitor citizens’ trust in parties is low as well¹²³. Two thirds (68%) did not feel represented by any party or politician and 27% said they felt represented politically¹²⁴.

113 Representative of one of ruling parties in the interview, November 2010.

114 Research done by TS and interviews with parties’ representatives, November 2010.

115 Research done by TS and interviews with parties’ representatives, November 2010.

116 President of the Commission for Protection of Competition Dijana Markovic Bajalovic, http://politickiforum.org/index.php?v_rsta=tribina&kategorija=&tekst=41&naredba=prikaz&br_stranice=

117 Sociologist Vladimir Vuletic, on 24 May 2010, tribune, National Assembly – creator of the Laws or political tribune

118 Sociologist Vladimir Vuletic, on 24 May 2010, tribune, National Assembly – creator of the Laws or political tribune

119 <http://www.blic.rs/Vesti/Tema-Dana/75675/Dacic-Canak-i-opozicija-ruse-budzet-u-korist-Peconija->

120 Interviews with parties representatives, November 2010

121 <http://www.blic.rs/Vesti/Politika/12168/Dinkic-hoce-deo-kolaca>

122 http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=81&Itemid=28&lang=sr

123 http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf

<http://www.pescanik.net/content/view/737/97/>

124 http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf

<http://www.pescanik.net/content/view/737/97/>

Anti-corruption commitment (Practice)

To what extent do political parties give due attention to public accountability and the fight against corruption?

Score 25

Fighting against corruption is mentioned in the agenda of all relevant political parties in Serbia¹²⁵. However, in most cases it is just declarative support. Programs of the parties' generally support "the government free of corruption", "uncorrupted state administration" or the stricter penalties and investigative bodies' tasks unhindered by the authorities so that everyone, regardless of political party affiliation should be responsible for eventual corruption¹²⁶. The fight against corruption (and organized crime) is also among principles on which the post-election coalition agreement was reached by parties that now make up the ruling majority, as well as those which were in the previous Parliament.

During the election campaign for the National Parliamentary and 2008 local elections political parties gave declarative and general commitment to fight against corruption amounted some concrete proposals - the Democratic Party and G17 launched the idea of criminal prosecution of officials who fail to declare or not to disclose their assets (this provision became a part of the Law on Anti-Corruption Agency which was adopted in late 2008). Representatives of the Democratic Party of Serbia (DSS) have spoken about the introduction of electronic public procurement, and the Liberal Democratic Party (LDP) campaigned to reduce the impact of parties on public enterprises¹²⁷.

However, when Transparency Serbia during the campaign proposed to the parties, "20 points for future acting in the field of fight against corruption"¹²⁸, the two parties, Democratic Party and Liberal Democratic Party, have stated that they are generally willing to accept them or to talk about them after the election, while others claimed to have their own quality programs¹²⁹.

The parties later on several occasions indicated that the party's interest might limit their willingness to fight corruption. In late 2008 Law on Anticorruption Agency was adopted which brought a series of restrictions for political parties and officials. However, when it became necessary for some officials to renounce dual function, the Law was changed¹³⁰. The Government first proposed the changes without consulting the Agency, but under public pressure withdraw the proposal has been withdrawn. The new proposal was coordinated with the Agency, but representatives of the ruling party voted for the amendment, without the official support of the government, which enabled rest of elected officials to still keep multiple functions until the expiration of their elected mandate¹³¹.

125 Research done by TS and interviews with parties representatives, November 2010

126 Reserach done by TS, parties' web sites

127 Research done by TS

128 http://www.transparentnost.org.rs/aktivnosti/antikorupc_sav/23042008.htm

129 http://www.transparentnost.org.rs/aktivnosti/antikorupc_sav/23042008.htm

130 <http://www.vesti-online.com/Vesti/Srbija/63969/Vlada-ne-odustaje-od-antikorupcijskog-zakona>

131 <http://www.pressonline.rs/info/politika/127516/borise-tadicu-ne-potpisuj.html>.

POLITICAL PARTIES

Key findings and recommendations

Political parties have formal democratic structure, but in practice, all decisions are made by the President and narrow circle of people around him. All parties violated the law on financing of election campaigns, because the law had serious flaws in control area. Clientelistic approach and secret lobbying are frequent.

1. Enabling effective application of the Law on Financing Political Activities, adopting by-laws, and creating preconditions for effective control.
2. To remove loopholes in the Law and clarify provisions that are not precise enough.
3. To determine obligations of the associations founded and registered by the political parties.
4. Political parties should focus more on curbing corruption through systematic measures in their pre-election manifestos.
5. Considering the fact that lobbying isn't regulated by the law, political parties should proactively publish information about their finances and lobbying attempts that could be linked to their stances in Parliament and Government.
6. Political parties should sustain from influencing public sector through electing direct parties' representatives in state owned enterprises and other parts of public sectors.
7. Introducing internal financial control in political parties.
8. Part of the resources that are received from the budget based on parties' representation in Parliament should be used to increase the quality of the parliamentary groups' work – drafting of laws and amendments



MEDIA

NATIONAL INTEGRITY SYSTEM

Summary: Regulations in Serbia are not an obstacle to the founding and work of the media. Censorship is prohibited, and the regulations promote values of independence and professionalism. In practice, the media face political and economic pressure, which, apart from censorship, also breeds self-censorship. Ownership of the media, especially the press, is often non-transparent. Journalists do not abide by the Code of ethics and investigative journalism is underdeveloped.

MEDIA			
Overall Pillar Score: 42			
	Indicator	Law	Practice
Capacity 50/100	Resources	75	25
	Independence	100	0
Governance 46/100	Transparency	50	25
	Accountability	75	50
	Integrity mechanisms	50	25
Role 25/100	Investigate and expose cases of corruption	/	25
	Inform public on corruption and its impact	/	25
	Inform public on governance issues	/	25

Structure – Serbia has more than 500 dailies and periodicals registered in the Registry of the Public Media, as well as over 200 radio stations, about 100 TV stations and 90 news web portals¹. There are eight relevant dailies with nationwide distribution, which boast circulation of between 10,000 and 100,000 copies. There are two public broadcasters, Radio Television of Serbia, which receives funding through both subscription and commercial revenues, and Radio Television Vojvodina, the public broadcaster in the province of Vojvodina, with the same funding model. They are set up according to the Broadcasting Law.² Local stations, owned by local municipalities should have been entirely privatized by the year 2005. However this has not happened.

There are five commercial TV stations with national coverage, as well as five radio stations with national coverage³. There are four political weeklies with circulation of between 10,000 and 20,000 copies. The issuing of licenses for broadcasting radio and TV programs falls under the authority of the Republic Broadcasting Agency. Members of the RBA Council are appointed by the Parliament based on nominators' proposals, in line with the Broadcasting Law⁴. There are two national journalists' associations – the Journalists' Association of Serbia and the Independent Journalists' Association of Serbia, along with several associations of broadcasters, press and local media.

The National Media Strategy is due to be passed in Parliament in December 2011⁵. The draft – Media Study – was done by foreign experts hired by the European Union Delegation, followed by several public debates. The document states that Serbia has an excessive number of media, that the quality of the content they offer is low and that the funds at their disposal are too small. The experts recommend the reduction of the number of commercial stations with national coverage to one or two, having several regional broadcasters share one frequency, the annulment of state ownership of local and regional media and aid to the local media through projects, rather than through budget subsidies and the maintaining of the Press Council as a self-regulating and self-financing body⁶. In the debate, the journalists' associations called for the securing of transparency of media ownership, the complete withdrawal of the state from ownership, a ban on concentration and monopoly and the establishing of equal treatment of all media on the market⁷.

1 <http://www.apr.gov.rs/eng/Registers/PublicMedia.aspx>

2 Broadcasting Law, article 76

3 <http://www.RBA.org.rs/latinica>

4 Broadcasting Law, article 6-11

5 <http://www.osce.org/sr/serbia/78415>

6 <http://www.osce.org/sr/serbia/78415>

7 http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=06&dd=26&nav_category=12&nav_id=521422

ASSESSMENT

CAPACITY

Resources (Law)

To what extent does the legal framework provide an environment conducive to a diverse independent media?

Score: 75

The legal framework in Serbia does not create any obstacles for setting up media entities. The Serbian Constitution envisages that everyone shall have the freedom to establish newspapers and other forms of public information without prior permission and in a manner laid down by the law⁸, and that television and radio stations shall be established in accordance with the Broadcasting law.⁹ Founding of radio and TV stations and license issuing is regulated by the Broadcasting law¹⁰. The Broadcasting Law envisages that a public bid shall be open for distribution of frequencies for terrestrial broadcasting, whilst licenses for cable and/or satellite broadcasting shall be issued upon a network operator's request. No licenses are needed for webcast broadcasting¹¹.

A broadcasting license can be obtained only by a domestic physical or legal entity registered on the territory of Serbia. The law provides that a foreign legal entity can hold up to 49 percent of shares in a broadcasting enterprise. The law stipulates that the license owner has to apply to the RBA for approval for any change in the media's ownership, for the reason of "ownership structure control" and capital's origin control. A broadcasting license cannot be issued to any enterprise or institution owned by the Republic of Serbia or the Province of Vojvodina (exception being the public broadcasting services), nor to political parties or legal entities founded by a political party.¹²

The law and the Development Strategy for broadcasting envisage formal conditions for license issuing – technical, organizational, program and economical minimum, transparency of ownership structure and finances, nonexistence of prohibited media concentration¹³. It also stipulates that the RBA Council, when deciding on license issuing shall take into consideration quantitative criteria (TV/radio ratings and financial success) and qualitative criteria (program quality and behavior of the station in the past). One of the criteria for obtaining a license is "guarantee of the radio/TV station that it will contribute to quality and diversity of the program".¹⁴ Finally, those candidates that contribute to the respect of basic broadcasting principles (freedom, professionalism, independence, lack of censorship, affirmation of freedom of expression and pluralism of ideas, human rights respect) will have priority in the licensing process¹⁵.

Besides the public broadcasting services and commercial stations, the law envisages the existence of civil sector stations. The priority for obtaining licenses for such stations, according to the law, shall be given to groups and organizations that have proven in the field of human rights, minorities' rights and civil liberties affirmation, and those that work in the wider interest of all beneficiaries of such programs in the community¹⁶. That particularly means different ethnic groups, organizations

8 Constitution of Republic of Serbia, article 50
9 Constitution of Republic of Serbia, article 50
10 Broadcasting Law, articles 38-48
11 Broadcasting Law, articles 49
12 [†]The broadcasting law, article 41, 42
13 The broadcasting law, article 53
14 The broadcasting law, article 53
15 The broadcasting law, article 53
16 The broadcasting law, article 95

of the citizens with special needs, cultural groups, youth organizations, organizations specialized for child care assistance, consumer protection organizations, nature and animal protection organizations, ecological organizations and other NGOs and citizens associations.¹⁷

Candidates not granted a license can appeal to the RBA. A further appeal can be made via an administrative lawsuit at the Administrative court¹⁸.

There are no legal limitations for founding newspapers or any other print media. According to the Public Information Act, there can be no monopoly on founding or distribution of media¹⁹. A print media's founder can be any domestic or foreign legal or physical entity. The law amendments in 2009 envisaged that print media can be founded only by a Serbian legal entity, but the Constitutional Court proclaimed that article non-compliant with the Constitution, the European Convention on Human Rights and International Pact on Civil and Political Rights²⁰.

The law also stipulates that all media must be registered in the Register of Public Media²¹. However, the Constitutional Court proclaimed one article to be non-compliant with the Constitution, and according to this article, the public prosecutor was obliged to initiate a procedure against a publisher publishing a non-registered media outlet. Media now must be formally registered but there are no sanctions imposed for a non-registered media to publish²².

As far as journalists are concerned, there are no legal limitations or restrictions on entering into this profession. One regional journalist association in 2004 came out with an initiative for licensing journalists as a form of self-regulating, but the idea gained no wider support²³.

Resources (Practice)

To what extent is there diverse independent media providing a variety of perspectives?

Score: 25

The news programs of broadcasters and news published by the press largely deal with the same topics, mostly imposed on them by politicians and political parties²⁴. Representatives of the two national journalists' associations, with regards to the state of the media, remarked that "everyone is edited in the same place,"²⁵ pointing out that one of the Serbian President's advisers and the Belgrade mayor (both being officials of the ruling Democratic Party) own marketing agencies that purchase marketing time and space in the media.

All national TV and radio stations and printed publications with national distribution are based in Belgrade, there is a provincial public radio and TV service, whereas regional publications are practically non-existent²⁶. Local radio stations owned by municipalities and towns have not been privatized, even though the Broadcasting Law had foreseen the completion of that process by 2005²⁷.

17 Strategy for development of broadcasting in Serbia till 2013 II chapter/ 3.4

18 The broadcasting law, article 54

19 The Public Information Act, article 7

20 http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=07&dd=22&nav_category=11&nav_id=447111

21 <http://www.apr.gov.rs/eng/Registers/PublicMedia.aspx>

22 http://www.b92.net/info/vesti/index.php?yyyy=2010&mm=07&dd=22&nav_category=11&nav_id=447111

23 <http://www.ndnv.org/wp-content/uploads/2012/05/PUBLIKACIJA-FV-2.pdf>

24 Interview with representatives of Journalists' Association of Serbia (UNS) and Independent Journalists' Association of Serbia (NUNS), October 2010.

25 Interview with representatives of Journalists' Association of Serbia (UNS) and Independent Journalists' Association of Serbia (NUNS), October 2010.

26 <http://www.apr.gov.rs/eng/Registers/PublicMedia.aspx>

27 Interview with representatives of Journalists' Association of Serbia (UNS) and Independent Journalists' Association of Serbia (NUNS), October 2010.

Thanks to the fact that there are numerous media, they are available to the public and all social categories can satisfy their basic need for general information, but also for specialized magazines or programs²⁸. Serbia ranks among the countries with the largest number of media outlets per capita²⁹. Media privatization has made modest progress. State regulatory institutions still tolerate illegal media³⁰. The saturated media market is characterized by two groups: private media working under market realities, and government-owned media financed both by government budgets and advertising revenue.³¹

The quality, on the other hand, is questionable, because the media operates according to the “low cost” principles – the lowest possible salaries for journalists, reliance on news agencies and free (unreliable) news sources, less investment in the quality and content and more in the form³².

There is room in the media for various political options, but the central spot is most frequently occupied by the news that depicts the authorities’ activities in a positive light. To that point – meddling with the interests of the authorities, whether they are national or local – the space is also open for all other social, economic and anti-corruption topics³³.

The Serbian media lacks a serious approach to a number of events and topics, especially economic issues, such as economic development, export problems, public spending. Media outlets have an insufficient number of journalists with specific knowledge of these areas³⁴. There is not so much qualitative and investigative journalism. In Serbia there is no critical public, so most reports are removed from strong critics, and amongst journalists there are few specialists for complex topics.³⁵

During the media boom of the 1990s, many media outlets were founded in unregulated conditions and the population of journalists was enlarged. After the changes of October 2000, numerous journalism schools and courses were opened, as well as private faculties of journalism, hence the market became saturated with the large number of people seeking to work in journalism despite lacking professional knowledge and any sort of specialization³⁶. Of about 4,000 journalists voluntarily registered in the Serbian Journalists’ Data Base, around 45 percent boast a university degree or higher education³⁷.

Independence (Law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Score: 100

The Serbian Constitution and laws protect the freedom of the media, prohibit censorship and guarantee free access to information. The Constitution stipulates that “there is no censorship in the Republic of Serbia.”³⁸ However, a court can prevent the spreading of information and ideas through the media if that is necessary for preventing calls for the violent disruption of order determined by the Constitution or disruption of the territorial integrity of Serbia, prevention of war propaganda or instigation of direct violence, or for the purpose of preventing the advocating of racial, ethnic

28 Irex Media Sustainability Index 2010, www.irex.org/system/files/EE_MSI_2010_Serbia.pdf

29 Irex Media Sustainability Index 2010, www.irex.org/system/files/EE_MSI_2010_Serbia.pdf

30 Irex Media Sustainability Index 2010, www.irex.org/system/files/EE_MSI_2010_Serbia.pdf

31 Irex Media Sustainability Index 2010, www.irex.org/system/files/EE_MSI_2010_Serbia.pdf

32 Irex Media Sustainability Index 2010, www.irex.org/system/files/EE_MSI_2010_Serbia.pdf

33 Interview with representatives of Journalists’ Association of Serbia (UNS) and Independent Journalists’ Association of Serbia (NUNS), October 2010.

34 Irex Media Sustainability Index 2010, www.irex.org/system/files/EE_MSI_2010_Serbia.pdf

35 Irex Media Sustainability Index 2010, www.irex.org/system/files/EE_MSI_2010_Serbia.pdf

36 Interview with representatives of Journalists’ Association of Serbia (UNS) and Independent Journalists’ Association of Serbia (NUNS), October 2010.

37 www.novinari.rs

38 Constitution of Republic of Serbia, Article 50

or religious hatred, which incite discrimination, hostility or violence³⁹. The Public Information Act⁴⁰ stipulates that public information is free, that it is not subject to censorship, and that no one can, even indirectly, limit the freedom of public information.

The Law on Free Access to Information of Public Importance was passed in 2004 and the Commissioner in charge of such information has been in place since 2005⁴¹. Over the course of five years, he has handled some 4,500 appeals⁴². In 93 percent of cases the authorities meet the demand of the person calling for information immediately upon learning that an appeal has been filed or after the Commissioner has issued a decision⁴³.

The media can be founded by all legal entities and natural persons. The only exception is electronic media that can be founded only by a Serbian citizen or legal entity⁴⁴. Those looking to set up radio and TV stations broadcasting on public frequencies must apply for a license, issued by the Broadcasting Agency. The Agency is legally appointed as an independent regulatory body, whose nine-member Council – which decides on the licenses – is appointed by the Parliament, at the proposal of nominators⁴⁵. The appointment of members is legally designed to balance out state influence through Parliament, over the distribution of public resources – broadcasting frequencies, and on the other hand, to avoid complete politicization. Three members are nominated by the Parliament's Information Committee, one by the Vojvodina Assembly, one each by the universities, media and journalists' associations, NGOs, churches and religious communities, while the ninth is nominated by the previously appointed Council members⁴⁶.

The legislation regulating licensing is reasonable and aims to ensure balanced programming. It deals with both technical aspects of broadcasting and the types of broadcasted programs⁴⁷.

The state can directly influence the media only in a state of emergency or war, when certain rights – including the right to media freedoms – can be suspended⁴⁸. The Information Law⁴⁹ states that “no one can put any kind of physical or other pressure on a public medium and its staff, or influence meant to hinder them in doing their job.”

According to the law, journalists in Serbia are not obliged to reveal data related to their source of information, unless the data refers to a criminal act, i.e. the perpetrator of a criminal act which carries the prison sentence of at least five years.⁵⁰ Since 2005, libel no longer carries the penalty of prison⁵¹, but rather a fine, which, if the libel has led to severe consequences for the damaged party, can total a maximum of a million dinars (approximately 9,000 euros).

39 Constitution of Republic of Serbia, Article 50, The Public Information Act, Article 17

40 The Public Information Act, article 2

41 <http://www.poverenik.rs/en.html>

42 <http://www.poverenik.rs/ru/informator-o-radu/informator-o-radu-arhiva.html>

43 <http://www.poverenik.rs/ru/informator-o-radu/informator-o-radu-arhiva.html>

44 The Public Information Act, article 11 and 14

45 The Broadcasting Law, articles 6-11

46 The Broadcasting Law, article 23

47 The Broadcasting Law, article 68-74

48 Constitution of Republic of Serbia, articles 20, 200-202

49 The Public Information Act, Article 2

50 The Public Information Act, Article 32

51 The Penal Code, Article 171

Independence (Practice)

To what extent is the media free from unwarranted external interference in its work in practice?

Score: 0

The media and journalists in reality do not enjoy the freedom and independence proclaimed by the Constitution and laws. Censorship, particularly self-censorship, is more widespread now than ever.⁵² According to the IREX Media sustainability Report 2010, the media situation worsened in 2010, due to a surge in political influence on media outlets and their editorial policies. In 2009, the government introduced new regulations, officially "in order to increase the accountability of the media, which are free and independent in their work, but they are required to comply with the provisions of the law"⁵³. However, media associations considered it to be an attempt to tighten control of the media by state and political actors⁵⁴. The result was homogeneity in news stories at the expense of plurality, a rise in self-censorship, and stunted investigative journalism⁵⁵.

The media is strongly suffering the effects of the economic crisis, it depends on commercial advertisers – which are often closely linked with political parties – and on the state or state-owned advertisers⁵⁶. By choosing the publications in which its companies will advertise, the state influences the financial sustainability of the media⁵⁷. Politicians, particularly ministers, individually wield a bigger influence over the media by means of benefits, such as free trips for journalist teams, especially from news agencies, so that the journalists can report on the politicians' activities⁵⁸.

Public relations continue to strongly influence the media sphere⁵⁹. Companies' Public Relations (PR) representatives use similar mechanisms of influence over the media as politicians – from gifts and free trips for journalists to closely tying advertising to the selection of topics in their interest or those that might jeopardize their interests. For that reason it is common for economic and political power centers to dictate the editorial policy and companies' PR services feel so powerful compared with the media that they even try to influence the very appearance of the news⁶⁰.

A good example of influence over the media, over a benign case, was registered during the Croatian President Ivo Josipovic's visit to Serbia on July 18, 2010, when nearly all media⁶¹, at the intervention of the Serbian president's media service, failed to mention the fact that Josipovic, after speaking before 2,000 people, missed a step while coming down from the stage and fell. Insider sources are rare and the journalists' unnamed sources will most frequently try to spin a story - unveil compromising material regarding their political opponents⁶².

The influence of long-present censorship produces self-censorship and the journalists themselves often avoid delving into topics they believe will cause negative reactions from political parties, companies or powerful and influential offices⁶³. For that reason journalism is perceived badly⁶⁴ – the public thinks journalists are unprofessional (62%), corrupt (35%), and journalism is marked as a politicized and less important profession (10th out of 11 professions ranked).

52 Interview with representatives of UNS and NUNS, October 2010

53 <http://www.seecult.org/vest/izmene-i-dopune-zakona-o-javnom-informisanju>

54 Interview with representatives of UNS and NUNS, October 2010

55 Interview with representatives of UNS and NUNS, October 2010

56 Interview with media's representative in Anticorruption Agency's Board, December 2010.

57 Interview with representatives of UNS and NUNS, October 2010

58 Interview with representatives of UNS and NUNS, October 2010

59 Irex Media Sustainability Index 2010, www.irex.org/system/files/EE_MSI_2010_Serbia.pdf

60 Interview with media's representative in Anticorruption Agency's Board, December 2010.

61 Exceptions were private news agency Beta and newspapers Press

62 Interview with representatives of UNS and NUNS, October 2010

63 Interview with representatives of UNS and NUNS, October 2010

64 Survey conducted by Strategic Marketing: Journalists and journalism in the eye of citizens and journalists, April 2007

In such context, physical assaults on journalists are a regular occurrence. Journalists are exposed to both verbal and physical assaults by politicians.⁶⁵ The media and journalists are often the targets of lawsuits. Concerned over frequent suits against media and journalists, in June 2010 IJAS (NUNS) publicly appealed to citizens to address the Press Council first. According to the data provided by journalists' associations, judges, especially in smaller towns, are not sufficiently specialized in media law, hence they make decisions that are abolished by the European Court of Human Rights in Strasbourg.⁶⁶ That is why, at the initiative of the Independent Journalists' Association of Serbia, the Judicial Academy has launched a course in media law for future judges and prosecutors, as well as seminars for existing judges and prosecutors, and for lawyers and media editors. The Police discovered and the judiciary has processed numerous attacks on journalists, but certain attacks from the past decade remain unresolved⁶⁷.

The RBA, in charge of broadcasters, and the Press Council, a self-regulating body in charge of the press that was formed by journalists' and media associations and which de facto has not started working yet, are active in the field of regulating the work of the media⁶⁸. The RBA Council was accused, especially in its early days, of working in an insufficiently transparent manner, i.e. the unclear implementation of pretty general criteria for the distribution of frequencies.⁶⁹ The Broadcasting Agency also demonstrated its "ear" for politics when it called an additional tender for granting a frequency to the municipal TV station in the southern Serbian town of Presevo, which was a direct demand to the Presevo mayor, who, as the President of a minority Albanian party, is an MP and member of the ruling coalition⁷⁰. On the other hand, the Council tried to demonstrate political balance by issuing public warnings over the violation of the law in five cases (of the total nine such measures) against TV stations for the unlawful advertising of the ruling coalition parties outside of the election campaign period or for the uneven presence of opposition parties in election programs.⁷¹

65 Former minister of infrastructure Velimir Ilic, Kragujevac Mayor Veroljub Stevanović, <http://www.nuns.rs/dosije/22/02.jsp>
<http://www.kurir-info.rs/vesti/politika/verko-pretio-novinarki-kurira-7135.php>

66 Cases Lepojic vs Serbia (13909/05), Bodrozic vs Serbia (32550/05) Also, judges often mistake a commentator's view for slander and in drastic cases, such as Velimir Ilic's suit against the Cacanske Novine newspaper and its editor in chief Stojan Markovic, a satire in which any local figure in power can be identified, was taken as grounds for a verdict. In the Vranjske newspaper-pharmacies case, the judge did not know the difference between a reaction and a denial

67 <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136056.htm> and interview with representatives of UNS and NUNS, October 2010

68 Interview with UNS and NUNS representatives, October 2010

69 http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=05&dd=20&nav_id=198248

70 Interview with representatives of UNS and NUNS, October 2010

71 <http://www.RBA.org.rs/index.php?id=31&task=mere>

GOVERNANCE

Transparency (Law)

To what extent are there provisions to ensure transparency in the activities of the media?

Score: 50

The National Anti-Corruption Strategy, which the Parliament adopted on December 8th 2005, stipulated the recommendation of enabling transparent access to the ownership structure of the media and preventing their monopolizing as one of the tasks in the media field.⁷² The action plan for the implementation of the National Strategy set the task before the Culture Ministry and Parliament to make and pass the law that will regulate the matter in 2007⁷³. So far, a working version of The Law on Unlawful Merging and Transparency of Media has been made⁷⁴. According to current regulations (Public Information Act) the media has to publicize the company and headquarters of the founder, but the owners – direct or indirect – of the founder remain unknown⁷⁵. In the case of broadcasters applying for frequencies, the Broadcasting Agency Council is obliged to determine the capital structure (according to the Broadcasting Law), so as to prevent improper concentration⁷⁶. All media has to publicize the names of the medium's editor in chief and editors in chief of particular editions and sections, i.e. programs. They are not obligated to present information on the editorial policy⁷⁷.

Transparency (Practice)

To what extent is there transparency in the media in practice?

Score: 25

In reality there is no clear data on the ownership of the media, especially the press. There are indications that some formal owners serve as a front for the real interests behind a given outlet⁷⁸, meaning that formal owners named with the government registering agency are not the real owners, with whom they have secret contracts⁷⁹. The owners or co-owners of several influential and popular dailies are companies registered in Cyprus, whereas the public can only guess about the real owners – businessmen and tycoons⁸⁰.

On the positive side, data on the internal organization of the media is available to the public and all media fulfill the legal obligation of publicizing the impressum – detailed information on the management and editors. The obligation of publicizing data on the editorial policy does not exist but can be recognized in reality through editors' columns, which are regular in the majority of dailies⁸¹.

72 http://www.acas.rs/images/stories/Nacionalna_strategija.pdf

73 http://www.acas.rs/sr_lat/zakoni-i-drugi-propisi/strategija.html

74 <http://www.anem.rs/sr/aktivnostiAnema/AktivnostiAnema/story/10403/Nacrt+Zakona+o+konzraciji+medijskog+vlasni%C5%A1tva%3A+poslednji+momenat+da+se+spre%C4%8De+jo%C5%A1+jedne+izmene+medijskog+zakona+neposredno+pred+usvajanje.html>

75 Public Information Act, article 14

76 Broadcasting Law, article 97-103

77 Public Information Act, article 26-29

78 http://www.unhcr.org/refworld/country,...SRB_4562d8b62_4caf1c1b28_0.html

79 http://www.irex.org/system/files/EE_MSI_2010_Serbia.pdf

80 Interview with representatives of UNS and NUNS, October 2010 and interview with media's representative in Anticorruption Agency's Board, December 2010

81 Research done by TS

Accountability (Law)

To what extent are there legal provisions to ensure that media outlets are accountable for their activities?

Score: 75

The Press Council was founded in 2010, as a self-regulating body monitoring the compliance of the Code of Serbian journalists in the press and handles petitions by individuals and institutions following concrete contents in the press⁸². The Press Council is also meant to mediate between injured parties, institutions and offices and to issue public warnings in cases where the violation of ethical standards defined by the Code has been noted⁸³. The Council, however, did not become operative until November 2010⁸⁴. The media, individually, do not have an ombudsman. The contact between the public and the media is achieved through readers' letters and comments on web-sites.

Broadcast license holders are not required to present annual reports containing information about their compliance with the license terms and their sources of funding⁸⁵. The Broadcasting Agency, however, is required to monitor whether broadcasters comply with conditions under which their licenses were granted⁸⁶.

The Public Information Act stipulates that a person (or representative of a legal entity), whose right or interest has been violated by information publicized in a public medium, can demand of the editor in chief to publicize a response, free of charge and as soon as possible – in the next issue or news broadcast – in which the person claims the information is untrue, incomplete or inaccurately carried⁸⁷. If the response is not publicized, the damaged party can demand it through a lawsuit. The response, i.e. correction is publicized in the same part of the medium – in the same issue, same section, on the same page, with the same equipment, i.e. in the same part of the show, the same as the information to which the response is being made, under the same headline and with the note “response” or “correction.”⁸⁸ The law also foresees that the person whose correction, response or other kind of information the publicizing of which they are entitled to demand of the public medium, was not publicized and who is suffering damage due to the medium's failure to publicize the information, is entitled to material and non-material compensation.⁸⁹

Accountability (Practice)

To what extent can media outlets be held accountable in practice?

Score: 50

The Council of the Serbian Broadcasting Agency, an independent regulatory body in charge of broadcasters, has revoked licenses from 32 broadcasters since its inception, mostly local media, which had notified the Broadcasting Agency on their own that they would no longer broadcast, and in several cases over debts on account of the frequency fee⁹⁰. The Council has, since its inception, filed more than 40 misdemeanor reports against the stations that had been working without

82 <http://www.savetzastampu.rs/>

83 <http://www.savetzastampu.rs/cirilica/statut>

84 <http://www.savetzastampu.rs/>

85 The Broadcasting Law

86 The Broadcasting Law, article 13

87 The Public Information Act, article 47-53

88 The Public Information Act, article 47-51

89 The Public Information Act, article 79

90 <http://www.RBA.org.rs/cirilica/izrecene-mere>, <http://www.RBA.org.rs/cirilica/odluke-o-oduzimanju-dozvola-za-emitovanje-rtv-programa->

a license⁹¹. Fifteen non-public warnings and nine public warnings have been issued against the media that had violated the law, mostly for advertising political parties outside of the election campaign period⁹². Reports on monitoring of the media scene regularly published by the Association of Independent Broadcasters ANEM constantly pointed out that the number of misdemeanors was much bigger than the number of launched cases⁹³. The July 2010 report, however, noted that the Broadcasting Agency was becoming increasingly active – it had issued a report on monitoring the national television RTS as a public service, was actively monitoring the implementation of the Advertising Law and filing reports against violators, and had reacted to a number of petitions over improper and vulgar media content.

The media usually grant a right of reply and publicize responses or denials, but they are often not in the same format and in the same place as the news they refer to⁹⁴. Lawsuits demanding that a medium publicizes a response or correction are rare, while those demanding damages for insult, libel and mental pain are much more frequent⁹⁵. The newspapers have sections for readers' letters, which sometimes open discussions between public figures and editors on press reports or editorial policy. Those sections most frequently include responses by the individuals who had been subjected to criticism in the media, if their opinion had not been taken into consideration in the given article⁹⁶.

Integrity mechanisms (Law)

To what extent are there provisions in place to ensure the integrity of media employees?

Score: 50

The joint Code of Serbian journalists, harmonized by the two national journalists' associations (Journalists' Association of Serbia and the Independent Journalists' Association of Serbia) was adopted in December 2005⁹⁷. The code, which is voluntary, does not cover the fields of journalists' conflict of interest, nor gifts and hospitality rules. The Code was adopted as the basis for forming the Press Council which, relying on the single Code, is to take stands, voice opinions and issue sanctions for failure to abide by journalism standards⁹⁸. The Code covers the fields "veracity of reports," "independence from pressure," "journalists' responsibility," "journalists' attention," "attitude toward sources of information," "respect of privacy," "use of honorable means for the gathering of information," "respect of authorship," and "protection of journalists." The Code also states that "accepting bribes for publicizing, covering up or preventing the gathering and publicizing of information is incompatible with journalism," as well as that "the economic and political interests of publishers must not influence the editorial policy, in a manner that would result in the inaccurate, un-objective, incomplete and untimely informing of the public."⁹⁹

No medium in Serbia is known to have an individual ethical code or an ethical committee. The national journalists' associations have courts of honor, which react to reports of Code violations¹⁰⁰.

91 <http://www.RBA.org.rs/cirilica/odluke-o-oduzimanju-dozvola-za-emitovanje-rtv-programa->

92 <http://www.RBA.org.rs/files/1275048422Godisnji%20izvestaj%20o%20radu%20RBA%202009...pdf> <http://www.RBA.org.rs/index.php?id=43&task=kategorija>

<http://www.RBA.org.rs/index.php?id=31&task=mere>

93 <http://www.anem.org.rs/en.html>

94 Interview with UNS and NUNS representatives, October 2010

95 Interview with representatives of UNS and NUNS, October 2010

96 Research done by TS

97 <http://www.uns.org.rs/kodeks-novinara-srbije.html>

98 Interview with representatives of UNS and NUNS, October 2010

99 <http://www.uns.org.rs/kodeks-novinara-srbije.html>

100 <http://www.uns.org.rs/o-nama/organizacija/honorable-court.html> <http://nuns.rs/about-nuns/who-is-who/honorable-court.html>

Integrity mechanisms (Practice)

To what extent is the integrity of media employees ensured in practice?

Score: 25

The joint Code of Serbian journalists, as a joint document harmonized by two national journalists' associations, has existed since December 2006, the media have formally accepted it, but the journalists are not generally familiar with its provisions and do not implement it¹⁰¹. Provisions of the Code are violated on a daily basis, but reports to courts of honor of journalists' association over the matter are not common¹⁰². Journalists' associations react by issuing statements over more severe cases of Code violation¹⁰³.

In reality conflict of interest (the journalists' simultaneous work for the media and PR agencies or political parties or companies) is a common occurrence¹⁰⁴. In October 2010, the Independent Journalists' Association of Serbia, with support from the Anti-Corruption Agency, launched an initiative to add anti-corruption provisions to the Code related to the accepting of gifts and the conflict of interest¹⁰⁵. The initiative also includes the preparation of guidelines for the media, so that they can adopt internal regulations that would regulate the field more thoroughly.¹⁰⁶ Now, in reality, the media and journalists accept all kinds of gifts, journalists are not obliged to inform the office of that, and in their reports the media do not say who financed the trips from which the journalists reported¹⁰⁷.

Complaints for violations of the Code will be considered by the Press Council, which was formed and convened in May 2010, but did not start working until November 2010 due to a misunderstanding concerning its funding. The courts of honor of the two journalists' associations have not received reports of conflict of interest and other misdemeanors that fall into the anti-corruption category, but have reviewed reports and decided on the violation of other ethical norms¹⁰⁸. The associations' representatives believe that failure to report conflict of interest, which is present among numerous journalists, proves that there is no awareness and that it is poor and wrong practice. It is frequent practice for journalists to simultaneously work in the media and ministries or ministers' cabinets, for sports journalists to simultaneously work for sports clubs, and economic journalists to work for companies' PR services¹⁰⁹.

Although the Code regulates the attitude toward unchecked information, the necessity of consulting several sources, as well as that of a journalist "is obliged to respect the presumption of innocence and cannot proclaim anyone guilty until a court has reached its verdict," those provisions are being violated daily¹¹⁰. The general provision on the independence of editorial policy from economic and political interests of publishers is not applied in reality¹¹¹.

101 Interview with representatives of UNS and NUNS, October 2010 and interview with media's representative in Anticorruption Agency's Board, December 2010

102 Interview with representatives of UNS and NUNS, October 2010 and interview with media's representative in Anticorruption Agency's Board, December 2010

103 Interview with representatives of UNS and NUNS, October 2010 and interview with media's representative in Anticorruption Agency's Board, December 2010 <http://nuns.rs/info/statements.html> <http://www.uns.org.rs/saopstenja.html>

104 Interview with representatives of UNS and NUNS, October 2010 and interview with media's representative in Anticorruption Agency's Board, December 2010

105 Interview with representatives of UNS and NUNS, October 2010 and interview with media's representative in Anticorruption Agency's Board, December 2010

106 Interview with representatives of UNS and NUNS, October 2010 and interview with media's representative in Anticorruption Agency's Board, December 2010

107 Interview with representatives of UNS and NUNS, October 2010 and interview with media's representative in Anticorruption Agency's Board, December 2010

108 Data from UNS and NUNS

109 Interview with representatives of UNS and NUNS, October 2010 and interview with media's representative in Anticorruption Agency's Board, December 2010

110 <http://www.blic.rs/Vesti/Hronika/66163/Monstrum-pre--ubistva-silovao-zrtvu> <http://www.novosti.rs/vesti/naslovna/aktuel-no.69.html:290078-Silovao-pa-ugusio-devojcicu>

<http://www.kurir-info.rs/crna-hronika/majka-ubica-bebe-kod-psihijatra-53939.php>

111 www.irex.org/system/files/EE_MSI_2010_Serbia.pdf and interview with representatives of UNS and NUNS, October 2010

ROLE

Investigate and expose cases of corruption (Practice)

To what extent is the media active and successful in investigating and exposing cases of corruption?

Score: 25

Investigative journalism is not considered a key part of the media's work. Most media, apart from weeklies, exist as low-cost¹¹² media – relying mostly on news agencies, press releases, press conferences. Activities of high public officials (president, ministers) are regularly top news. Investigative journalism in the sense of discovering corruption cannot be found in Serbia, unless particular media is given information by the police or prosecution¹¹³. Media will seldom try to take advantage of a corruption scandal to go deeper and investigate the prevention aspect of the case - whether bad regulation should be changed¹¹⁴.

However, when corruption-suspected case is presented to the public (regularly done by the Anti-corruption Council, the Government's body that operates without Government's support, except financial) the media might pick up that trail¹¹⁵. There are several journalists and programs that publish stories about corruption¹¹⁶, but some of them are actually just publishing materials handed by the police, prosecution or political parties and officials trying to discredit their political opponents¹¹⁷.

Due to the fact that the lack of money is one of the major reasons for media not being able to afford investigative journalism, investigative reporting can mostly be found in regional donor-funded south-east European projects, that include Serbia, such as BIRN, Tol.org, Setimes.com). The web portal "Pistaljka" ("Whistle"), specialized on whistleblowers and funded by the US Government and Norwegian Embassy, was launched in July 2010. There are no specific media outlets in Serbia that focus on investigative journalism, although there are several programs of training for journalists (<http://www.cins.org.rs/>, OSCE Mission, "Vreme" weekly, BIRN network)¹¹⁸.

Inform public on corruption and its impact (Practice)

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

Score: 25

Corruption, as a subject, is present in the media in Serbia, but mostly through police press releases on corruption-related arrests¹¹⁹. Corruption and the fight against corruption are also used by politicians as part of the pre-election folklore and daily image-building routine¹²⁰. Very few journalists are actually trained on corruption and corruption-prevention subjects. Training on corruption-prevention reporting, organized by the Anti-corruption Agency in April 2010 was attended by five journalists,

112 Interview with UNS and NUNS representatives, October 2010.

113 Interview with UNS and NUNS representatives, October 2010

114 Interview with UNS and NUNS representatives, October 2010

115 <http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028/index/>

116 B92's Insider, Vreme and NIN weeklies, formerly Portal Argus run by Beta News Agency, Pistaljka web site, political tabloids – Blic, Press

117 Interview with UNS and NUNS representatives, October 2010

118 Research done by TS

119 <http://www.javniservis.rs/uhapsen-zbog-korupcije.html> http://www.mup.gov.rs/cms_cir/saopstenja.nsf/MUP

120 Interview with media's representative in Anticorruption Agency's Board, December 2010

although 20 editors on a previous meeting with the Agency's director and OSCE representatives agreed to delegate journalists for the training¹²¹. Several major media try to regularly educate the public on corruption, the importance of prevention and to explain novelties in the anti-corruption system, introduced by the Law on the Anti-corruption Agency that has been applied from January 1st 2010¹²².

Corruption related programs in media, such as B92's Insider, regularly have verbal support from independent anti-corruption institutions and regulatory bodies, such as the Commissioner for Information of Public Importance and Personal Data Protection, Ombudsman, and Anti-corruption Agency¹²³. The Anti-corruption agency also organizes education for journalists on corruption reporting¹²⁴. Verbal support to such programs is also given by the government's Anti-corruption council. There is no data available that the Serbian government, Vojvodina province's government or any local municipality supported any corruption related media's program.

Inform public on governance issues (Practice)

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

Score: 25

Even though reporting on government's activities is on the top of most media's priority lists, it is limited to statements by government's officials, press releases, interviews, in which only occasionally "hard questions" might be asked.

According to the US Department of State 2009 Human Rights Report on Serbia, the press was generally not limited or prevented from criticizing the government publicly or privately¹²⁵. However, some media organizations experienced threats or reprisals for publishing views critical of the government¹²⁶. Criticism of certain activities can be found, sometimes in the form of the media raising questions or media just publishing the opposition's stance¹²⁷. Reporting on government's and opposition's stances creates the illusion of objective reporting. Most media publishes basic information or political party and state announcements without analysis or opposing views¹²⁸. True analysis of the government's activities, impact of laws and by-laws is hardly found in the media.

The Serbian media lacks serious approaches to a number of events and topics, especially economic issues, such as economic development, export problems, public spending¹²⁹. Even the state budget is regularly presented without explanation of individual budget expenditures, presenting just the main figures and claims by the government and opposition. A further limitation is the trend of not improving the niche and detailed reporting, which is often attributed to the lack of specialists for complex topics¹³⁰.

121 Interview with media's representative in Anticorruption Agency's Board, December 2010
122 Interview with media's representative in Anticorruption Agency's Board, December 2010
123 Interview with representatives of UNS and NUNS, October 2010.
124 Interview with media's representative in Anticorruption agency's Board, December 2010.
125 <http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136056.htm>
126 www.irex.org/system/files/EE_MSI_2010_Serbia.pdf
127 www.irex.org/system/files/EE_MSI_2010_Serbia.pdf
128 www.irex.org/system/files/EE_MSI_2010_Serbia.pdf
129 www.irex.org/system/files/EE_MSI_2010_Serbia.pdf
130 www.irex.org/system/files/EE_MSI_2010_Serbia.pdf

MEDIA

Key findings and recommendations

The **media** is strongly influenced by political and economic power centers or advertisers who are, on the other hand, linked with political power centers. Investigative reporting is not developed and texts on corruption often arise as a result of political confrontation and not as the result of journalists' research.

1. Adopting a Law on the transparency of media ownership;
2. Regulating the system of direct and indirect financing of media by state bodies;
3. Monitoring the breach of the Journalists' code of conduct's regulations on conflict of interest and preventing corruption;
4. Adopting individual media's codes on gifts, hospitality and conflict of interest;
5. Supporting investigative journalism, both within the media themselves and by donors, through media projects;
6. Training journalists in reporting on corruption, investigative journalism and about tools, norms and institutions for systematic curbing corruption through preventive measures.



CIVIL SOCIETY

NATIONAL INTEGRITY SYSTEM

Summary: NGO registration is simple and there are no obstacles for the work of unregistered NGOs. There is no general system of tax incentives for CSOs, as well as direct tax incentives for donors. Public funding is not well regulated. The law provides that public funds are allocated solely on the basis of competition rules, but the regulation that would specifically control this area has not been adopted. A third of CSOs is funded on project basis. While CSOs have formal management and supervisory boards, a large number operates on the principle of leadership; board composition is not publicly available, as well as financial or annual reports. The state does not directly interfere in the work of CSOs. The exceptions are associations and professional chambers established by special laws which are assigned certain public authorities (such as the issuance of professional licenses). However, there are CSOs established by political parties in order to obtain additional funds from public sources. There are instances of occasional attacks on CSOs dealing with human rights, especially the rights of the LGBT population. Generally, there is a freedom for various CSOs activities, but the Constitutional Court initiated proceedings to ban a few extreme right-winged CSOs. There is a sectorial Code of Ethics, but without any mechanisms to monitor its compliance or violation. There are NGOs that are active in the fight against corruption and have a watchdog role, but the results of advocacy campaigns are limited in scope.

CIVIL SOCIETY			
Overall Pillar Score: 53			
	Indicator	Law	Practice
Capacity 69/100	Resources	50	50
	Independence	100	75
Governance 38/100	Transparency	/	25
	Accountability	/	25
	Integrity	75	25
Role 50/100	Hold government accountable	/	50
	Policy reform	/	50

Structure – Serbia has around 15,500 registered NGOs which employ 4,200 staff along with 4,500 part-time employees and volunteers¹. Civil society retains a traditional focus on social and community services and charitable activities. Advocacy for change in government policy and social attitudes with regard to the traditional areas of civil society activity (e.g. service provisions, assistance in the community etc.) is still the exception and is mainly conducted by the small number of professional NGOs².

About 60 percent of registered organizations are engaged in social work, culture, media or environmental protection, and more than two-thirds of the organizations are located in Belgrade and Vojvodina. There are three categories of CSOs: professional and modern ones, in most cases founded in the last 10-15 years, engaged in advocacy and capacity building in areas such as: social policy, good governance, human rights and economic development. A second recognizable category of CSOs, probably the largest group numerically, are those associations established mostly during socialist times with mandates to provide or coordinate services in the community. These are generally “old-fashioned organizations” in terms of their administration and their approach to government. They function within the state “socially owned” structures and are funded through state budgets. These associations include traditional professional associations, cultural and sports groups, service providers for those with special needs and hobby groups. A third category of CSOs is a diverse group of more or less professionalized small and mid-scale NGOs, established from the mid-1990s onwards, covering a range of issues at the community level and acting as a focal point or hub of citizens’ activism. These associations retain a member-based service-orientation, but in most cases, have developed through inclusion in internationally sponsored capacity building programs into modern, active NGOs³.

1 Reserch of the Civil Initiatives (www.gradjanske.org), Jun 2011

2 USAID 2011 Civil Society Assessment Report and Reserch of the Civil Initiatives (www.gradjanske.org), Jun 2011

3 Reserch of the Civil Initiatives (www.gradjanske.org), Jun 2011

ASSESSMENT

CAPACITY

Resources (Law)

To what extent does the legal framework provide an environment conducive to civil society?

Score: 50

The Serbian Constitution guarantees freedom of association and states that associations can be formed without prior approval, if entered in the register kept by the state⁴. CSOs are free to engage in advocacy and to criticize the government. Secret and paramilitary associations are forbidden, and the Constitutional Court may ban only those associations whose activities are aimed at the violent overthrow of the constitutional order, violation of guaranteed human and minority rights, inciting racial, national or religious hatred⁵.

Associations can operate without being entered in the registry, but in this case do not have a legal status⁶. The Register of Associations is maintained by the Agency for Business Registers⁷. Registration is not complicated. It requires the submission of the associations' founding acts, the statute, minutes of the founding meeting, the document on the election of representatives of associations, a certified copy of the identity card of the association's representative, proof of payment of fees for registration in the Register of Associations⁸, and costs 4,500 RSD (50 USD). The Association may be established by a minimum of three founders, provided that at least one of the founders (natural or legal entity) has a residence or office on the territory of the Republic of Serbia.⁹

The procedure to ban the association can be initiated upon the proposal of the Government, the Public Prosecutor, the Ministry in charge of administration, the Ministry in charge of the area of the association's objectives or the Registry. There is no appeal against the final decision of the Constitutional Court¹⁰. It is possible to ban the operation of an association that is not registered, and the procedure is the same as for a registered one.

The Association may acquire assets from membership fees, contributions, donations and gifts (in cash or goods), financial subsidies, legacies, interest on deposits, rents and dividends¹¹. Although these organizations are non-profit, they are conducted as profit in the tax system. The tax system does not provide incentives for NGOs actions. There are no general tax exemptions. The exceptions are organizations of people with disabilities that are exempt from customs duty on equipment for people with disabilities¹².

When CSOs receive a donation from the international organization or entity which is exempt from VAT in Serbia, this exemption is applied for granted CSOs also.¹³ These minor benefits cannot be marked as essential or critical for the operation of CSOs in Serbia¹⁴.

4 Serbian Constitution, Article 55

5 Serbian Constitution, Article 55

6 The Law on Civic Associations, article 4

7 <http://www.apr.gov.rs/eng/Registers/Associations.aspx>

8 The Law on Civic Associations, Article 26-29

9 <http://www.apr.gov.rs/eng/Registers/Associations/Instructions.aspx>

10 The Law on Civic Associations, article 51

11 The Law on Civic Associations, article 36

12 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

13 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

14 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

The Law on Associations provides that individuals and legal entities that make contributions to associations may be exempt from tax in accordance with the law which introduces appropriate public revenue¹⁵, but this field is still not well regulated¹⁶. Thus, the Law on income tax stipulates that expenditures on health, education, scientific, charity, religious, environmental and sporting activities, are recognized as an expense in the amount up to 3.5% of total revenue. This means that these funds could be donated to NGOs that implement projects in these areas. However, it is notable that the range of activities of public interest is narrow and does not match the definition in the Law on Associations. The business sector and fight against corruption are also among the programs or activities for which there is no incentive for donations¹⁷.

Even in areas where there is an incentive, companies are more interested in projects that have commercial character (and are profitable for them) than in using these resources in a socially useful purpose¹⁸. This does not create a favorable environment for CSO support from the business sector.

At the end of 2010, the amendments to the Law on Property Tax abolished tax of 2.5 % that associations (but not foundations) used to pay for all donations and gifts worth more than 9,000 RSD (80 Euros)¹⁹. The condition is that associations, recipients of gifts, are registered and operate in the public interest²⁰. Associations believe that the survival and sustainability of the sector requires reform of tax and fiscal policy in relation to CSOs²¹.

Resources (Practice)

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

Score: 50

The majority of CSOs have funding from multiple sources and at least some capacity to attract and diversify funding²². CSOs are most likely to have secured public funding from the Government of Serbia or municipal governments, while they are least successful in soliciting contributions from Serbian businesses and foreign companies in Serbia²³. The work of major CSOs does not depend on just one donor, while such cases are present in smaller communities, where it is the relatively common case that NGOs rely on local governments²⁴.

In fact, the most common sources of income, with the exception of self-financing where members financing the work of CSO (44%), are the local administration (20%), international donor organizations (9%), local donor organizations (8%), ministries (7%), and the business sector (6%). The situation is significantly different for NGOs active in the field of law, public policy and advocacy where most donations come from the international donor organizations (34%). NGOs are largely financed on a project basis (28 %) and membership fees (24%)²⁵.

In practice, sources from economic activities of CSOs represent an average of 13 % of total NGO revenues. Institutional support accounts for about 12 % of NGOs' revenue, while 8% come from

15 The Law on Civic Associations, article 36

16 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

17 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

18 Zdenka Kovacevic, NGO *Sretenje*, interview

19 <http://civilnodrustvo.gov.rs/dokumenta/zakoni-i-opsti-akti-rs>

20 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

21 Strategic Marketing Research, NGOs in Serbia (2005-2009)

22 USAID 2011 Civil Society Assessment Report

23 USAID 2011 Civil Society Assessment Report

24 Zoran Gavrilovic, NGO *Birodi*, active in involving local NGOs in anti-corruption activities and Aleksandar Bratkovic, NGO Center for development of non-profit sector, interview

25 Reserch of the Civil Initiatives (www.gradjanske.org), Jun 2011

voluntary contributions. NGOs focusing on law, advocacy and politics have more pronounced dependence of the projects (48 %), and significantly lower incomes from self-financing activities²⁶.

However, NGOs cannot rely on donations from local authorities because they often depend on the ruling coalitions' political will at the local level²⁷. Vacancies, if any, are made so as to favor topics that relate only to a particular organization or type of organization, while they do not provide clear criteria for selecting the best projects. Evaluation and monitoring of projects remain fully unknown, as well as standards in financial reporting²⁸. Slightly better is the position at the national level where there are certain prescribed forms and criteria for allocating funds, but without control and performance standards, monitoring and evaluation. The vast majority of local government funds do not support "watchdog" projects and projects related to the prevention of corruption and fight against corruption²⁹.

On average, NGOs are involved in 2.4 projects per year. A study from 2009 shows that almost a quarter of all organizations did not have a single project³⁰.

There is a limited number of local (national) organizations or foundations that support the work of CSOs, especially outside of Belgrade³¹.

Public funding is not fully regulated. The Law on Associations³² defines a contest as the sole basis for the allocation of funds from the budget to the programs of public interest conducted by associations. It is anticipated that "The government regulates specific criteria, requirements, scope, method, process allocation, and the manner and process of returning funds", but the government has not adopted rules, or any similar act that would more closely regulate this field³³. This has disabled the full implementation of the Law in its most important part, thus leaving room for different interpretations of the legal gap. It should be noted that the provisions of this Act apply to the allocation of funds from the provincial budget and the budgets of cities and municipalities³⁴.

Typical is the example pointed out by the State Audit Institution in its audit report of the annual financial report of the Ministry of Economy. That Ministry, with authorities in the area of tourism as well, awarded a grant classified for non-governmental organizations to a sports sailing club to conduct the program in the field of culture promotion³⁵.

The budget of the Republic of Serbia in 2009 allocated 0.54%, or about 4.1 billion RSD for "donations to non-governmental organizations" (about 50 million USD)³⁶. From this amount, sports and youth organizations received 1.2 billion, religious communities 722 million, political parties 600 million, the Serbian Red Cross 350 million, other civic associations 864 million and other non-profit organizations 318 million³⁷. This means that the NGOs received a total of about 1.2 billion RSD (15 million USD) which is not sufficient. What is interesting is that among these "other non-profit organizations" very often there are sporadic sports organizations, companies, or religious communities³⁸.

26 The state in OCD sector, Civil Initiatives research, (www.gradjanske.org), Jun 2011

27 Pavle Dimitrijevic, NGO *Birodi*, interview

28 Zdenka Kovacevic, NGO *Sretenje*, interview

29 Pavle Dimitrijevic, NGO *Birodi* and Zdenka Kovacevic, NGO *Sretenje*, interview

30 Strategic Marketing Research, NGOs in Serbia (2005-2009), June 2009

31 USAID 2011 Civil Society Assessment Report

32 Law on associations, article 38

33 Grants to NGOs in Serbia: NGO funding from the budget of Serbia in the Serbian budget 2007-2009. Center for Development of Non-Profit Sector, 2010 and Aleksandar Bratkovic, NGO Center for development of non-profit sector, interview

34 Aleksandar Bratkovic, NGO Center for development of non-profit sector, interview

35 <http://dri.rs/images/pdf/revizija2011/izv-zrrs2010.pdf>, page 170

36 Grants to NGOs in Serbia: NGO funding from the budget of Serbia in the Serbian budget 2007-2009. Center for Development of Non-Profit Sector, 2010

37 Grants to NGOs in Serbia: NGO funding from the budget of Serbia in the Serbian budget 2007-2009. Center for Development of Non-Profit Sector, 2010

38 Grants to NGOs in Serbia: NGO funding from the budget of Serbia in the Serbian budget 2007-2009. Center for Development of Non-Profit Sector, 2010

CSOs also face the problem of an insufficient number of professional full-time fundraisers who could cultivate a stable core of diverse financial support³⁹. As international donors withdraw from Serbia, even the strongest NGOs have a difficult time ensuring sustainability for more than a short period of time⁴⁰. Donors have largely discontinued support for the purchase of office equipment, rent payments and other related administrative costs, which directly impacts day to day as well as long-term operations for many NGOs.⁴¹

The majority of organizations lack the internal capacity, staffing and management skills necessary for effective division of labor and strategic approach to NGO management⁴².

Around 15,500 registered organizations employ approximately 150,000 volunteers and 8,700 professionals (full-time and part-time employees)⁴³. Even the most active organizations have only a handful of permanently engaged staff⁴⁴. Only 10% of professionalized organizations were working without any volunteers. Those with the highest levels of volunteerism include sports and recreational organizations, environmental groups, youth groups and charitable organizations⁴⁵.

At present there are simply insufficient financial resources in Serbia dedicated to civil society to support all currently active organizations. The structure of funding also dictates that almost all organizations are more or less dependent on short-term project funding with the exception of a few professional NGOs which have obtained long-term institutional funding (usually from an international donor) and those community-based self-help groups, whose activities do not require material investments.⁴⁶

This is a major obstacle in developing a professionally qualified staff. Solely project funding, as well as various other economic limitations also impact the ability of larger fully professionalized NGOs to retain experienced staff⁴⁷.

Independence (Law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

Score: 100

There are no obstacles to register CSO that will engage in promoting good governance and anti-corruption. The state can interfere in the work of civil associations only in cases defined by Constitution and Law. The Constitution and the Law on Associations stipulate that the Constitutional Court may initiate a process to ban the association (i.e. remove it from the registry) if its activity is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or at inciting racial, national and religious hatred⁴⁸.

The state does not have its representatives among the boards of typical CSOs. Professional associations and chambers, set up by special laws which give them also public authorities in a certain

39 Grants to NGOs in Serbia: NGO funding from the budget of Serbia in the Serbian budget 2007-2009. Center for Development of Non-Profit Sector, 2010

40 Grants to NGOs in Serbia: NGO funding from the budget of Serbia in the Serbian budget 2007-2009. Center for Development of Non-Profit Sector, 2010, interviews with CSOs representatives

41 USAID 2009 NGO Sustainability Index for Central and Eastern Europe and Eurasia

42 USAID 2009 NGO Sustainability Index for Central and Eastern Europe and Eurasia

43 Reserch of the Civil Initiatives (www.gradjanske.org), Jun 2011

44 Reserch of the Civil Initiatives (www.gradjanske.org), Jun 2011

45 Strengthening Civil Society in Serbia, OSCE Mission to Serbia, 2010

46 Civil Society Organisations' Capacities In The Western Balkans And Turkey. TASC0, 2010

47 Civil Society Organisations' Capacities In The Western Balkans And Turkey. TASC0, 2010

48 Constitution of Serbia, article 55, The Law on Civic Associations, article 3

area, such as the issuance of licenses for members are an exception⁴⁹. These are professional organizations of engineers, doctors, pharmacists, veterinarians and social workers. This does not apply to professional associations established under the Law on Associations that do not have public authority. The representatives of state in chambers have all the rights that belong to other board members – they attend meetings and have the right to vote. It is important to note that the state usually has a minority presence in these boards⁵⁰.

State control of the CSO is limited to financial statements that organizations must submit when they receive money from public sources. On the other hand, there is no serious evaluation of CSOs' projects, which opens the possibility for misuse⁵¹.

Independence (Practice)

To what extent can civil society exist and function without undue external interference?

Score: 75

The NGO sectors' general assessment is that there are conditions for the smooth operation of the government and the state apparatus, but there are constant attempts by the government and in particular parties, to win NGOs or to manipulate them and thus promote their own interests.

According to the representatives from this sector, NGOs are free and independent to the extent to which they have developed their own integrity, autonomy and defined way of functioning⁵². Many organizations allow interference and influence under the pressure of blackmail in project financing⁵³. It is difficult to prove corruption, which happens as mutual obtaining of projects where city or local officials promise to support the project, and in turn, the association indicates in the project that the executive services will be entrusted to a very specific marketing agency to which funds are transferred upon winning the project⁵⁴.

In January 2011, the Government of Serbia established the Office for Cooperation with Civil Society⁵⁵. This has been the subject of advocacy by civil society, in order to establish an institutional mechanism for dialogue between government institutions and civil society organizations. However, one part of civil society is dissatisfied with the Office's work and believes that the Office is trying to coordinate civil society, rather than to coordinate cooperation and thus affect the autonomy of civil society⁵⁶.

Reviews of the obstacles that the government puts in front of the NGO sector are more a consequence of unmet high and perhaps unrealistic expectations by the NGO sector after the adoption of the Law on Civic Associations in 2009⁵⁷. According to research at the end of 2009, 27% of representatives of NGOs stated that the state apparatus or the government had hindered their work in some way⁵⁸.

The most frequent ways of hindering NGO work is deprivation of finances (18%), deprivation of space for usage (16%), indifference, absence of support (15%), obstruction of work (14%) and lack of cooperation (12%)⁵⁹.

49 The Law on Civic Associations, Interview with Zoran Gavrilovic, NGO *Birodi*

50 Interview with Zoran Gavrilovic, NGO *Birodi*

51 Interview with Zoran Gavrilovic, NGO *Birodi*

52 Interviews with four representatives of CSOs

53 Interviews with four representatives of CSOs

54 Pavle Dimitrijevic, NGO *Birodi*, interview

55 <http://civilnodrustvo.gov.rs/en/>

56 Zoran Gavrilovic, NGO *Birodi*, interview

57 Interviews with four representatives of CSOs

58 Strategic Marketing Research, NGOs in Serbia (2005-2009), June 2009

59 Strategic Marketing Research, NGOs in Serbia (2005-2009), June 2009

Direct obstruction of work is something that faces smaller local NGOs. Large NGOs, operating on the national level, are usually completely free to operate without undue government interference⁶⁰.

Small NGOs at the local level sometimes cannot criticize the local government that is often one of the main sources of income⁶¹. There are some cases of NGO manipulation at the local level – where certain actions or campaigns glorify the success of municipalities and local governments, and are supported by the local media. Thanks to them, local NGOs receive funds from the local government⁶².

CSOs consistently emphasize the threat posed to their independence by political parties. Well-established CSOs in Belgrade believe that they are strong enough and sufficiently politically wise to interact with political parties and the government without compromising their principles⁶³. Regionally based CSOs are more inclined to believe that their counterparts in Belgrade “sold out” to political interests and aren’t pushing hard enough for significant reforms. Particularly in the regions, civil society actors report is exposed to significant pressure from all sides to politically align their organizations. And while this pressure is most intense during election campaigns, it is ever present⁶⁴. Unqualified support of a given party and its policies is often presented as the ticket to access, endorsement, influence and public funding, which may be too good an offer for some CSOs to refuse⁶⁵.

There are also other forms of government interference in the work of NGOs. One of the phenomena recorded in the period following the adoption of the Law on Associations is the establishment of NGOs by political parties or its activists⁶⁶. This way parties tried to make extra money from public sources or EU IPA funds, to monopolize access to decision-makers, manipulate public opinion, and/or contribute to an exaggerated perception of government and CSO cooperation, thereby crowding out “legitimate” civil society⁶⁷.

The GRECO 2010 report on Serbia cited that “at least one political party reportedly registered 40 associations“. The report included steps that needed to be taken to increase the transparency of accounts and activities of all organizations that are related, whether directly or indirectly, to political parties or otherwise under their control⁶⁸.

The media showed evidence for these claims - a letter addressed in 2009 from the headquarters of the ruling Democratic Party to activists, mostly young members of the party, instructing them to establish non-governmental organizations and apply for money from local, national and international funds, so that a part of that money could be used to finance party activities⁶⁹.

Shortly afterwards cites that other parties have “their” NGOs appeared and that one political coalition, created by bringing together a number of national and regional parties, is registered as a civic association⁷⁰.

In addition to appearance of a “partisan NGO”, at the local level there is already an existing practice of bringing together NGOs and party structures, resulting from local public funding of projects that usually support one-time activities such as political seminars or training, often with visits or involvement of politicians from the local or national level. This is a threat to the independence of NGOs.⁷¹

60 Zoran Gavrilovic, NGO *Birodi* and Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

61 Zoran Gavrilovic, NGO *Birodi* and Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

62 Pavle Dimitrijevic, NGO *Birodi*, interview

63 USAID 2011 Civil Society Assessment Report

64 USAID 2011 Civil Society Assessment Report

65 USAID 2011 Civil Society Assessment Report

66 European Council’s Group of States Against Corruption (GRECO) 2010 report on Serbia

67 USAID 2011 Civil Society Assessment Report

68 GRECO report [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)3_Serbia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)3_Serbia_Two_EN.pdf)

69 http://www.danas.rs/danasrs/politika/omladina_ds_u_vojvodini_po_naredbi_formira_nvo.56.html?news_id=21961_5

http://www.danas.rs/danasrs/politika/demokratska_stranka_zbog_fondova_osniva_nevladine_organizacije.56.html?news_id=219320

70 http://www.danas.rs/danasrs/politika/urs_registrovan_kao_udruzenje_gradjana_.56.html?news_id=219199

71 Zoran Gavrilovic, NGO *Birodi*, interview

There are no detentions or arrests of civil society actors because of their work. Several representatives of right-wing non-governmental organizations were detained, but the reason was inciting violence in October 2010, rather than political action of NGOs. Representatives of the right-wing organizations were detained for organizing, without permission public meetings protesting against the arrest of Radovan Karadzic in September 2009. In June 2011, several activists of left-wing anti-NATO organizations were detained for unregistered protests during the summit of NATO in Belgrade⁷². There are examples of obstruction and systematic denial of information and obstruction of the association's activities, particularly those that operate at the local level⁷³. Local institutions or local governments deliberately "boycott" associations, which in their view threatens their interests, and sends them "warnings" to stop some activities through mediators. "Messages" are usually secretly sent by parties, not institutions, and it is very difficult to prove those threats. They are discussed only within associations, but rarely beyond⁷⁴.

There are sporadic attacks on LGBT activists and organizations that promote human rights and deal with war crimes, but in such cases police responds quickly and effectively with a proper and impartial investigation⁷⁵.

72 http://www.b92.net/info/vesti/index.php?yyyy=2011&mm=06&dd=12&nav_category=12&nav_id=518417

73 Pavle Dimitrijevic, NGO *Birodi*, interview

74 Zoran Gavrilovic, NGO *Birodi*, interview

75 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

GOVERNANCE

Transparency (Practice)

To what extent is there transparency in CSOs?

Score: 25

NGOs do not have the practice of publishing annual reports on their work as well as financial statements. By law, the associations funded from the budget for the implementation of their program (whether republic autonomous province or local government budget) have to, at least once a year, make available to the public a report on their work, the extent and manner of acquisition and use of these funds and to submit this report to the provider of funds⁷⁶. The obligation to submit reports on donation funds to the provider is most often respected⁷⁷. On the other hand, there are no records that any NGO was fined for violation of the obligation to publish an annual report and/or failed to submit a report on the expenditure of funds⁷⁸.

Instead of financial statements, the NGO web-sites mostly present general overview of completed projects and an overview of the project value and the name of the donor⁷⁹.

The Law also stipulates that annual accounts and reports on associations' activities are submitted to associations' members in the manner prescribed by the statute⁸⁰. CSOs that have foreign assistance are also required to provide reports to their donors, but only few post such information on their web-sites or make it available to the public otherwise⁸¹.

Data on the members of the board are usually not publicly available on the websites of CSOs, while the Agency for Business Registers' web-site only presents information on persons representing CSOs⁸².

A small number of NGOs prepare annual audited financial statements of operations, but it is the consequence of the lack of funds as audit is a considerable expense for most of the NGOs⁸³.

Accountability (Practice)

To what extent are CSOs accountable to their constituencies?

Score: 25

Strategic leadership, a key function of governing bodies, is frequently absent, owing the rarity of truly functioning CSO governing bodies⁸⁴. In practice, CSOs are mostly leader-based organizations⁸⁵. This principle is a direct consequence of the lack of institutional integrity. Even though CSOs have the opportunity and right to form a managing or oversight board, they seldom do this⁸⁶. Even if the board of directors, which includes members from outside of the organization, does

76 The Law on Civic Associations, Article 38

77 Aleksandar Bratkovic, NGO Center for the Development of Non-Profit Sector, interview

78 Subject to fines in the range of 50,000 – 500,000 RSD (450-4500 Euros)

79 Reserach done by TS, web sites of NGOs

80 The Law on Civic Associations, Article 39

81 The Law on Civic Associations, Article 38, USAID 2011 Civil Society Assessment Report

82 Reserach done by TS, web sites of NGOs, <http://www.apr.gov.rs>

83 Aleksandar Bratkovic, NGO Center for the Development of Non-Profit Sector, interview

84 Civil Society Organisations' Capacities In The Western Balkans And Turkey, TASCO, 2010

85 Civil Society Organisations' Capacities In The Western Balkans And Turkey, TASCO, 2010

86 Zorana Gavrilovic, NGO *Birodi*, interview

exist, NGOs typically do not divide responsibilities between the board of directors and staff members. The NGO leader is often both the board's key decision maker and the person responsible for program implementation⁸⁷.

Only recently some NGOs have started introducing good governance practices, such as establishing an independent board of directors⁸⁸. Additionally, NGO activists often have to take multiple roles due to lack of steady funding⁸⁹. A 2009 research showed that less than half of the CSOs (43%) has written rules and procedures (in addition to the statute) related to the decision-making and overall work of the organization⁹⁰.

There are opinions within the NGO sector, that the Law on Associations with its liberal approach, (three people are enough to register an association), stultified the system of internal organization through the Assembly of the association, management and supervisory board⁹¹.

A minority of older organizations have undergone leadership transitions⁹². While there is broad consensus within the NGO sector⁹³ that governance is an important issue impacting the legitimacy of their organizations, this is not an issue on the top of the agenda yet. In the research done for USAID in 2011, CSOs ranked governance near the very bottom amongst priorities for capacity building⁹⁴. This suggests that CSOs continue to resist the tasks of separating governance and executive functions and initiating leadership transitions, as well as operating in a more transparent and publicly accountable manner.

Integrity (Law)

To what extent are there mechanisms in place to ensure the integrity of CSOs?

Score: 75

The Code of Ethics for civil society was developed in the first half of 2011 by the NGO Civic Initiatives, which in the past was a common promoter of mutual actions of the NGO sector and initiated gatherings around common goals⁹⁵. This is the only attempt of self-regulation within the sector. The Code of Ethics is a result of the tendency to develop a system of integrity for all CSOs competing for public funds. The Code provides common values and principles on which their actions should be based⁹⁶.

The code states that organizations which adopt it consider social change as a basis of CSO work and that the ideas of CSOs are directed to the benefit of a larger group of people and society as a whole⁹⁷.

All parties that sign the Code accept the responsibility for their work and public results to all customers and partners and to the communities in which they work, and are obliged to present true information on their work, activities and results, and to make all aspects of the work available to the public - whether these are activities, results or financial resources⁹⁸.

87 USAID 2011 Civil Society Assessment Report

88 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

89 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

90 Strategic Marketing Research, NGOs in Serbia (2005-2009), June 2009

91 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

92 USAID 2011 Civil Society Assessment Report

93 Survey conducted for USAID 2011 report

94 Survey conducted for USAID 2011 report

95 <http://www.gradjanske.org/page/news/sr.html?view=story&id=3633§ionId=1>

96 <http://www.gradjanske.org/page/news/sr.html?view=story&id=3633§ionId=1>

97 The Code of Ethics for civil society <http://www.gradjanske.org/page/news/sr.html?view=story&id=3633§ionId=1>

98 The Code of Ethics for civil society <http://www.gradjanske.org/page/news/sr.html?view=story&id=3633§ionId=1>

The Code deals with the issue of conflict of interest, obliging CSOs to make efforts to establish procedures to timely recognize and prevent all existing and potential conflicts of interest or correct them in a way that no organization, customer, partner and associate is harmed⁹⁹.

CSOs are bound by the code to apply only for those assets and activities that are consistent with their goals and programs and that can be competently achieved¹⁰⁰.

Integrity (Practice)

To what extent is the integrity of CSOs ensured in practice?

Score: 25

There were only a few cases where leaders from civil society were accused of abuse. The Director of the fund "Katarina Rebraca Foundation", that collected donations for fighting against cancer, was accused of abuse and the trial is ongoing¹⁰¹. The Code of Ethics, which was offered to non-governmental organizations to sign in June 2011, has no effective mechanisms to oversee its enforcement or sanctions for violations of provisions accepted by signatories¹⁰².

Fifty CSOs signed the Code at the promotion, while on July 1st 2011 it was announced¹⁰³ that a total of 112 organizations joined the Code. There was no more information about its fate since then. The representatives of the NGO sector agree that the essential problem is the lack of a body to monitor the implementation of codes and mechanisms for sanctioning violations.¹⁰⁴

NGOs which developed the existing Code implied that part of the CSO sector denotes it. They believe this is the reason why it cannot show results¹⁰⁵.

99 The Code of Ethics for civil society <http://www.gradjanske.org/page/news/sr.html?view=story&id=3633§ionId=1>

100 The Code of Ethics for civil society <http://www.gradjanske.org/page/news/sr.html?view=story&id=3633§ionId=1>

101 <http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:299001-Optuzena-Katarina-Rebraca>

102 The Code of Ethics for civil society <http://www.gradjanske.org/page/news/sr.html?view=story&id=3633§ionId=1>

103 <http://www.gradjanske.org/page/news/sr.html?view=story&id=3633§ionId=1>

104 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, Zoran Gavrilovic, Pavle Dimitrijevic, NGO *Birodi*, Zdenka Kovacevic, NGO *Sretenje*, interviews

105 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector, interview

ROLE

Hold government accountable (practice)

To what extent is civil society active and successful in holding government accountable for its actions?

Score: 50

The role of the NGO sector in monitoring the public sector is not developed enough, especially at the local level.

There are several reasons for this. According to some NGO representatives, some organizations which are autonomous and are not “related” to certain political parties, experienced a number of inconveniences during the implementation of the monitoring activities and therefore they changed the field of action. On the other hand, the vast majority of organizations avoid working in this field¹⁰⁶.

Sector-wide there are few CSOs with the analytical capacities necessary for providing the basis for effective advocacy and policy dialogue¹⁰⁷.

The organizations involved in monitoring the public sector implement activities more persistently and diligently, bring qualitative changes in terms of improving decision-making procedures at the local and national level and point to deficiencies, i.e. absence or disregard of established procedures¹⁰⁸.

There are a few successful examples of high profile activities of NGOs in monitoring the public sector, such as: perennial research of the Center for the non-profit sector about grants to non-governmental organizations from the Serbian budget and budgets of local governments¹⁰⁹, the work of the Coalition for the overview of public finances¹¹⁰, as well as the results of Transparency Serbia¹¹¹ in the field of transparent public finance and public procurement. This primarily refers to activities at the national level. Transparency Serbia has successfully influenced the content of numerous anti-corruption legislation¹¹², as well as the return of some 750,000 Euros into the budget that was wrongly paid to political parties for annual funding, due to the misapplication of the procedures¹¹³. The Coalition for Free Access to Information recently gave a great contribution to the establishment of the institution of the Commissioner with its work on the implementation and monitoring of the Law on Free Access to Information¹¹⁴. The Bureau for Social Research conducted activities on the development and adoption of local plans to fight corruption in 5 cities (Nis, Kragujevac, Zrenjanin, Pozega and Bujanovac) and is active in 4 more municipalities. Activities are sustainable since local municipalities established independent anti-corruption bodies for implementing the plan¹¹⁵. In 2010, association *Sretenje* managed to introduce bidding for funding citizens’ associations in the municipality Pozega. The entire process was carried out in cooperation with local authorities and currently all budget funds from line 481 (grants to NGOs) are allocated in a transparent manner through biddings¹¹⁶.

106 Pavle Dimitrijevic, NGO Birodi, interview

107 Civil Society Organisations’ Capacities in the Western Balkans and Turkey TASC0, 2010

108 Civil Society Organisations’ Capacities in the Western Balkans and Turkey TASC0, 2010

109 <http://www.crnps.org.rs/linija-481>

110 <http://www.nadzor.org.rs/projekti.htm>

111 http://transparentnost.org.rs/index.php?option=com_content&view=article&id=108&Itemid=21&lang=sr

112 Including Law on Public Procurement, Law on Financing Political Activities, Law on Anti-corruption Agency, Law on National Assembly and Law on Free Access to Information of Public Importance.

113 http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=108&Itemid=21&lang=sr

114 http://www.spikoalicija.org/index.php?option=com_content&task=blogcategory&id=71&Itemid=57

115 <http://www.birodi.rs/>

116 <http://www.sretenje.org.rs/sr/content/category/2/2/14/>

There is a noticeable increase in the number of municipal-level advocacy initiatives, concerning a wide variety of local-level policy issues such as: waste disposal, social inclusion and budget monitoring¹¹⁷. However, at this level CSOs rarely have the organizational and financial capacities to sustain concerted campaigns over a longer period and in many cases their activities are reduced to shorter-lasting information and educational campaigns or public events¹¹⁸.

Independent research centers focused on providing expert analysis and evidentiary approach to policy formulation and review are also rare¹¹⁹. Despite the existence of professional associations and trade unions, these groups appear to be largely missing from the sphere of advocacy on key issues of economic reform, unemployment and labor rights. Many of these associations are mandatory membership organizations that have limited interest or capacity for advocacy¹²⁰.

The campaigning for public education and other forms of NGO activism in the fight against corruption, such as advocacy campaigns, are widespread and recognized in the public, but there is the question of the extent to which this recognition applies to organizations and campaigns and how much to individuals from the NGO sector who lead those campaigns¹²¹.

Authorities respond to public advocacy campaigns conducted by the NGO sector on a case-by-case basis and depending on the media promotion, in order to avoid negative publicity. There are some changes that are a result of the activities in the sector, but it is more because of the pressure from civil society rather than real understanding of the decision makers that it is necessary and useful to involve the public and CSOs in the decision-making process¹²².

There is lack of governments' initiative to start collaboration, seek interaction and support CSOs in achieving goals¹²³.

In a study on the NGO sector in Serbia, Civil Society Assessment Report, conducted by USAID in 2011, respondents pointed out that many regulations are not enforced and that there is a great field for the actions of watchdog organizations. This can be considered as evidence of insufficient development of the sector. They identified the project orientation of numerous organizations as undermining many on-going watchdog activities, i.e. "no project, no oversight."¹²⁴

According to the USAID 2011 Civil Society Assessment Report, the major issue with respect to lobbying and advocacy efforts by civil society is their points of access and leverage vis-à-vis decision-makers at the republic and municipal levels. At present, the functioning of Serbia's governing institutions and its system of representation conspire to restrict access and leverage¹²⁵. Serbia's National Assembly remains a weak body that does not adequately fulfill its representative, legislative or oversight functions. Given the absence of formal mechanisms or processes for government-civil society cooperation, this tends to occur more on the basis of personal contacts and interactions than on multi-faceted strategies or broad-based efforts. This scenario is applicable at the municipal level vis-à-vis mayors and local party bosses.¹²⁶

117 Civil Society Organisations' Capacities In The Western Balkans And Turkey. TASCO, 2010

118 Civil Society Organisations' Capacities In The Western Balkans And Turkey. TASCO, 2010

119 USAID 2011 Civil Society Assessment Report

120 USAID 2011 Civil Society Assessment Report

121 Aleksandar Bratkovic, NGO Center for Development of Non-Profit Sector and Zoran Gavrilovic, NGO Birodi, interview

122 Representatives of NGO *Birodi* and CRNPS Zoran Gavrilovic and Aleksandar Bratkovic

123 Representatives of NGO *Birodi* and CRNPS Zoran Gavrilovic and Aleksandar Bratkovic

124 USAID 2011 Civil Society Assessment Report

125 USAID 2011 Civil Society Assessment Report

126 USAID 2011 Civil Society Assessment Report

Policy reform (practice)

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

Score: 50

The contribution of the NGO sector in anti-corruption events is significant, particularly in the field of cooperation with independent and regulatory bodies and through mutual support in activities and actions.

Generally, over the past few years CSOs in Serbia have played a rather important role in the development of some laws, bylaws, and/or strategies on a range of issues affecting not just the sector itself, but also anti-discrimination, anticorruption, decentralization, free access to information, poverty reduction, domestic violence, persons with disabilities, and youth¹²⁷.

Around 30% of NGOs claim their field of work is legislation, representation and public politics¹²⁸. However, among the 15,000 registered NGOs there are relatively few of those who can contribute to anti-corruption discussions and reforms. In the past, anti-corruption initiatives came mainly from specialized NGOs, such as Transparency Serbia, organizations having broader portfolio of work and occasionally conduct corruption – related activities (such as the Fund for Open Society, Birodi, CESID, YUCOM, CLDS, Pro-concept, CRNPS, LiNet and others) or NGO groups such as the Coalition for overview of public finances and the Coalition for Free Access to Information.

Coordinated involvement of the NGO sector in fighting against corruption is established by the draft new Anti-corruption Strategy, expected to be adopted by 2011¹²⁹. The draft Strategy recommends the creation of a strategic framework for the participation of civil society in the fight against corruption and building integrity. NGOs are recommended to coordinate work, draft and adopt an anti-corruption civil agenda, adopt a plan for the integrity in civil society, initiate the adoption of the Law on Professional Association, adopt the code of anti-corruption subjects and a body for its implementation, as well as to initiate the development of procedures and criteria for the selection of civil society representatives in management and supervisory bodies, which have the representatives of civil society under existing legal provisions¹³⁰.

The draft Strategy, also recommends the participation of civil society in monitoring and evaluation of corruption and anti-corruption, and within that formation of base of completed projects in the fight against corruption field and the involvement of the NGO sector in the national shadow report on the level of implementation of anti-corruption measures from the Strategy.¹³¹

127 USAID 2011 Civil Society Assessment Report

128 Strategic Marketing Research, NGOs in Serbia (2005-2009), June 2009

129 <http://www.mpravde.gov.rs/tekst/38/protiv-korupcije.php>

130 <http://www.mpravde.gov.rs/tekst/38/protiv-korupcije.php>

131 <http://www.mpravde.gov.rs/tekst/38/protiv-korupcije.php>

CIVIL SOCIETY

Key findings and recommendations

Civil Society Organizations are extremely numerous and procedures for registration are simple. However, few organizations have adequate capacities and are seriously and systematically engaged in the areas of policy reform and fight against corruption. The system of CSO funding from public resources has not been fully regulated yet and leaves room for the influence of government to the work of CSOs.

1. Publishing transparent annual financial reports and reports on projects supported by state bodies;
2. Strengthening internal control mechanisms in order to enhance CSO's integrity;
3. Adopting by-laws that will regulate distribution of money from the budget to CSOs. Anti-corruption projects should be financed from the budget;
4. Separating in budget classification funds for CSOs from the funds allocated for political parties, religion organizations and sport organizations;
5. Amending regulations in order to enables greater resources for CSOs for policy making advocacy and oversight of the public authorities;
6. Reassessing the system of oversight of the organizations that are entrusted with public authorities, such as professional chambers, organizations that represent owners of intellectual rights, author rights etc;
7. Professional chambers should be more active in sanctioning their members for breach of the ethical principles and reporting of law violation.



BUSINESS

NATIONAL INTEGRITY SYSTEM

Summary: Regulations in Serbia allow simple establishing of businesses and a solid basis for work. The collection of payments and judicial protection is, however, problematic. State bodies pass measures that sometimes violate the free market and competition. Regulations on transparency of business conduct are formally respected although there is a certain mistrust in the content and validity of the report. Control mechanisms inside companies are mostly inefficient. Anti-corruption advocating in the business sector is extremely limited, companies agree to corruption in business, and cooperation with the civil sector in fighting against corruption practically does not exist.

BUSINESS			
Overall Pillar Score: 50			
	Indicator	Law	Practice
Capacity 56/100	Resources	75	50
	Independence	75	25
Governance 58/100	Transparency	75	25
	Accountability	100	25
	Integrity	75	50
Role 13/100	AC policy engagement	25	
	Support for/engagement with civil society	0	

Structure – Companies in Serbia are in private or public ownership. There are approximately 700 public enterprises, whose establishers are the Republic of Serbia or municipality units. Those enterprises hire around 110.000 people¹. There are more than 2.000 enterprises that are partially or completely owned by the state, whether privatized or the state took over the ownership on the basis of their debts. They employ around 400.000 employees². Private companies employ 1.2 million people. According to data of the Serbian Business Registers' Agency, 111.000 business companies are registered and approximately 225.000 are entrepreneurs. Final accounts are submitted by 72.000 companies, and it is estimated that 130.000 entrepreneurs are active³, while others are in a regime of temporary cancellation of work. Small companies (up to 50 employees and annual income up to 2.5 million Euros) make 98.5 percent of the total number of companies, middle (50 to 250 and annual income up to 10 million Euros) 0.9 percent, while large make 0.6 percent of the total number of registered companies⁴.

Companies are organized through the system of Chambers of Commerce – Chamber of Commerce of Serbia and 19 regional chambers of commerce. Membership in the Chamber of Commerce is obligatory until January 1st 2013, when provisions of the new Chamber of Commerce Law come into force that will stipulate that 100 companies could organize a chamber, and membership in the Chamber of Commerce of Serbia won't be obligatory. Beside the chamber system, there are associations and clubs of enterprises, like the Employers' Union of Serbia with approximately 46.000 members that have 237.000 employees⁵, and the Serbian Business Club "Privrednik" that gathers 45 top people from some of the largest private companies or Association of Small and Medium Companies and Entrepreneurs of Serbia⁶.

Types of enterprises or business associations are determined by the Law on Enterprises: partnership, limited partnership, Limited Liability Company and stock company (open and closed)⁷.

1 <http://www.apr.gov.rs/>

2 <http://www.apr.gov.rs/>, <http://webrzs.stat.gov.rs/WebSite/>

3 Estimations of Employers' Association of Serbia, interview with the author of the report, January 2011

4 <http://webrzs.stat.gov.rs/WebSite/>

5 Data from Employers' Union of Serbia, interview with the author of the report, January 2011

6 According to data from the web site www.poslodavci-apps.org

7 Law on Enterprises (1996), article 2

ASSESSMENT

CAPACITY

Resources (Law)

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

Score: 75

Laws that regulate establishing, operating, insolvency and closing of companies stipulate legal framework that mainly guarantees efficient establishing, operating, insolvency and closing of companies.

The Law on Enterprises⁸ regulates the establishing of business companies and entrepreneurs, legal forms to establish an enterprise and for its operating, managing, rights and obligations of founders, members and stockholders, termination of work of entrepreneurs and liquidation of enterprises.

The following documentation is delivered for the registration of an enterprise: registration application, founders' act, proof on identification of the founder, proof on the down payment of monetary stakes, decision on the election of a representative, certification of signatures of representatives and evidence on payment of registration fees⁹.

Steps that a company must implement in practice for establishing and registration are: passing a decision on establishing a founding assembly; verification of signatures of the establishers on the founding act with an authorized body (court or municipality), verification of signatures of representatives, opening of a temporary bank account and payment of a cash investment into this account, submitting the registration application to the Business Registers' Agency, making stamps, opening an account of the newly established company in a bank¹⁰.

Companies are established by a founding act¹¹, and they become a legal entity by entering the register run by the Business Registers' Agency¹², in accordance with the Law on Registration of Legal Entities¹³.

That Law stipulates that the Business Registers' Agency determines whether legal assumptions for establishing companies exist and issue decisions on the registration on delivering a registration number and tax identification number¹⁴.

The deadline in which the person registering the business resolves by registration applications is prescribed by the Law on Registration of Legal Entities is five days after issuing the decision, the company is obligated to open a permanent bank account and to submit to the tax administration several applications and documents in the goal of finalizing the procedure related to assigning of a tax identification number¹⁵.

8 <http://www.apr.gov.rs/LinkClick.aspx?fileticket=EfO7DH6pvsE%3d&tabid=181&mid=733>

9 <http://www.apr.gov.rs/LinkClick.aspx?fileticket=EfO7DH6pvsE%3d&tabid=181&mid=733>

10 Interview with representative of Employers' Union of Serbia Dragoljub Rajić, January 2011

11 Law on Enterprises, article 7

12 <http://www.apr.gov.rs/>

13 <http://www.apr.gov.rs/LinkClick.aspx?fileticket=yDt5L1NrS7U%3d&tabid=181&mid=733>

14 Law on Registration of Legal Entities, articles 22-25

15 Law on Registration of Legal Entities, article 24

If it is determined that there are certain deficiencies in the registration application or documents that are delivered along with the application, the submitter of the registration application will have 30 days after expiring of the deadline to remove them¹⁶.

Appeal to rejecting of registration can be submitted to the competent Minister authorized for Economy, through the Business Registers' Agency. In the process of appeal the person registering the business can change the decision and if not the decision will be made by the Minister within a 30 day deadline from the day of submitting the complaint¹⁷.

The Law on Bankruptcy¹⁸ regulates the bankruptcy procedure of insolvent companies. The Decree on the Classification of Activities¹⁹ prescribes the classification of activities with titles, codes and described activities that companies can perform. In the area of the protection of intellectual property competencies are in the hands of the Intellectual Property Office²⁰, "special organization" in the system of state administration of the Republic of Serbia. The Office keeps a register of requests for recognizing the right of industrial property (application), decision on the administrative procedure and recognized rights. Following the registration of recognized rights of industrial property into the appropriate register, a document on recognized right is issued to holder of the right²¹.

The area of protection of intellectual property is organized with the Law on Patents, Law on Stamps, Law on Author and Related Acts, Law on Industrial Design, Law on Designations of Origin, Law on Protection of Topography of Integrated Circuits, and Law on Legal Protection of Industrial Design²².

Resources (Practice)

To what extent are individual businesses able in practice to form and operate effectively?

Score: 50

Registration and initiating of businesses is simple but a special problem in the work of companies are long periods of debt collection and poor efficiency of the enforcement procedure.²³ There are no larger problems in practice in the process of establishing and registration of companies²⁴.

The procedure in the Business Registers' Agency for establishing a company and starting of work according to the Law on the Registration of Enterprises lasts five working days²⁵. The registration of establishing is successfully reformed by introducing one counter system of registration ("one stop shop") which begun working in May 2009, which reduced the complete process to one procedure and a deadline of 2 days²⁶.

Additional time is necessary, several working days, in order to finalize the procedure before the tax authorities, after receiving the decision of the Business Registers' Agency. Municipality tax authorities don't have harmonized practice regarding the number of necessary documents for the finalization of procedures of awarding a tax identification number²⁷.

16 Law on Registration of Companies, article 24

17 Law on Registration of Legal Entities, article 27

18 http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?id=749&t=Z

19 <http://www.apr.gov.rs/LinkClick.aspx?fileticket=zmgKrSvIPqw%3d&tabid=64&mid=630>

20 <http://www.zis.gov.rs/en/home/>

21 <http://www.seio.gov.rs/dokumenta/nacionalna-dokumenta.199.html>

22 <http://www.seio.gov.rs/dokumenta/nacionalna-dokumenta.199.html>

23 Estimations of the director of one closed stock company with 200 employees, interview February 2011

24 Interview with representative of Employers' Union of Serbia Dragoljub Rajić, January 2011

25 Interview with representative of Employers' Union of Serbia Dragoljub Rajić, January 2011

26 Data of the Government of Serbia from answers to Questionnaire of European Commission sent for preparation of opinion on request of Serbia to enter European Union

27 Interview with representative of Employers' Union of Serbia Dragoljub Rajić, January 2011

The reform of the registration system decreased expenses for establishing enterprises. Compensation for registration is prescribed by the Decision of the Managing Board on compensations for registration and other services provided by the Business Registers' Agency passed on the basis of the Law on the Business Registers' Agency, and is approximately 45 USD for establishing, as well as for status changes, changes of legal form, 25 USD for the registration of data change and 12 USD for the registration of entrepreneurs²⁸. Enterprises in the process of registration have other expenses related to paying administrative taxes for the verification of the founding act, opening of bank accounts, creating stamps, so that such expenses are in total approximately 120 USD.

An obligatory capital that an enterprise places in a temporary account in a bank to fulfill one of the obligations for receiving the decision is not included. For enterprises with limited responsibility the minimum stake is 550 USD²⁹.

One of the largest problems in the area of protection of an enterprise's property, which enterprises encounter, are long periods of debt collection and poor efficiency of the enforcement procedure, which means that property rights are not protected effectively in practice³⁰. The new Law on Executing and Securing has been in public debate since December 2009³¹. According to data of the World Bank³² and research of the Program for reform of bankruptcy and executive procedure, Serbia is among the last countries in Europe by effectiveness of implementation of court decisions, with just 5% settlements, execution requires more than 500 days, although the court passes decision in 20 days, and 73% of the enterprises "never or rarely" use court mechanisms for payment of debts.

Independence (Law)

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

Score: 75

The Constitution³³ stipulates that the organization of economy in Serbia relies on market economy, open and free market, freedom of entrepreneurs, independence of businesses and equality of private property and of other forms of property. The Constitution also stipulates that everybody has equal legal positions on the market and that acts that limit free competition, create or abuse monopoly or dominant positions, contrary to the law, are forbidden³⁴.

Rights claimed by investing capital on the basis of law, cannot be diminished by any other law³⁵. The Law on Privatization prescribes the role of the Privatization Agency as a legal entity that promotes, initiates, conducts and controls the procedure of privatization, while a special Law on the Privatization Agency stipulates that it is responsible for the control of the process of privatization.³⁶

The bankruptcy process is initiated by the Commercial Court³⁷. Complaints can be filed to the Supreme Court³⁸.

28 Interview with representative of Employers' Union of Serbia Dragoljub Rajić, January 2011

29 Data of the Government of Serbia from answers to Questionnaire of European Commission sent for preparation of opinion on request of Serbia to enter European Union

30 Estimations of the director of one closed stock company with 200 employees, interview February 2011 and Interview with representative of Employers' Union of Serbia Dragoljub Rajić, January 2011

31 Statement of the Minister of Justice to Beta News Agency, 4 January 2011

32 <http://www.doingbusiness.org/data/exploreeconomies/serbia/>

33 Constitution of Serbia, article 82

34 Constitution of Serbia, article 84

35 Constitution of Serbia, article 84

36 Law on Privatization, article 5

37 Bankruptcy Law, article 43

38 Bankruptcy Law, article 46

In the case of inappropriate external interference, it is possible to request compensation through regular court procedure. Those procedures are regulated by the Law on Obligations, Criminal Law and Law Civil Procedure³⁹.

Independence (Practice)

To what extent is the business sector free from unwarranted external interference in its work in practice?

Score: 25

Creating legal insecurity, unequal treatment of companies and unpredictable policy of charging various taxes and other cash expenses in different levels of authority (from republic to local) most common is due to the interfering of the state into the business sector⁴⁰.

The state does not guarantee healthy competition, but instead companies that are closer to authorities have an easier approach to business⁴¹. Furthermore, state bodies are capable to slow down others by implementing discretion competencies, finding necessary new documents and licenses for the procedures⁴². Inspection services have a wide range of measures available, vast amount of parameters on the basis of which they can, but don't need to file charges, which also creates open space for abuse and unequal treatment⁴³.

The privileged position of companies that are close to the authorities is most visible in the area of public procurements, when they get contracts with state bodies⁴⁴. Companies, often avoid using available mechanisms for the protection of state influence to private sector businesses, such as the possibility of appeal in public procurement processes or submitting complaints against servants that are suspected to act contrary to the regulations⁴⁵. Reasons are warnings of losing privileges or threats that in the case of complaints they will not be able to work with the public sector or the possibility to be a subcontractor⁴⁶.

The state indirectly influences the business sector because it doesn't enable appropriate procedures for debt collecting for all participants on the market as defined in the Directive on Payment in the EU⁴⁷. The Government also, according to the estimation of business sector, does not curb grey economy⁴⁸.

The business sector indicates the unequal treatment of public enterprises and enterprises founded by the state and the private sector⁴⁹. A characteristic example of a municipality in Serbia that, thanks to the fact that the Ministry hadn't fulfilled its obligation and prescribed maximum taxes, increased taxes for companies 80 times – from around 25 to 2.000 Euros and at the same time

39 <http://www.mpravde.gov.rs/sekcija/54/pozitivno-zakonodavstvo.php>

40 Joint estimation from separate conversations with representative of the Employers' Association of Serbia Dragoljub Rajić and former Minister of the Government of Serbia for foreign economy relations Milan Parivodić, now a consultant for foreign investments, February 2011

41 Estimation of former Minister of of the Government of Serbia for foreign economy relations Milan Parivodić, now a consultant for foreign investments, February 2011

42 Estimation of former Minister of of the Government of Serbia for foreign economy relations Milan Parivodić, now a consultant for foreign investments, February 2011

43 Estimation of former Minister of of the Government of Serbia for foreign economy relations Milan Parivodić, now a consultant for foreign investments, February 2011

44 Estimation of editor in chief of Ekonomeast Magazine Vojislav Stevanović, February 2011

45 Joint estimation of Employers' Union of Serbia Dragoljub Rajić, interview, February 2011 and editor in Ekonomeast Magazine Vojislav Stevanović, February 2011

46 Joint estimation of Employers' Union of Serbia Dragoljub Rajić, interview, February 2011 and editor in Ekonomeast Magazine Vojislav Stevanović, February 2011

47 Representative of the Employers' Union of Serbia Dragoljub Rajić, February 2011

48 Estimation of representative of the Employers' Union of Serbia Dragoljub Rajić, February 2011

49 Representative of the Employers' Union of Serbia Dragoljub Rajić, February 2011

decided that public enterprises and enterprises founded by the municipality have a discount of 100 percent compared to the amount of taxes for companies⁵⁰.

Conclusions from meeting anti-corruption measures and procedures of harmonization in companies, organized by the Chamber of Commerce of Serbia in December 2010 state, among other, that “there is an emphasized special risk in the area of state interventions and administering in the economy, in the area of public procurements, sectors of construction, implementation of public work, pharmaceutical industry“.

50 Representative of the Employers' Union of Serbia Dragoljub Rajić, February 2011

GOVERNANCE

Transparency (Law)

To what extent are there provisions to ensure transparency in the activities of the business sector?

Score: 75

Companies are obligated to deliver financial reports to the Business Registers' Agency, which has records of financial reports and data on the solvency of legal entities and entrepreneurs⁵¹. By January 1st 2010 that area was under the jurisdiction of the Center for Solvency of the National Bank of Serbia, and was transferred to the jurisdiction of BRA by changes of the Law on Accounting and Auditing⁵². According to that Law⁵³, legal entities, entrepreneurs are obligated to deliver regular annual financial reports to the agency by February next year.

The Law on Accounting and Auditing stipulated cash penalties for "economic offence" for legal entities (in the range from 100.000 RSD - 1.200 USD to 3.000.000 RSD – app 36.000 USD) if they don't deliver a report to the Agency⁵⁴.

The Agency took over from the National Bank databases of financial reports and data on solvency, as well as the methodology, information technology and personnel⁵⁵. Consolidating the financial and status data, the Agency established a joint database on all legal entities and entrepreneurs in Serbia. Basic data from financial reports is available on the public web-site, while complete reports may be ordered in electronic form from the Agency⁵⁶.

Audit of annual financial reports is obligatory for large and medium legal entities. Medium legal entities that have two out of three criteria fulfilled: 50 to 250 employees; annual turnover 2.5 to 10 million Euros; and property value 1 to 5 million Euros. Large legal entities have two criteria that go over the top limit values. The annual audit report should be made by independent auditors to secure external and objective reliability of the method of creating and publishing of financial reports⁵⁷.

The Law prescribes the obligation for the Business Registers' Agency to publish on its web-site registered regular annual reports and consolidated financial reports of audit tributaries by 30 June the latest⁵⁸.

Legal entities and entrepreneurs are obligated to perform business accounting, recognition and evaluation of assets and liabilities, incomes and expenditures, preparation, display, delivering and disclosure and audit of financial reports, internal audit in accordance with legal, professional and their own internal regulations⁵⁹.

According to principles of corporative managing, issued by the Commission for Securities, and in accordance with the Law on Enterprises and Code of Corporative Management, timely and accurate publishing of information on all material facts regarding business conduct of the enterprises is necessary to provide, including matters related to the financial situation, successfulness of the business, ownership structure and managing the enterprise⁶⁰.

51 <http://www.apr.gov.rs/eng/Registers/FinancialStatementsandSolvency.aspx>

52 Law on Accounting and Auditing, http://www.paragraf.rs/propisi/zakon_o_racunovodstvu_i_reviziji.html

53 Law on Accounting and Audit, article 30

54 Law on Accounting and Audit, article 68

55 www.nbs.rs

56 <http://www.apr.gov.rs/>

57 Law on Accounting and Auditing,, article 37

58 Law on Accounting and Auditing,, article 34

59 Law on Accounting and Auditing,, article 25

60 http://www.sec.gov.rs/index.php?option=com_content&task=view&id=92&Itemid=91

Publishing information on financial and business results of the enterprise, goals of enterprises, on major shareholders and their voting rights, on members of administrative bodies, key executives and their incomes, on predictable material factors of risk, on material matters that concern employees and other third parties, on management structure and business politics is obligatory for enterprises that are listed on stock exchange⁶¹.

Information should be prepared, inspected by an auditor and published according to high quality standards of accounting, financial and nonfinancial disclosing and audit⁶².

Transparency (Practice)

To what extent is there transparency in the business sector in practice?

Score: 25

Enterprises formally fulfill the obligation of delivering financial reports and audit reports, but those reports are unreliable in practice. Exact property of enterprises is sometimes impossible to determine⁶³. The lack of complete transparency is especially emphasized with public enterprises and shareholder companies that are not on the official listing⁶⁴.

Enterprises that participate in public tenders have the interest to show in their financial reports profit, to fulfill sometimes strict conditions from tenders⁶⁵. Others most often show small losses or zero to avoid taxes⁶⁶.

Basic data on registered companies is available on the web-site of the Business Registers' Agency⁶⁷. Status data (title, date of establishing, identification number, tax identification number, number of account, headquarters, names of founders and representatives of companies, information on financial reports, possible minutes, amount of assets invested) are available through search⁶⁸. Basic data from financial reports for the previous three years is available also on the web-site search of the Agency⁶⁹.

Besides that each person has the authority to ask from the archive of the Business Registers' Agency insight into cases of each enterprise, and for that no explanation is required. Also, a client is allowed to photocopy documents with compensation prescribed by the Agency⁷⁰.

Content and credibility of the report in some cases are disputable⁷¹. Investors don't trust data from the report, they claim that audits are often done according to the order placed from the audited company, so that the real status is concealed⁷².

Data on ownership can be found on the web-site of the Business Records' Agency⁷³ or on the web-site of the Central Register for Securities⁷⁴. Ownership in practice is often nontransparent thanks to the fact that funds are often owners of the shares, predominantly from offshore locations⁷⁵.

61 http://www.sec.gov.rs/index.php?option=com_content&task=view&id=92&Itemid=91

62 http://www.sec.gov.rs/index.php?option=com_content&task=view&id=92&Itemid=91

63 Estimation of investment advisor Miroslav Bojčić, interview with the author of the report, February 2011

64 Estimation of editor in Ekonomeast Magazine Vojislav Stevanović, February 2011

65 Estimation of director of one closed shareholder company with 200 employees, interview February 2011

66 Estimation of director of one closed shareholder company with 200 employees, interview February 2011

67 <http://www.apr.gov.rs/eng/Registers/Companies.aspx>

68 <http://www.apr.gov.rs/eng/Registers/Companies.aspx>

69 <http://fi.apr.gov.rs/prijemfi/cir/objavlivanje.asp>

70 <http://www.apr.gov.rs/eng/Services.aspx>

71 Estimation of investment advisor Miroslav Bojčić, interview with the author of the report, February 2011

72 Estimation of investment advisor Miroslav Bojčić, interview with the author of the report, February 2011

73 <http://pretraga.apr.gov.rs/RepsisPublicSite/Search/GeneralEnterpriseSearch.aspx>

74 <http://www.crhov.rs/?Opcija=1>

75 Estimation of investment advisor Miroslav Bojčić, interview with the author of the report, February 2011, <http://www.crhov.rs>

Accountability (Law)

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

Score: 100

The Law on Enterprises prescribes that listed shareholder companies must have a supervisory board and an internal auditor⁷⁶. Members of the supervisory board are elected by the assembly of shareholders and they must fulfill conditions that in the previous two years they weren't employed in that company, that they haven't paid or received from the company more than 10.000 Euros that they do not own more than 10% of shares or stocks, directly or indirectly⁷⁷.

The Supervisory Board and internal Auditor report to the Assembly of shareholders on the accounting practice, reports and practice of financial reporting of the company and its related companies. The Supervisory board and internal auditor control and discuss with the steering committee of the company the credibility and completeness of financial reports of the company and propositions for the division of profit and other compensations to shareholders, credibility and completeness of the reporting of shareholders on financial and other facts, harmonization of the organization and acting of the company in accordance with the Code of Conduct, purposefulness of business policy and its harmonization with the law, proceedings on complaints of shareholders, bodies of the company or other persons⁷⁸.

According to principles of corporative managing of the Commission for Securities, and in accordance with the Law on Enterprises and Code of Corporative Management, it is necessary that members of the steering committee decide on the basis of complete information on the company, with attention of a good entrepreneur and in the best interest of the company and their owners. Decisions of the Board that influence various shareholders owner of various kinds and classes, should be passed with fair treatment of all shareholders⁷⁹.

The board should, among other things, monitor and manage potential conflicts of management's interest, members of the board and shareholders including the abuse of the board and shareholders, abuse of company's assets and abuse of transactions of related persons⁸⁰.

The Law on Enterprises envisages also that the director or steering committee of the company should submit to the Assembly annual financial reports and reports on business conduct, and if necessary reports of the auditor⁸¹.

The Law on Accounting and Audit and by-laws for implementing that law organize the keeping of business records, creating, delivering, disclosing and processing of the reports, issuing and taking away licenses for work of audit companies, Register of Audit Companies, supervision over the work of audit companies, as well as supervision over the work of the Chamber of Authorized Auditors⁸².

The Commission for Securities oversees the work of the stock market, as an independent organization. The Commission has five members, elected by the Parliament of Serbia.⁸³

The Commission can initiate and lead a case before the court for the protection of investors' interest and other persons for which a violation is determined of their rights or interest that is based on a right, and in relation to business with securities and other financial instruments⁸⁴.

76 Law on Enterprises, article 248

77 Law on Enterprises, article 274

78 Law on Enterprises, article 332

79 http://www.sec.gov.rs/index.php?option=com_content&task=view&id=92&Itemid=91

80 http://www.sec.gov.rs/index.php?option=com_content&task=view&id=92&Itemid=91

81 Law on Enterprises, article 261

82 http://www.paragraf.rs/propisi/zakon_o_racunovodstvu_i_reviziji.html

83 http://www.sec.gov.rs/index.php?option=com_content&task=view&id=1131&Itemid=62

84 <http://www.sec.gov.rs/index.php>

Accountability (Practice)

To what extent is there effective corporate governance in companies in practice?

Score: 25

The level of respecting good practice and prescribed principles of corporate management vary regarding individual companies. Principles are better respected in foreign companies that are active in Serbia and that have internal standards of abiding to the rules of corporate behavior⁸⁵. Supervisory boards in public companies, owned by the state, are mostly formal and are not effective in practice. Cases of determining irregularities in work by the supervisory board are extremely rare⁸⁶.

Web-sites of the companies sporadically contain reports of supervisory boards, content is usually the same – there were no irregularities, with more or less detailed listed areas without discovered irregularities⁸⁷.

The supervisory boards, however, haven't revealed irregularities in the work of shareholders' companies for which it is later on determined that they haven't complied with obligations from the contract on privatization, that they falsified investments thereby damaging small shareholders, which is the reason why the contracts were terminated. This means that supervisory boards did not perform their function.⁸⁸

The Commission for Securities doesn't have available data on whether, and if so, how many reports were submitted against participants that deal with securities, for whom the Commission in the process of supervision determined their violations with criminal features, economic offences or misdemeanors, tax criminal act and tax misdemeanor. Data on the procedures of protection of investors' interests and other persons for whom the Commission determined a violation of their rights related to dealing with securities are also unavailable⁸⁹.

Necessity of promoting a framework of corporate boards was ascertained by the Government of Serbia in their answers to the Questionnaire of European Commission. The Government announced⁹⁰ the adopting of a new Law on Accounting and Auditing (or two separate laws), for further harmonization with directives and legislation of the EU, as well as the adoption of the Strategy and Action Plan for promoting o corporate financial reporting in the Republic of Serbia⁹¹.

The Strategy and Action Plan for promoting corporate financial reporting in the Republic of Serbia, will represent the program of measures for the harmonization of the legal framework with legal achievements and practices of the EU, strengthening institutions and development of the accounting profession, and all in the goal of accomplishing a high quality of financial reporting. The Action Plan will define activities and deadlines for the realization of goals determined by the Strategy⁹².

85 Estimation of editor in Ekonomeast Magazine Vojislav Stevanović, February 2011

86 Estimation of editor in Ekonomeast Magazine Vojislav Stevanović, February 2011

87 http://www.telefonija.rs/uploads/media/lzvestaj_o_radu_Nadzornog_odbora_02.pdf

<http://www.dinamika.co.rs/kamendin/index.php?page=poslovnik-o-radu>

<http://www.skrobara.co.rs/PagesRS/www.skrobara.co.rs/userfiles/files/pdf/lzve%C5%A1taj%20o%20radu%20Nadzornog%20odbora.pdf>

http://www.termoelektro.rs/stocks/lZVESTAJ_NADZORNOG_ODBORA.pdf

<http://www.soyaprotein.com/docs/2/lzvestaj%20Nadzornog%20odbora%20za%20%2707g..doc>

http://www.tigar.com/docs/skupstina/skupstina0806/sr/TG06_lzvNadOdb.pdf

88 Data of the Anticorruption Council of the Government of Serbia

89 Research done by TS

90 <http://www.seio.gov.rs/code/navigate.asp?id=20>

91 Data from answers to Questionnaire of European Commission, <http://www.seio.gov.rs/documents/national-documents.222.html>

92 Data from answers to Questionnaire of European Commission, <http://www.seio.gov.rs/documents/national-documents.222.html>

Integrity mechanisms (Law)

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

Score: 75

The Serbian Chamber of Commerce adopted on 15 December 2005 the Code of Business Ethics⁹³, as a national code of business ethics and the Code of Corporative Management⁹⁴ that regulates the practice of good corporative management. The Code of Business Ethics determines principles and rules of business ethics that obligate companies, members of the chamber of commerce, as well as foreign companies that do business on the territory of Serbia⁹⁵.

Members of bodies of companies have the duty to proceed exclusively in the interest of the company, which includes respecting the rules on the prohibition of conflict of interest and prohibition of disloyal competition⁹⁶.

Provisions of the Code of Business Ethics⁹⁷ envisages that employees, members of the company or members of their family must not offer, give, indicate, promise or accept money, objects, rights, services, presents of large value or the possibility of influence by other persons that are in business relations with the company. A present of larger value is money, an object, right or service like any other benefit received or executed without proper charging, with compensation significantly lower than market price or without an appropriate favor in return, and whose value overcomes one half of the average net salary amount in Serbia. The Code allows acceptance and giving of presents of smaller value, unless if the acceptance of such presents doesn't represent a condition for closing a deal or enables someone who gave a present a more favorable position in regards to competition⁹⁸.

The Code of Business Ethics is implemented on the territory of Serbia and before all courts of honor of chambers of commerce, depending on their competencies. The implementation of the Code of Business Ethics is obligatory⁹⁹. On signing the work contract or other contract for engagement, employees or members of the company's body must be introduced with the obligatory character of the Code. Supervision over the implementation of the Code can be internal, in that case the competent body of the company is in charge and external supervision¹⁰⁰. Bodies of the Chamber of Commerce (court of honor) that adopted the Code pass appropriate measures, in accordance with the Law on the Chambers of Commerce, Chambers of Commerce statute or rules of the courts of honor in the Chambers of Commerce, to those that violated its provisions¹⁰¹.

The Code of corporative management is a set of rules that organize management and supervision of management in capital companies and are implemented in all the listed shareholder companies that are members of the Chamber of Commerce of Serbia, where members in the Chamber means automatic acceptance of that Code without previous signing of a specific statement on that. The Code elaborates in detail the area of conflict of interest in managing bodies of the company and supervisory bodies and the board¹⁰².

The Code of corporative management comprehends the segment of supervisory rules and control that directs the company to adopt and develop a publicly available, clear and efficient system of

- 93 http://www.paragraf.rs/propisi/kodeks_poslovne_etike.html
- 94 http://www.paragraf.rs/propisi/kodeks_poslovne_etike.html
- 95 http://www.paragraf.rs/propisi/kodeks_poslovne_etike.html
- 96 Code of Business Ethics, article 34-39
- 97 Code of Business Ethics, article 44
- 98 Code of Business Ethics, article 44
- 99 Code of Business Ethics, article 6
- 100 Code of Business Ethics, article 86
- 101 Code of Business Ethics, article 96
- 102 Code of Corporative Management, article 245-260, 289-291

internal control, that allows supervision of the work of members of the managing and executive board, their specialized commissions and external auditor, and all in the goal of protection of shareholders' rights, the property of the company, as well as providing respect of laws and codes. The Code promotes the transparency principle, whose implementation should increase responsibility of managing the company and transparency in managing its activities¹⁰³.

In the case of the Code of Business Ethics violation and the Code of Corporative Management, a procedure before the Court of Honor of Chamber of Commerce can be initiated. After the implemented procedure, the Court of Honor can pass measures for members of the Chamber of Commerce of Serbia and to foreign companies that do business on the territory of Serbia: a warning; public warning by publishing on the Steering committee of the Chamber and public warning by publishing in one or more printed or electronic media¹⁰⁴.

The Law on Enterprises¹⁰⁵ leaves the possibility, but not the obligation, for the steering committee of listed shareholder company to adopt their own written code of conduct or to accept some other code, that covers minimum standards of expertise and independency of directors or members of the steering committee, moral standards in their behavior, responsibility of directors, or members of the steering committee and rules regarding possible conflict of interest. Shareholder companies publish the code of conduct on its web-site, and in each annual assembly of the steering committee of the shareholder company it reports to the Assembly on the harmonization of the organization and acting in accordance with the code of conduct and explains every inconsistency of the company with the code of conduct if there was any¹⁰⁶.

The Code of Business Ethics contains only basic provisions on whistleblowers, stipulates the protection of the identity of the person that informs authorities of the Chamber of Commerce on the violation of the Code¹⁰⁷. Codes of certain companies have detailed provisions on reports on violations of the law or code, proceeding by complaints and protection of employees that reports the violation¹⁰⁸. Company codes contain provisions on the prohibition of bribing and presents¹⁰⁹.

There are no legal provisions that would obligate public procurement entities to own ethical programs. The anti-corruption working group UN Global Agreement Serbia in May 2009 initiated the adoption of the "Integrity Pact" of participants in public procurements procedure. The Ministry of Finance hasn't accepted the initiative, due to unclear legal grounds for the adoption of such a document¹¹⁰.

Integrity mechanisms (Practice)

To what extent is the integrity of those working in the business sector ensured in practice?

Score: 50

Before the Court of Honor of the Serbian Chamber of Commerce in 2010, 23 complaints were submitted for violation of the Code of Business Ethics and 10 because of violation of the Code of Corporative Management¹¹¹. In most of the cases warnings, public warnings before Steering Committees of CCS and in one case public warnings published in daily papers and one measure of deleting timetable was passed¹¹². According to the estimation of the prosecutor of the Court of

103 <http://www.projuris.org/Pogledajte/Kodeks1.pdf>

104 Code of Business Ethics, article 96

105 http://www.paragraf.rs/propisi/zakon_o_privrednim_drustvima.html

106 http://www.paragraf.rs/propisi/zakon_o_privrednim_drustvima.html

107 http://www.paragraf.rs/propisi/kodeks_poslovne_etike.html

108 <http://www.metalac.com/files/pdf/Kodeks%20poslovne%20etike.pdf> http://www.cs.uss.com/profile/code_en.html

109 <http://www.sojaprotein.rs/index.php?pg=403&lang=sr>

110 Data of the Chamber of Commerce representative in Work Group

111 Data from the prosecutor of Court of Honor Miladinka Bodrožić, February 2011

112 Data from the prosecutor of Court of Honor Miladinka Bodrožić, February 2011

Honor, companies take very seriously procedures before that institution and regularly turn up at trials, with their lawyers¹¹³.

Before the Court of Honor of the Belgrade Chamber of Commerce in 2010, 130 complaints were submitted for violation of the code, out of that 96 against companies, 28 against entrepreneurs and 4 against public companies¹¹⁴. Complaints were submitted by inspections, non-government organizations specialized for protection of consumers and other companies. Four verbal warnings were passed, 59 written, 3 warnings before SC of Chamber of Commerce, 4 in daily papers. Those figures indicate that violating the Code of Conduct is taken seriously by the companies¹¹⁵.

However, violations of anticorruption provisions are not, according to statistical data of the Court of Honor, even among the first ten reasons of complaint, but there is a general belief that practice of bribing is extremely widespread in Serbia¹¹⁶. According to data of the Heritage Foundation¹¹⁷ "corruption is perceived as widespread", "demands for bribes may be encountered at all stages of a business transaction" and "organized criminal groups engage in money laundering".

According to data of the World Bank, corruption is on the fourth place among obstacles in business in Serbia¹¹⁸. Research of BEEPS, published by the World Bank in 2010, however, showed that the percentage of companies that was expected to bribe the tax administration or bribing in order to ensure business with the Government is slightly lower than the average for Europe and Central Asia¹¹⁹. According to research of German Economy Association in Belgrade¹²⁰ among German companies in Serbia, the problem of corruption is at the fifth place – authorities were recommended a necessary decrease of bureaucracy, construction of public infrastructure, access to public procurements and subsidies, improving legal safety and the fight against corruption.

113 Data from the prosecutor of Court of Honor Miladinka Bodrožić, February 2011

114 Data from annual report on work of the Court of Honor of Belgrade Chamber of Commerce for 2010 <http://www.kombeg.org.rs/Slike/SudCasti/Izvestaj%20o%20radu.pdf>

115 Data from annual report on work of the Court of Honor of Belgrade Chamber of Commerce for 2010 <http://www.kombeg.org.rs/Slike/SudCasti/Izvestaj%20o%20radu.pdf>

116 Joint estimation from separate interviews with representatives of Employers' Union of Serbia, editor in magazine specialized for business *Ekonomieast Magazine*, director of the medium size company and owner of small company.

117 <http://www.heritage.org/index/country/serbia#freedom-from-corruption>

118 <http://www.enterprisesurveys.org/documents/EnterpriseSurveys/Reports/Serbia-2009.pdf>

119 http://siteresources.worldbank.org/INTECAREGTOPANTCOR/Resources/704589-1267561320871/Serbia_2010.pdf

120 Press Conference, 21 April 2010

ROLE

Anti-corruption policy engagement (law & practice)

To what extent is the business sector active in engaging the domestic government on anti-corruption?

Score: 25

The business sector mostly formulated anticorruption initiatives through the Serbian Chamber of Commerce, the working group for fighting against corruption in the UN Global Agreement¹²¹.

Individually high officials of the companies most often complain about tax policy, disloyal competition, exchange rates¹²², and very rarely to corruption or specific regulations that can generate corruption. Although in public opinion polls entrepreneurs point out to public procurements¹²³ referring that they are extremely susceptible to corruption, representatives of the business sector didn't have any objections to the Law on Promoting of the Construction Industry in the Economic Crisis that suspended certain provisions of the Public Procurement Law that opens the possibility for corruption¹²⁴.

The topics of meetings between directors of largest companies with representatives of the Government during 2010 were tax policies, the possibility for those entrepreneurs to take over the managing of companies that were not privatized or firms in the process of bankruptcy and regulations that influence their business, like the regulation on conversion of agricultural land into the construction terrain¹²⁵.

At the meeting of representatives of small and medium companies and entrepreneurs, delegations of the Forum of small and medium enterprises (SME) of the Serbian Chamber of Commerce with the Prime Minister of Serbia a series of problems were tackled and measures for their resolving, and there was also mention of problems of corruption¹²⁶.

In practice¹²⁷, according to representative of the Employers Union of Serbia Dragoljub Rajic, smaller companies agree to pay bribes in the public procurement system, agree to participate in fixing of prices, to be removed from open procedures in order to appear as sub-contractors, or to submit fixed bids in the negotiation of public procurements to create the impression of several participants.

A task group for fighting against corruption at the UN Global Agreement Serbia in May 2009 adopted the Proposal of the "Integrity Pact" of Participants in the Public Procurement Process in Serbia. The initiative to adopt that document was sent to the Public Procurement Office, so that it could give an opinion and the Ministry of Finance hasn't accepted that proposal¹²⁸.

Besides the general provisions on preventing corruption, proposal of agreement envisaged sanctions for violation of that contract (excluding from procedure, excluding from future procedures with that procurement entity) as well as appointing independent monitors, in cooperation with the anticorruption body, that would supervise the procurement process¹²⁹.

Certain companies in Serbia, mostly foreign companies that do business in Serbia¹³⁰, have prescribed anti-corruption rules for suppliers, while certain companies¹³¹ have anticorruption provisions in their ethical codes.

121 Data from the Chamber of Commerce representative in Work Group

122 <http://www.blic.rs/Vesti/Ekonomija/196539/Privrednici-ocenili-vladu-dvojkom>

123 Interview with representative of Employers' Union of Serbia Dragoljub Rajić, February 2011

124 Law was criticized by Government's Anticorruption Council (advisory body of the Government that is most often ignored), Transparency Serbia and Coalition for oversight of public finances and initiative for evaluation of its constitutionality and legality is before Constitutional Court <http://www.blic.rs/Vesti/Tema-Dana/200881/Vlast-legalizovala---korupciju-u-gradjevini>

125 http://www.pressonline.rs/sr/vesti/u_fokusu/story/112348/%C5%A0ta+biznismeni+predla%C5%BEu+Vladi.html

126 <http://www.pks.rs/tabid/1785/Default.aspx?iditem=11572&idjezik=1&idchannel=76&idlevel=213&newsperpage=1a20>

127 Interview with representative of Employers Union of Serbia Dragoljub Rajić, February 2011

128 Data from the Chamber of Commerce representative in Work Group

129 Data from the Chamber of Commerce representative in Work Group

130 http://www.cs.uss.com/profile/code_en.html <http://www.telenor.rs/en/About-Telenor/Corporate-Responsibility/Our-business-practice/Supplier-conduct-principles/> http://www.siemens.rs/portal/onama/principinabavke/code_of_conduct_for_siemens_suppliers.pdf

131 <http://www.sojaprotein.rs/index.php?pg=403&lang=sr> http://www.deltaholding.rs/upload/documents/reports/csr_2010_delta_holding.pdf

The UN Global Agreement of Serbia has 64 companies¹³² participating with over 60.000 employees. The Serbian Chamber of Commerce is the chair of the working group for the fight against corruption. Since it's establishing in 2008 the working group adopted documents about the significance of the existence of the code of business ethics in companies, about the role of professional associations in the fight against corruption and about revolving doors – preventing corruption on transferring from the public to private sector”. The working group cooperates with the Anticorruption Agency¹³³.

The working group created a proposal of the Declaration for the fight against corruption, that was adopted by the Global Agreement Assembly on 2 December 2010, and that every member of the Global Agreement were supposed to sign the following year¹³⁴.

In December 2011 the first reports are expected on the implementation of the Declaration. Signatories are obligated to respect anticorruption measures and increase capacities in the part of the company for anticorruption with regular reporting¹³⁵. The Serbian Chamber of Commerce¹³⁶ is in the working group for the fight against corruption initiated the necessity of introducing integrity plans, as a measure of prevention in the fight against corruption in companies.

Introducing integrity plans is, according to the Anticorruption Agency Law, an obligation for all entities that have public authorities, while private companies can introduce them if they wish and they can engage the Agency for assistance on a commercial basis. So far, one private company in Serbia created integrity plans. The deadline for public companies and state bodies is 2013.¹³⁷.

Support for/engagement with civil society (law & practice)

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

Score: 0

There is no listed case of support, neither general nor financial, of the business sector to the non-governmental sector in the fight against corruption. There are no records of the civil society organizations addressing the business sector with the request for assistance that was denied.

Cooperation is becoming possible through the Declaration on the fight against corruption adopted by the working group for the fight against corruption of the UN Global agreement of Serbia¹³⁸. Signatories obligated to realize measures and activities in corruption prevention will be one of the criteria for the annual evaluation of successfulness in the plan of socially responsible business of the members in Serbia¹³⁹.

At the moment, socially responsible business comes down exclusively to support of humanitarian, sport, ecological actions¹⁴⁰.

132 <http://www.unglobalcompact.rs/ucesnici/>

133 <http://www.unglobalcompact.rs/>

134 <http://www.unglobalcompact.rs/radne-grupe/radna-grupa-za-borbu-protiv-korupcije/>

135 Data from the Chamber of Commerce representative in Work Group

136 Data received from coordinator of team CCS in Work group of UN Global agreement Dejan Trifunović

137 Company Bambi-Banat hired Commission for preventing of corruption in Slovenia for assistance in changes of creating integrity plans

138 Coordinator of CCS team in Task group of UN Global agreement Dejan Trifunovic

139 Data received from coordinator of team CCS in Work group of UN Global agreement Dejan Trifunović

140 Research conducted by TS

BUSINESS

Key findings and recommendations

A **business** is easy to be registered and run, but there are problems with the judicial protection through enforcement proceedings and debt collection. The state is interfering in the functioning of the market and affects the competition through its measures. Anticorruption advocating of the business sector is extremely limited, companies agree to corruption in business, and cooperation with the civil sector in fight against corruption practically does not exist.

1. Business should be more active in initiating measures aimed to remove systematic causes of corruption – unnecessary procedures, direct financing from the state, and misuse of inspections' discretion powers etc.
2. Promoting and initiating introduction of integrity plans in private business;
3. Reporting corruption in the private sector instead of covering up such cases. Encouraging whistle-blowers and making internal mechanisms for the protection of whistle-blowers;
4. Businesses should consider the support for CSOs projects aiming at curbing corruption in the public sector, especially in those areas where public and private sectors interfere, such as public procurements.



THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

NATIONAL INTEGRITY SYSTEM

Summary: The Commissioner has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties. There are comprehensive laws seeking to ensure the independence of the Commissioner, but it can be improved. In practice the Commissioner acts independently from political influence. The public is able to readily obtain relevant information on the organization and functioning of the Commissioner, on decisions that concern them and how these decisions were made. Extensive provisions are in place to ensure that the Commissioner has to report and be accountable for its actions. The Commissioner is very active and successful in dealing with complaints that are of “sensitive” nature. The Commissioner is also generally very active and mostly successful in raising awareness within the government and the public about standards of transparency that Serbia should achieve in the work of public bodies.

COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

Overall Pillar Score: 73

	Indicator	Law	Practice
Capacity 56/100	Resources	50	50
	Independence	75	50
Governance 75/100	Transparency	50	100
	Accountability	75	75
	Integrity mechanisms	75	75
Role 100/100	Investigation	100	
	Promoting good practice	100	

Structure – The Commissioner for Information of Public Importance and Personal Data Protection is an independent body to which citizens and legal entities can submit appeals against decisions of other public bodies for being denied access to information or to submit complaints against public bodies obstructing the freedom of information in some other way¹. Serbia adopted the Free Access to Information Law in 2004 and established in this way a broad right to access documents possessed by authority bodies. Limits to the right for access to information are largely in line with relevant international standards and the whole law can be considered as far more progressive than the rest of the Serbian legislation of the time². Although the status of Commissioner is not guaranteed through constitutional provisions, the status of institution is a relatively strong one, being independent from those subjected to its scrutiny.

The Commissioner has various duties in the implementation of the Law, including issuing of final decisions upon appeals of requestors, promotion of the right to access information and issuing of by-laws regulating mandatory pro-active publishing of information. Since 2008, following the adoption of the Law on Personal Data Protection, the Commissioner became in charge also of the protection of this human right. In that way the legislator found the solution to prevent potential conflicts in execution of two important citizens' rights³.

The Law on Free Access to Information of Public Importance authorizes the Commissioner to decide about appeals of information requestors related to decisions of all authority bodies in the country except six – the President of the Republic, Parliament, Government, Supreme Court, Republic Public Prosecutor and Constitutional Court⁴.

Since the outset of the institution, the Commissioner was very active in the promotion of the right to access information as an anti-corruption tool⁵.

1 http://paragraf.rs/propisi/zakon_o_slobodnom_pristupu_informacijama_od_javnog_znacaja.html

2 Free Access to Information Law, article 9 Official Gazette of the Republic of Serbia⁷ No. 120/04, 54/07, 104/09 and 36/10

3 <http://www.poverenik.org.rs/sr/o-nama/nadleznost.html>

4 Free Access to Information Law, article 22

5 From interview with independent expert.

ASSESSMENT

CAPACITY

Resources (Law)

To what extent does the commissioner or its equivalent have adequate resources to achieve its goals in law?

Score: 50

The Law contains “standard” provisions related to the resources of the Commissioner in terms of its budget, such as “financial resources for the work of the Commissioner and his professional service shall be provided for in the budget of the Republic of Serbia”⁶. This means that the Commissioner, as any other State body, prepares its draft financial plan, which is later approved (or disapproved) by the Ministry of Finance, Government and finally the Parliament. The level of human resources of the Commissioner is approved by the Parliamentary Committee, while the Government is in charge to provide premises⁷.

The Commissioner is entitled to a salary equal to the one of a Supreme Court judge, as well as to other rights on the grounds of work and to the right to reimbursement of expenses incurred in connection with performing his competencies.⁸ The salary level of the Commissioner’s staff is regulated through the Law on Civil Servants⁹.

Legal provisions, therefore, make possible for resources to be provided to the Commissioner in the amount that would be sufficient for the performance of its duties, but there is no guarantee that it will be done. For example, even if the Commissioner properly estimates the level of staff and budget needed, there is no legal provision that would bind the Parliament or Government to approve such a financial plan or work organization act.

Resources (Practice)

To what extent does the commissioner or its equivalent have adequate resources to achieve its goals in practice?

Score: 50

The Commissioner has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties. The Commissioner faces many problems when performing its duties, including reluctance of the Government to ensure the Commissioner’s decisions to be enforced when necessary, obstruction in providing the Commissioner’s budget and other resources, attempts to diminish the Commissioner’s authorities through other legislation or to remove a person elected as the first Commissioner from that post.

The budget of the Commissioner was for years far lower than needed, but the situation changed since 2009. By paradox, the Commissioner did not spend the most of its, otherwise quite realistic,

6 Free Access to Information Law, article 34

7 Interview with deputy Commissioner, February 2011.

8 Free Access to Information Law, article 32

9 Free Access to Information Law, article 34

budget. The reason is the problem with other resources. The Commissioner did not have the opportunity to employ the necessary number of staff, whether due to the lack of working premises or due to the lack of permission to do so in the context of strict budget saving policies¹⁰, or both. Currently, the Commissioner is still lacking premises¹¹, i.e., the current premises are sufficient only for the current number of employees and not for the number that should be employed in accordance with the Work Organization Act. The Work Organization Act itself¹² provides for a total of 69 civil servants and other staff (36 currently employed), out of which 16 directly work on duties related to free access to information. However, even if the current Work Organization Act has been approved by a relevant body of the Parliament unanimously, on the Commissioner's proposal, in December 2010 the needs were already far above those previously planned, due to a significantly increase¹³ of the number of appeals and other complaints.¹⁴ The negative consequences of the lack of budget funds in the previous years were diminished through the support obtained from international and non-governmental organizations (e.g. OSCE Mission and UNDP).¹⁵

The staff of the Commissioner generally does have appropriate skills and experience. Of the total number of staff, 30 out of 36 have a university degree. The vast majority of civil servants have significant previous experience of work, mostly in public administration. There are also a lot of chances for trainings and additional education, in particular through the program of cooperation with similar institutions worldwide¹⁶. However, the working capacity of institution is low, due to an insufficient number of employees to cover all their legal duties¹⁷. The capacity problem of the Commissioner became recognized as a matter of high interest in the context of EU integrations as well¹⁸.

Independence (Law)

To what extent is the commissioner independent by law?

Score: 75

There are comprehensive laws seeking to ensure the independence of the Commissioner, but it can be improved.

The Commissioner is an independent state body, established on the basis of the law¹⁹. The Law provides that the "Commissioner shall be autonomous and independent in the exercise of his/her powers. In the exercise of his/her powers, the Commissioner shall neither seek nor accept orders or instructions from government bodies or other persons²⁰." The Commissioner is obliged to submit annual reports to the Parliament that is also in charge for its appointment and termination of mandate²¹.

The appointment procedure provides for professional criteria that the candidate should meet. "The incumbent shall be a person of established reputation and expertise in the field of protecting and promoting human rights". Furthermore, the incumbent must fulfill the requirements for employment in government agencies (e.g. Serbian citizenship and general ability to work), hold a Bachelor's degree in

10 Annual reports of Commissioner for previous years, <http://www.poverenik.rs/index.php/en/doc/reports.html>

11 <http://www.poverenik.rs/index.php/en/doc/reports.html>, Interview with deputy Commissioner, February 2011.

12 Pravilnik o sistematizaciji radnih mesta u Sluzbi Poverenika za informacije od javnog značaja i zaštitu podataka o ličnosti, <http://www.poverenik.rs/index.php/en/o-nama/commissioners-work-acts/958-2010-10-14-11-41-11.html>

13 Annual Report of Commissioner for year 2010.

14 Interview with deputy Commissioner, February 2011.

15 Informative directory of Commissioner, February 2011.

16 <http://www.poverenik.org.rs/sr/informator-o-radui/informator-o-radui-arhiva.html>

17 Based on interview with deputy Commissioner.

18 Government of Serbia, Action plan for faster obtaining of candidate status for EU membership, http://www.seio.gov.rs/upload/documents/akcioniplan/akcioni_plan_za_brze_sticanje_statusa_kandidata.pdf

19 Free Access to Information Law, article 1

20 Free Access to Information Law, article 32

21 Free Access to Information Law, article 30 and 36

Law and have at least ten years of relevant work experience. “A person holding a post in or employed by a government body or a political party shall not be eligible for appointment as the Commissioner²².” The mandate of the Commissioner is longer than the one of MPs – it is seven years with a maximum of two consecutive terms. The nomination of a candidate should come from a relevant parliamentary committee and appointment itself, as for other officials elected by the Parliament, it is done by the absolute majority of MPs. The Commissioner has its deputies, appointed by the Parliament on his/her proposal²³. The salary of Commissioner is equal to the one of Supreme Court judge²⁴.

The Commissioner itself passes regulations governing the work of its staff, but after approval of the Administrative Committee of the Parliament. “The Commissioner shall independently decide on the employment of Commissioner’s staff in accordance with law, bearing in mind the need to ensure competent, diligent and responsible discharge of his/her duties²⁵.”

The Commissioner is solidly protected from arbitrary removal from the office. Reasons for removal are: imprisonment for a criminal offence; permanent incapacity; holding a post or employment in a government body or political party; losing citizenship; failure to perform duties “with due competence, diligence and responsibility”²⁶. Although legal procedure for removal of the Commissioner envisages several steps, including an opinion of the relevant parliamentary committee, it is still possible to interpret the failure to meet “due competence, diligence and responsibility” in very different ways and to remove the Commissioner based on political reasons.

A motion to remove a Commissioner from office can be initiated by at least one third of the members of Parliament. The Information Committee of the Parliament then determines whether reasons for removal from the office pertain and informs the Parliament about that. The same majority is needed for removal as it is for the appointment²⁷.

There are no provisions about immunity of the Commissioner. The Commissioner’s decisions are subjected to the review done by the Administrative Court. The Commissioner’s decisions are “binding, final and enforceable”²⁸.

Among the professional qualifications for the appointment of the Commissioner, the importance of experience in human rights issues is overestimated, while some other specific knowledge is not mentioned, although it should, e.g. administrative procedure law²⁹.

Independence (practice)

To what extent is the commissioner independent in practice?

Score: 50

Although the status of the Commissioner is not guaranteed through constitutional provisions, the status of the institution is a relatively strong one, being independent from those subjected to its scrutiny.

Other actors occasionally interfere with the activities of the Commissioner. These instances of interferences are usually non-severe, such as threatening verbal attacks to the head of the institution, without significant consequences for the behavior of the commissioner.

- 22 Free Access to Information Law, article 30
- 23 Free Access to Information Law, article 30, 5(S1)
- 24 Free Access to Information Law, article 32
- 25 Free Access to Information Law, article 34
- 26 Free Access to Information Law, article 31
- 27 Free Access to Information Law, article 31
- 28 Free Access to Information Law, article 28
- 29 Free Access to Information Law, article 30, and from interview with independent expert.

The Commissioner acts independently from political influence but does not succumb to any. However, the Commissioner's independence is rather a consequence of lucky circumstances than legal provisions. First is that the current commissioner happens to be a person of high integrity and professionalism³⁰. Even though he was a politician in years before his appointment and became an incumbent partly on the basis of support coming from politicians, this did not endanger anyhow the independence as the political party he resigned from when being nominated as a candidate, lost its political influence soon after the commissioner's election.³¹

However, the professional operation of the Commissioner is occasionally threatened through other factors, such as the lack of resources and reluctance to execute the Commissioners' decisions³², politically motivated attacks³³, and even security threats³⁴.

Having in mind high performance, visibility and popularity of the commissioner in the Serbian public, there were no efforts to remove him from the office on cause since 2004. However, such an intention was notable in provisions of the Constitutional Law, adopted in November 2006 that was used as grounds for a new election process of the Commissioner³⁵. However, after strong reactions by the public and media, the whole process ended with the re-appointment of the same person for that post.

Politically motivated attacks are usually related with the Commissioner's decisions that information should be provided in "sensitive cases" or with his open support of initiatives for greater transparency. Although there are many examples, several could be mentioned, like: attacks from the New Serbia party representatives because of the Commissioner's decisions aimed at disclosing information about the abuse of public funds in the Serbian Roads and Serbian Railway public companies³⁶; attacks from the Director of the Public TV Service after the Commissioner's decisions related to the use of public TV funds³⁷; attacks from the Ministry of Justice and from the Security – Intelligence Agency related to the provisions of the newly adopted Secrecy and Personal Data Protection Regulation and also some decisions concerning secret surveillance of communications.³⁸

30 From interview with independent expert.

31 From interview with independent expert.

32 See Commissioner's annual reports for previous years, <http://www.poverenik.org.rs/index.php/en/doc/reports.html>

33 <http://www.poverenik.org.rs/index.php/en/public-announcement/1007----932011.html>

34 <http://www.poverenik.org.rs/index.php/en/public-announcement/1007----932011.html>

35 Provisions of new Constitution of Serbia were irrelevant to open procedure of Commissioner's appointment. Namely, Commissioner is not named as a body in Constitution and there was no "general reappointment clause" i.e. for all state officials after adoption of new Constitution.

36 http://www.danas.rs/vesti/dijalog/licnost_danas_branko_jocic.46.html?news_id=154144

37 <http://vesti.krstarica.com/drustvo/yukom-tijanac-napada-sabica-da-bi-izbegao-zakonsku-obavezu/>

38 Interview with Commissioner, public statements of Commissioner.

GOVERNANCE

Transparency (Law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the commissioner?

Score: 50

While a number of laws/provisions exist, they do not cover all aspects related to the transparency of the Commissioner.

There are no special provisions about the transparency of appeal procedures before the Commissioner, but rules from the Administrative Procedure Law are applied instead³⁹. That assumes that communication is done between the relevant parties (appellant/Commissioner, Commissioner/holder of information). There are no special provisions about the publicity of the Commissioner's work related to the improvement of transparency of operations of public authorities.

The Commissioner is obliged to make publicly available its annual and extraordinary reports (containing the overview of work, but also recommendations for improvement of the state of affairs in the field of free access to information)⁴⁰ and budget⁴¹. Public officials in this institution (such as the deputy commissioners and Secretary General of the Service) are obliged to submit assets declarations to the Anti-corruption Agency⁴².

Transparency (Practice)

To what extent is there transparency in the activities and decision-making processes of the commissioner in practice?

Score: 100

The public is able to readily obtain relevant information on the organization and functioning of the Commissioner, on decisions that concern them and how these decisions were made.

The Commissioner's web-site is one of most informative among the Serbian authorities. Besides the published annual reports and rather comprehensive Information Directory⁴³, where all procedures, services, structure and budget are explained in detail, the Commissioner releases a monthly overview of cases in progress, information about other activities and comments to current events related to the free access to information issue⁴⁴.

There is also a practice to publish information about instances where public authorities did not comply with the Commissioners' binding decisions and information about appeals and complaints related to the matter of greater public importance. Informing is rather prompt, including publishing of English translations of almost all the documents⁴⁵.

39 http://www.paragraf.rs/propisi/zakon_o_opstem_upravnom_postupku.html

40 Free Access to Information Law, article 36

41 Free Access to Information Law, article 36

42 Law on Anticorruption Agency, article 43

43 <http://www.poverenik.org.rs/index.php/en/information-booklet.html>

44 <http://www.poverenik.org.rs/sr/o-nama/mesecni-statisticki-izvestaji.html>

45 <http://www.poverenik.org.rs/yu/praksa.html>

The Commissioner often participates on events organized by other entities (NGOs, international organizations, public institutions) and organizes itself thematic conferences, both in Belgrade and all around Serbia. These conferences, seminars and public debates are covered by huge media and stakeholders' attendance and some of them are very effective in promoting the right of access to information and the fight against corruption in general⁴⁶.

The Commissioner regularly submits annual reports on the activities to the Parliament and presents them to the public⁴⁷. According to available data, all public officials in the Commissioner's office submitted assets declaration⁴⁸.

Accountability (Law)

To what extent are there provisions in place to ensure that the commissioner has to report and be accountable for its actions?

Score: 75

Extensive provisions are in place to ensure that the Commissioner has to report and be accountable for its actions.

According to the Law, the Commissioner, within three months of the end of each financial year, "shall submit to the Parliament an annual report on the activities undertaken by the public authorities in the implementation of this Law and his/her own activities and expenses⁴⁹."

Public authorities shall, by the 20th January each year, submit an annual report for the previous year to the Commissioner, detailing the activities the body undertook with the aim of implementing the Law, which shall contain the information about the number of submitted requests, number of wholly or partly approved requests and the number of rejected or dismissed requests, number and content of the complaints against the decisions to reject or dismiss a request, total sum of fees charged for the exercise of the right to access to information of public importance, measures taken with regard to the obligation to publish an Information Directory.⁵⁰

The Commissioner's reports should be discussed by the parliamentary committee in charge of information, and along with the committee's recommendations and conclusions by the entire Parliament. The duty to discuss reports is rather new, established by changes of the Parliamentary Rules of Procedure in 2010 and 2011⁵¹. There is no legal duty to publish reports, neither by the Commissioner nor by the Parliament. However, they are legally available under request and they are available on the Commissioners web site⁵².

The Commissioner's decisions are subjected to judicial review. This right is reserved for requestors of information, unsatisfied with Commissioner's decisions, i.e. the Administrative court denies such a possibility to the body that the information is originally requested from⁵³.

There are no special provisions about whistle-blowing for the Commissioner's staff. The general rule for the public administration also apply here, providing poor protection for whistleblowers⁵⁴.

46 <http://www.poverenik.org.rs/yz/iz-medija.html>

47 <http://www.poverenik.org.rs/yz/o-nama/godisnji-izvestaji/1018-izvestaj-poverenika-za-2010-godinu.html>

48 http://www.acas.rs/sr_lat/registri.html

49 Free Access to Information Law, article 36

50 Free Access to Information Law, article 43

51 Parliamentary Rules of procedure, article 237-241

52 <http://www.poverenik.org.rs/yz/o-nama/godisnji-izvestaji/1018-izvestaj-poverenika-za-2010-godinu.html>

53 Free Access to Information Law, article 22, http://archive.yihr.org/sao.php?id=145&lang=_bhs

54 http://www.paragraf.rs/propisi/zakon_o_drzavnim_sluzbenicima.html, http://www.paragraf.rs/propisi/zakon_o_radu.html

Accountability (Practice)

To what extent does the commissioner have to report and be accountable for its actions in practice?

Score: 75

While the Commissioner has to report and be accountable for certain actions, the existing provisions are only partially effective and applied in practice.

The Commissioner respects fully its duty to submit annual reports to the Parliament, in a timely manner⁵⁵. The Commissioner's reports contain all the mandatory information, but also plenty of other information, including a list of non-enforced decisions, overview of problems in work of institution, list of recommendations for the improvement of the situation in the field, overview of other legislation which has effects to the right to access information etc.⁵⁶

The Commissioner's reports are accurately published on the web-site of this institution and promoted by the Commissioner. However, they were rarely discussed in the relevant parliamentary committee until recently, and no further action followed after a unanimous "adoption" of reports (for example to resolve problems that the Commissioner identified). This situation improved in July 2011, when the Parliament supported the work of the Commissioner by adopting conclusions of parliamentary committees related to its annual report.

A judicial review mechanism of the Commissioner's decisions exists and functions, although it is not sufficiently effective. Namely, the procedure before the Administrative court usually lasts for months or even years⁵⁷.

Integrity mechanisms (Law)

To what extent are there provisions in place to ensure the integrity of the commissioner?

Score: 75

There are provisions in place to ensure the integrity of the Commissioner. By law the commissioner is neutral, unaligned and impartial⁵⁸.

There are rather comprehensive conflict of interest, gifts and assets declaration rules in place for all public officials, but not a general Code of conduct. Some code-like rules are however set by this law, among conflict of interest provisions, or in other legislation, regulating the work of the administration in general⁵⁹.

Among special rules for the Commissioner, there are conditions set by the law, covering some additional issues, such as the ban of employment or office holding in any other public authority and political party. However, there is no ban for the Commissioner to be a member of a political party⁶⁰.

An integrity mechanism for the staff of the Commissioner is the same one as in public administration - a civil servant shall not accept gifts in connection with the performance of their duties and civil servants shall not use the authority of the state to influence the exercise of its own rights or rights of its affiliates⁶¹.

55 <http://www.poverenik.org.rs/yu/o-nama/godisnji-izvestaji/1018-izvestaj-poverenika-za-2010-godinu.html>, research done by TS

56 <http://www.poverenik.org.rs/index.php/en/doc/reports.html>

57 Interview with independent expert, March 2011.

58 Free Access to Information Law, article 32

59 Law on Ant-corruption Agency, articles 27-42

60 Free Access to Information Law, article 30

61 Law on Civil Servants, article 25

There is no special rule regulating confidentiality of communication with the Commissioner or duty to keep records about communication with those seeking assistance.

Integrity mechanisms (Practice)

To what extent is the integrity of the commissioner ensured in practice?

Score: 75

There is a comprehensive approach to ensure the integrity of members of the Commissioner's service, comprising effective enforcement of existing rules, proactive inquiries into alleged misbehavior, sanctioning of misbehavior, as well as regular training of staff on integrity issues⁶².

There was no violation of integrity rules identified until now, neither by the Commissioner and his deputies, nor by employees in the Commissioner's service. The staff of the Commissioner has passed trainings on various issues, but most of them were related to the implementation of legislation they are in charge of⁶³. The Commissioner also issued a separate document regulating the education of its staff.⁶⁴

Furthermore, the Commissioner issued a series of internal acts which are aimed to foster integrity and prevent the loss of public funds, including the Decision on the use of official mobile phones, the Directive on the use of official vehicles, the Rulebook on the employment and Rules of procedure of the Appeal Commission.⁶⁵

62 Interview with deputy Commissioner.

63 Interview with deputy Commissioner.

64 <http://www.poverenik.rs/index.php/en/o-nama/commissioners-work-acts/666-pravilnik-o-strucnom-osposobljavanju.html>

65 <http://www.poverenik.rs/index.php/en/o-nama/commissioners-work-acts.html>

ROLE

Investigation (law and practice)

To what extent is the commissioner active and effective in dealing with complaints from the public?

Score: 100

The Commissioner is generally very active and successful in dealing with complaints from the public.

In practice, it is quite easy for members of the public to lodge complaints and appeals to the Commissioner⁶⁶. Beside regular mail, the Commissioner's Service accurately checks received e-mails and also communicates with interested persons coming to the Commissioner's office⁶⁷. The way how citizens interested in such communication with the Commissioner may communicate with this institution and what they can expect is in detail explained in chapters 10-12 of the Commissioner's Information Directory.⁶⁸

The Commissioner receives various types of appeals and complaints. According to the latest available data from the Commissioner, from July 2011, the Commissioner received 9351 appeals and resolved 7487 of them since 2005. In many instances, the Commissioner initiated procedures even without complaints, such as in the case of construction works in the Parliament and alleged irregularities in the process of judges and prosecutors appointment and others⁶⁹.

Public perception of the Commissioner is excellent. Although there is no public opinion survey with this question, the above mentioned statement is notable from various sources, including press-clippings⁷⁰, various internet forums⁷¹ and also records from parliamentary discussions when the current commissioner was reappointed, in 2007⁷².

While there is no special outreach program to make the Commissioner's services better known to the public, it is ensured through very frequent public statements⁷³ and author texts in media⁷⁴ participation in public debates and organizing of numerous seminars both in major and small cities of Serbia and even a special blog⁷⁵, used by the Commissioner to present problems in a less formal way.

Promoting good practice (law and practice)

To what extent is the commissioner active and effective in raising awareness within the government and the public about standards of transparency?

Score: 100

The Commissioner is generally very active and mostly successful in raising awareness within public authorities and the public about standards of transparency.

66 Research done by TS

67 Interview with deputy Commissioner.

68 <http://www.poverenik.rs/index.php/en/information-booklet.html>

69 Data from annual reports, <http://www.poverenik.org.rs/yu/o-nama/godisnji-izvestaji/1018-izvestaj-poverenika-za-2010-godinu.html>

70 http://www.transparentnost.org.rs/index.php?view=categoryevents&id=4%3Apress-clipping&option=com_eventlist&lang=sr

71 See, for example <http://blog.b92.net/text/16188/Trazi-se-borac-protiv-monopola---vrednosti-10-%5BSabic%5D/>

72 http://otvoreniparlament.rs/page/7/?s=poverenik+2007&post_type=post&submit=Pretraga

73 <http://www.poverenik.rs/index.php/en/public-announcement.html>

74 <http://www.poverenik.rs/index.php/en/media.html>

75 <http://blog.b92.net/blog/12170/Freedom-of-Information/>

Due to activism of the first commissioner, he and the whole institution earned a very good reputation in the Serbian public, which is very much in relation with the performance of its anti-corruption role and attempts not just to fulfill legal duties but also to initiate other necessary reforms.

The Law on free access to information of public importance authorizes the Commissioner to decide about appeals of information requestors related to decisions of all public authority bodies except six - President of Republic, Parliament, Government, Supreme Court, Republic Public Prosecutor and Constitutional Court⁷⁶. The Commissioner is generally authorized to monitor some aspects of the implementation of the law even when these bodies are concerned, as they are also submitting to the Commissioner annual reports about measures taken in the implementation of the Law. However, the oversight which includes power to initiate misdemeanor procedures for violations of the Law is under the authority of the Government's Administrative Inspection⁷⁷.

The procedure of the Commissioner's work always provides an opportunity to other public agencies to give their views, before launching any official decision or making a public statement about the issue⁷⁸.

It is very common for the Commissioner to launch initiatives related to the transparency of public authorities' work or the fight against corruption or to support actively others' initiatives, including those coming from the civil sector. Among such initiatives are those related to the adoption of whistle blowers' protection rules, changes of the Law on free access to information, about the right for free access to information to become a constitutional right, to pass the law on personal data protection, to pass the law regulating the data confidentiality and to pass the law regulating the opening of secret service files⁷⁹.

While the Commissioner is very active, there is no guarantee for its initiatives to be thoroughly considered by relevant bodies in charge. Even when the Commissioner provides the Parliament with thorough information about problems that should be resolved, the reaction is missing⁸⁰. It is expected that the latest changes of the Parliamentary Rules of Procedure might have positive effect in that regard, but the positive outcome, in terms of resolving the problems identified by the Commissioner is not guaranteed. The Conclusion of the parliamentary committee, that the Parliament agreed with, reads that the Parliament should, "when adopting new or amending existing legislation, having in mind European standards and the need to ensure coherence of the legal framework in the area of access to information and personal data protection, insist on the application of mechanisms and guarantees for the enforcement of laws on free access to information, insist on the accountability for omissions of public institutions and public officials for the violation of these laws and provide support to the Commissioners full autonomy in work⁸¹.

76 Free Access to Information Law, article 22

77 Free Access to Information Law, article 43 and 45

78 Free Access to Information Law, article 24

79 Research done by TS

80 Research conducted by TS on acting upon the recommendations of independent bodies

81 <http://www.parlament.gov.rs/narodna-skupstina-872.html>

THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

Key findings and recommendations

Despite the lack of resources, **The Commissioner for Information of Public Importance and Personal Data Protection** has substantially contributed to the right of access to information and the promotion of transparency in the work of state bodies.

1. Prescribe the right to free access to information as a constitutional right, as well as the position of the Commissioner as an independent state body;
2. Harmonizing Work Organization Act with the necessity of resolving a large number of complaints;
3. Providing adequate premises for the Commissioner's work;
4. Change the basis for dismissing the Commissioner to be less dependent on arbitrary interpretations;
5. To ensure the execution of the Commissioner's decisions (by the Government) whenever it becomes necessary;
6. Providing access to part of the data on on-going procedures, in a way that doesn't violate personal data protection;
7. Determine as an obligation of the proponent of the law and creators of by-laws to ask for the Commissioner's opinion regarding provisions that could influence the publicity of the authority bodies' work;
8. Changes of the Law on Free Access to Information of Public Importance that will allow the Commissioner to initiate misdemeanor procedures for the violation of that law and organize other matters of importance to increase the publicity of authority bodies' work.



LOCAL SELF-GOVERNEMENT NATIONAL INTEGRITY SYSTEM

Summary: The law allows local governments to levy their own taxes, but there are inconsistencies that have a negative impact on small and underdeveloped municipalities. Central governments can directly influence the transfers of money to local governments, and therefore many municipalities tend to form the ruling coalition of the same composition as the ones at the national level. There are regulations that limit the number of employees and penalties for municipalities that violate rules, but these penalties are not enforced in practice. Rules on recruitment, advancement and work of staff provides a lower level of protection from corruption than on the central government level.

Local politicians interfere in the work of the municipal administration beyond the limits of their authority. Local anti-corruption mechanisms are rare, and although there are Codes for local officials, very few local governments have the bodies for the implementation of those Codes. The budget inspections and auditors are underdeveloped on the local level. Models of good governance are still in development and are often created at the initiative of international organizations. Public hearings on legislation are rare, and even the budget cases come down only to formal public hearings; officials do not give reasons for their decisions, but the decisions of local authorities can usually be found on the web-sites of local governments.

LOCAL SELF-GOVERNMENT			
Overall Pillar Score: 50			
	Indicator	Law	Practice
Capacity 56/100	Resources	75	50
	Independence	75	25
Governance 50/100	Transparency	75	50
	Accountability	50	25
	Integrity mechanisms	50	25
Role 38/100	Local administration	25	
	Fight against corruption	50	

Structure - The territorial organization of Serbia is regulated by the Constitution and the Law on Territorial Organization¹. Serbia has 24 cities (Belgrade has a special status), 150 municipalities and 28 city municipalities (municipalities within the cities of Belgrade, Nis and Novi Sad). Local government units have the status of legal entities². The Assembly is the supreme body of the local government and consists of the councilors who are elected for a term of four years through direct elections by secret ballot and under a proportional system³. The Assembly elects the mayor, as well as his deputy and members of the municipal council, at the proposal of the mayor. Municipal (city) administration is headed by the Chief of Administration who is also elected by the Assembly. By means of the Statute, the municipality (city) can anticipate the formation of other bodies, such as, for example, the ombudsman⁴. The affairs of the local government are financed from its own revenues, the budget of the Republic of Serbia and, in accordance with the law, the budget of the autonomous province, when the autonomous region has delegated the affairs within its jurisdiction to the local government, and following the decision of the Assembly of the autonomous region⁵.

In accordance with the Constitution and law, local governments can independently regulate the organization and jurisdiction of their bodies and public services⁶.

1 http://www.paragraf.rs/propisi/zakon_o_teritorijalnoj_organizaciji_republike_srbije.html

2 Law on Territorial Organization, article 16

3 Local Elections Act, Article 7

4 The Law on Local Self-Government, article 97

5 Constitution of Serbia, article 188

6 The Law on Local Self-Government, article 5

ASSESSMENT

CAPACITY

Resources (Law)

To what extent do local governments have adequate resources for the effective performance of their duties and in accordance with the law?

Score: 75

The Serbian Constitution stipulates that natural resources, goods determined by law to be of general interest and the assets used by the authorities of the Republic of Serbia are state property⁷. The Law on Public Property from 2011 stipulates that the holders of public ownership are the Republic of Serbia, autonomous regions and municipalities, and cities⁸. The property of the local government is independently run by the bodies of the local government⁹.

The Law on Local Government Funding allows municipalities and cities to have direct revenues, to determine the rate of the taxes and to collect them¹⁰. When it was adopted, the law presented a major step in the decentralization of Serbia and the creation of conditions for the development of local government¹¹.

Municipalities or cities are entitled to direct revenues from the territory of local government, including property taxes, local administrative fees, local utility taxes, local taxes, fees for the use of public property, concession fees, revenues from fines for violations of local regulations, income from leasing real estate and personal property, income from donations and voluntary taxes¹².

The local government is entitled to “shared revenues” and transfers from the national level¹³. Shared revenues are the property of transfer tax, inheritance and gift tax, as well as income tax, while, most importantly, the local government is entitled to 80% of the payroll tax paid according to the employee’s residence.

At the national level, the local government has transferred a total of 1.7% of the gross domestic product. The amount of transfer also depends on the population, size of the municipality, the number of primary and secondary schools, the number of children in pre-school, and the amount is further multiplied by coefficients which are determined according to the municipality development level¹⁴.

The Law on Local Self-government stipulates that local governments may establish enterprises, institutions and other organizations that perform public service. By means of contract and based on the principles of competition and transparency, the local government may also authorize an individual or legal entity to perform those duties¹⁵.

The number of local government employees (excluding those employed in the sectors of education, health and kindergartens) is limited by the maximum number of employees in local administration¹⁶.

7 Constitution of Serbia, article 87

8 The Law on Public Property, article 18

9 The Law on Local Self-Government, article 15

10 The law on local government funding, article 6

11 The Challenges of Decentralization and Regionalization in Serbia, Snezana Djordjevic, 2011

12 The Law on Local Self-Government, Article 6

13 The Law on Local Self-Government, Article 34

14 The law on local government funding, article 37

15 The Law on Local Self-Government, Article 7 and 32

16 <http://dopuna.ingpro.rs/Aktuelni%20tekstovi/28297.htm>

The total maximum number of permanent employees in local administration cannot be more than 4 employees per 1,000 inhabitants, with tolerances, as in the case of municipalities with fewer than 15,000 residents or municipalities that use the languages of national minorities¹⁷.

The law, which was adopted in November 2009, left municipalities to choose whether to reduce the number of employees or to fund the excess over the maximum number of employees from its own resources¹⁸. The law also limited the number of fixed-term employees to 10% of the number of permanent employees. By the decision of Ministry of Finance, those employing more than this number are entitled to reduced transfers from the Serbian budget by 1% for each percentage of part-time employees over the limit¹⁹.

Municipalities can apply for the money from the Serbian budget that comes from the lottery²⁰. The total of 40 percent of this revenue is planned to be used to finance the Red Cross, people with disabilities' organizations, social welfare, sports and local government²¹.

Among other things, municipalities and cities are also eligible to apply for the programs of rationalization and training of the local government bodies and the provision of technical and other assistance with the aim of modernization of local government bodies²².

Resources (Practice)

To what extent do local government bodies possess adequate practical resources for the effective performance of their duties?

Score: 50

In practice, a significant number of municipal authorities do not have adequate resources to effectively carry out their duties²³. At the same time, some municipalities and cities have a sufficient number of employees (even excess) and resources²⁴. Those local government units that had implemented the provisions of the Act determining the maximum number of employees in local administration from 2009, created a problem for themselves because they disabled the income of new, skilled people, while, paradoxically, those who broke the law are in a better position because they have a space for staff turnover²⁵.

The application of the law anticipated 5,648 employees less in the local government, out of the total number of 37,789. The Ministry of Finance was supposed to monitor and regularly publish data on the number of employees and data on transfers denied to local governments but it has failed to fulfill the obligations. According to available data²⁶, a small number of municipalities have applied this regulation, the Ministry of Finance does not publish data on the number of employees and the transfer of assets is not reduced to any municipality regarding this respect.

When it was adopted in 2006, The Law on Local Self-Government for the first time defined the local government revenues and sources of funding. The law on financing local governments aimed to organize this area in a systematic, predictable and sustainable manner. However, the fiscal

17 The Law on Determining the Maximum Number of employees in local administration, article 2

18 The Law on Determining the Maximum Number of employees in local administration, article 2 and 3

19 The Law on Determining the Maximum Number of employees in local administration, article 3

20 The Law on Games of Chance, Article 5

21 The Law on Games of Chance, Article 5

22 <http://www.paragraf.rs/strane/aktuelne-vesti/170311-vest8.html>

23 The conclusion based on the attitudes of representatives of the Standing Conference of Towns and Municipalities, the Anti-Corruption Agency and the representatives of several municipalities, interviews for NIS

24 Secretary General of the Standing Conference of Towns and Municipalities Djordje Stanicic

25 Secretary General of the Standing Conference of Towns and Municipalities Djordje Stanicic

26 SKGO data

predictability at the local level was violated in 2009, when budget transfers to local governments were substantially reduced by about 15 billion RSD (190 million USD) due to the economic crisis²⁷. The amendments to the Law on Local Self-Government from June 2011 significantly increased the assets that municipalities collect from the payroll tax²⁸.

Without appropriate transfer of authority and responsibility, local governments have abundantly started to spend the available excess of funds on increasing wages and increasing the number of employees²⁹.

Every year, local governments get distributed approximately 100 million RSD from the lottery and by means of tenders, which are intended for the modernization of local governments (about 75 million) and the rationalization and training of local governments (about 25 million), while the second item mostly refers to severance pay for former employees³⁰. In addition, there is an annual allocation of around 160 million RSD for projects "of special importance for citizens", which together with modernization may include the purchase of computer equipment for the services provided to citizens³¹.

Municipalities receive funds from the budget reserve, that is, the money in the budget at the discretion of the Serbian government. Although this money should be primarily intended for emergency purposes, it is often given to municipalities to cover the reduced inflow of the local budget³². In cases of allocation of funds from the budget reserve there is also public suspicion that political affiliation between municipal officials or the ruling parties in local government with national government plays a significant role in decisions on the allocation of money to local governments. There is also a similar suspicion in case of central government authorities' decisions on directing money to individual local governments through subsidies³³.

As for the technical equipment of the local governments, a great progress has been made over the past few years in the use of IT technology, employees' knowledge, the organization of municipal governments when it comes to relations with the public and commercial entities, as well as setting up municipalities as services to citizens and businesses³⁴. This was particularly contributed by donation projects, but some municipalities have not yet reached the level of equipment and knowledge required to function effectively³⁵.

In terms of human resources, the local administration is usually inadequate according to its structure (under-educated and highly inadequate professional structure with many profiles missing) and its number (the problem of overstaffing)³⁶. Recruitment procedures have personal bases (parties, relatives, friends). The Administration works in sections, each representing an isolated entity, there are no standards, work effects are not evaluated, team work is not encouraged and there is no bonus system, which is very demotivating³⁷. Wages in the public sector are generally low, there is no bonus system, nor is there a risk of losing a job due to the lack of work³⁸.

In addition, the jurisdiction and the level of the government are the same for all cities and municipalities, irrespective of the development level, which in practice causes problems for small municipalities that do not have enough qualified staff³⁹.

27 <http://www.skgo.org/pages/display/313>

28 http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/2714-12Lat.pdf

29 Member of the Fiscal Council Nikola Alparmakov, http://www.skgo.org/upload/files/Polis_broj_1_strana.pdf

30 Research conducted by TS, data from Ministry and municipalities

31 Cites of the Secretary of State in the Ministry of Human and Minority Rights, Public Administration and Local Self-Government, Ms. Sanja Cekovic, at the conference on anti-corruption mechanisms in local governments, 30 June 2011.

32 http://www.danas.rs/danasrs/politika/palma_dobio_120_miliona_iz_budzetske_rezerve.56.html?news_id=224792

33 http://www.b92.net/biz/vesti/srbija.php?yyyy=2011&mm=01&dd=26&nav_id=488301

34 Analysis of the Secretary General of the Standing Conference of Towns and Municipalities Djordje Stanicic, interview for NIS

35 Analysis of the Secretary General of the Standing Conference of Towns and Municipalities Djordje Stanicic, interview for NIS

36 The challenges of decentralization and regionalization in Serbia, Snezana Djordjevic, 2011

37 The challenges of decentralization and regionalization in Serbia, Snezana Djordjevic, 2011

38 The challenges of decentralization and regionalization in Serbia, Snezana Djordjevic, 2011

39 Milos Mojsilovic from the Department for the Prevention of Anti-Corruption, interview for this analysis

Independence (Law)

To what extent does the law provide independence of local government bodies?

Score: 75

The Constitution guarantees the right to local government, stating that citizens have the right to a local self-government⁴⁰ and that the Republic of Serbia regulates the territorial organization of the Republic of Serbia and the local government system⁴¹.”

The highest authority of the local government is the municipal assembly or city assembly that consists of councilors elected in accordance with the proportional principle. The councilors elect the municipal president or the mayor, and, at his suggestion, the vice-president and members of the municipal or city council⁴².

The supervision of legality of local government acts is exercised by the authorities of the Republic and territorial autonomy⁴³. The competent authority of the local government is required to submit the requested information, files and documents to the republic or autonomous province that supervise the legality of the local government acts⁴⁴. If the supervision is conducted over the acts of the municipal assembly, the person responsible for submitting the required data, files and documents is the mayor or secretary of the municipality⁴⁵.

In accordance with the law, the municipality can independently adopt its budget and balance sheet, urban planning and development program⁴⁶. The Government implements direct supervision of the municipality by having the ability to suspend the implementation of the municipal general act – statute that is considered not to be constitutional or legal, and to initiate the procedure for assessing its constitutionality and legality within five days⁴⁷. The government may dissolve the municipal assembly if the assembly is not in session for more than three months, if the mayor and municipal council are not elected within one month from the day of the assembly of the local government, or from the date of their dismissal or resignation, or if the statute or budget are not adopted within the timeframe established by law⁴⁸.

On the other hand, the body designated by the statute of the municipality has the right to appeal to the Constitutional Court if an individual act or action of a state body or body of local government impedes the implementation of municipality jurisdiction⁴⁹.

Independence (Practice)

To what extent are local government bodies independent in practice?

Score: 25

Given the proportional electoral system, in which voters vote for party lists, not for representatives of electoral units, there is no direct connection between councilors and the electorate or electoral unit, or system of direct responsibility, but the party serves as an intermediary between citizens and the government⁵⁰.

40 Constitution of Serbia, article 176

41 Constitution of Serbia, article 97

42 Local Elections Act, Article 7, Law on Local Self-Government, article 42 and 43

43 The Law on Local Self-Government, Article 78

44 The Law on Local Self-Government, Article 78

45 The Law on Local Self-Government, Article 78

46 The Law on Local Self-Government, article 5

47 The Law on Local Self-Government, article 81-82

48 The Law on Local Self-Government, article 85, 86

49 The Law on Local Self-Government, article 95, 96

50 The Law on Local Elections, article 5 and 7

After the general elections in 2008, while awaiting the formation of the central government, the authorities in many local governments were elected. However, the formation of the ruling majority was followed by a wave of dismissals of elected bodies or termination of the coalition agreements reached in all municipalities and cities in which it was possible to establish a coalition identical to the one at the national level⁵¹.

Given that the parties directly controlled councilor seats by means of the mechanism of blank resignation written into the Law on local elections, an authority resembling the one at the national level was quickly formed in almost all municipalities and cities⁵². The decision of the Constitutional Court from 2010 that such provision was unconstitutional, reached after criticism of not only the domestic public but also the Venice Commission and the European Commission, stipulated the return of seized mandates to councilors and new changes in local authorities in some municipalities, but the overall held principle was that the backbone of the government are the parties that form authorities at the national level⁵³.

Depending on the composition of the local authorities, some cities and municipalities are privileged and some are marginalized in the allocation of public money and “bringing” investors, both of which are implemented in a discretionary and politically motivated manner. Cities and municipalities have become an ideal place in which corruption is overflowing from the national level, because very often the city officials do not comply with the law, but with the opinions and interpretations of the law that are issued from the ministries⁵⁴.

In addition, after the takeover of the authority in local government units, the parties are trying to position their staff in deeper structures of local government, or at all leading positions in municipal governments, local institutions, utility companies, and recruit party members in local authorities and businesses⁵⁵. Those who refuse to obey the will of the party headquarters are removed, and the jobs practically became a source of rewards for party officials⁵⁶.

Although formally, under the law⁵⁷, heads of municipal administration are elected by public competition for a period of five years, which is longer than the term of the municipal assembly (four years), in practice in 90 percent of the cases, heads of administration change with the local government. This indicates a low level of independence of local administration from politics⁵⁸.

Although the central government has no possibility of direct control over the work of the local government, that is, they can conduct formal administrative control or financial control through the work of budget inspectors, there are other mechanisms that restrict full freedom of local authorities. Some of those mechanisms are prices of utilities and services, which are under direct control of the central government and local governments are threatened by shutdown of the transfer of money if prices rise more than projected in the budget memorandum⁵⁹.

51 http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=05&dd=28&nav_category=418&nav_id=300740 <http://www.b92.net/info/izbori2008/pokrajinski-lokalni.php?start=0>

52 http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=05&dd=28&nav_category=418&nav_id=300740 <http://www.b92.net/info/izbori2008/pokrajinski-lokalni.php?start=0>

53 <http://www.ustavni.sud.rs/page/view/sr-Latn-CS/90-101274/blanko-ostavke-neustavne>

54 The report of the Organization Bureau for Social Research (BIRODI) “Captured society is not fighting against corruption”

55 Secretary General of the Standing Conference of Towns and Municipalities Djordje Stanicic, interview for this analysis

56 Milos Mojsilovic, the Department for the Prevention of Anti-Corruption, interview for this analysis

57 The Law on Local Self-Government, article 56

58 Secretary General of the Standing Conference of Towns and Municipalities Djordje Stanicic, interview for this analysis

59 Secretary General of the Standing Conference of Towns and Municipalities Djordje Stanicic, interview for analysis

GOVERNANCE

Transparency (Law)

To what extent are there regulations that ensure transparency of relevant activities of the local government bodies?

Score: 75

The Law on local government stipulates the session of the municipal assembly to be public⁶⁰. The municipal assembly may decide that the session of the assembly remains closed for public for security reasons or for “other reasons provided by law⁶¹.” Bodies and agencies of local government are obliged to inform the public about their acts through media and “other appropriate manners” and bodies and agencies of local government are obliged to provide citizens with necessary information, explanations and notification for the exercise of their rights and obligations⁶².

The transparency of municipal or city councils are regulated by their Rules of Procedure⁶³. On a request for information access and on the basis of this law it is possible to obtain minutes of local government meetings, as well as all other documents produced in local government functions⁶⁴. All municipal authorities are obliged to prepare and publish on their website detailed information on the budget, structure, services provided, procurement, and all the acts within their authority⁶⁵. The decisions of the council or the mayor and the assembly are published in the official newspapers of municipalities and cities.⁶⁶

The statute of a large number of cities and municipalities anticipates public hearings when making certain acts⁶⁷.

Data on the property of local officials are published in accordance with the Law on the Anti-Corruption Agency. The law stipulates that officials shall, within 30 days from the date of election or appointment, submit a report concerning their property and income, assets and income of the spouse or common-law partners and minor children if they live in the same household⁶⁸. The report shall be submitted within 30 days from the date of termination of office, according to the day of termination of office⁶⁹. However, this obligation does not apply to the representatives in local councils, members of management and supervisory boards of public companies and institutions established by the municipality or city⁷⁰. Still, ACA may demand them to submit the report. This means that the reports are submitted by the mayors or municipality presidents, their deputies, members of the Council and directors of public companies and institutions. Part of the information is publicly available on the ACA⁷¹ website, as envisaged by ACA Law⁷².

60 The Law on Local Self-Government, article 35
61 The Law on Local Self-Government, article 35
62 The Law on Local Self-Government, article 71
63 Research conducted by TS
64 The FOI Law, article 2
65 Statutes of Local Municipalities, research conducted by TS
66 Statutes of Local Municipalities, research conducted by TS
67 Statutes of Local Municipalities, research conducted by TS
68 The ACA Law, articles 43-47
69 The ACA Law, articles 43-47
70 The ACA Law, article 45
71 http://www.acas.rs/sr_cir/registri.html
72 ACA Law, article 47

Transparency (Practice)

To what extent are the relevant activities of local government transparent in practice?

Score: 50

Over the past few years, great progress has been made in the area of transparency of the local government activities. Municipalities and cities have web-sites which, in most cases, publish their budgets, the decisions of the municipal/city councils, and often complete editions of local official journals. More and more municipalities now offer services of electronic registry⁷³. There are still some municipalities and cities that use web-sites as information portals - to promote the activities of officials to voters or to publish local news⁷⁴.

Information Directories about municipalities' work are often not complete or up to date. According to the data of the Commissioner for Information of Public Importance and Personal Data Protection⁷⁵, the report on the implementation of the Law on Free Access to Public Information in 2010 was submitted by a total of 158 of 200 authorities in the "Local Government" category. The information was published by 108 municipalities and cities (54% of overall number), and another 21 municipalities made drafts, but did not publish the Directory.

In 2010 a total of 45,300 requests were submitted by the Freedom of Information (FOI) Act, of which 22.9 percent were related to local government bodies⁷⁶. Out of 2,066 complaints filed with the Commissioner due to refusal to provide information to authorities, 22.7 percent were related to local government bodies⁷⁷.

Municipalities and cities that implement the law practices related to the maximum number of employees in local administration are rare. The Law, passed in late 2009, obliges local authorities to electronically publish data on the number of employees and contracted individuals, as well as salaries and benefits paid⁷⁸.

All local governments have information systems, but there are significant differences in how the system is developed and what functions it has⁷⁹. The first steps in the introduction of information systems were made in the archives and registry offices⁸⁰.

Web-sites are also under-used as a tool for making complaints against the government. In some municipalities this issue raises certain attention⁸¹, but there is an obvious absence of promotion of this form of communication with public enterprises, which by the nature of their work, can have a large number of both satisfied and dissatisfied users of services⁸².

Many authorities do not publish any information on public procurement on their websites. In cases when this is done, very often the public procurement was advertised, but there is no data on how it ended, or the information is not published promptly. Purchasers publish public procurement notices,

73 TS Research "The update of information on the authorities' websites", July 2010 and the survey of websites of 18 municipalities and cities for the purpose of NIS (Kragujevac, Pirot, Becej Indjija, Beograd, Trstetnik, Sombor, Zrenjanin, Lebane, Leskovac, Kraljevo, Vrnjacka Banja, Novi Pazar, Ljubovija, Sremska Mitrovica, Bor, Pozarevac, Majdanpek, Sabac, Veliko Gradiste, Raca, Lazarevac Pozega, Crna Trava, Novi Beograd, Sremski Karlovci)

74 TS Research "The update of information on the authorities' websites", July 2010 and the survey of websites of 18 municipalities and cities for the purpose of NIS

75 The Report on the Implementation of the Law on Free Access to Public Information in 2010.

76 The Report on the Implementation of the Law on Free Access to Public Information in 2010.

77 The Report on the Implementation of the Law on Free Access to Public Information in 2010.

78 One of the few examples of application of this provision: <http://www.indjija.net/code/navigate.php?ld=85>

79 Data of the Standing Conference of Towns and Municipalities

80 Data of the Standing Conference of Towns and Municipalities

81 The examples of good practice <http://www.indjija.net/pitajtepredsednika/pitajte.aspx> <http://www.sombor.rs/contact>

82 TS Research "The update of information on the authorities' websites", July 2010 and the survey of websites of 18 municipalities and cities for the purpose of NIS

some of which are very recent, but, in the meantime, they also release additional ads that cannot be found on the website and which are published in the public Procurement Portal⁸³.

All municipalities and cities hold public assembly meetings attended by journalists, which could also be attended by citizens with previous notice.⁸⁴

Local government bodies often have closed sessions, claiming that it is enough that their acts are “publicly available”, but there are also some examples when their sessions are public, including the possibility of the presence of media⁸⁵.

In practice, local governments do not hold public hearings before making the most of their laws⁸⁶, and when they do, the public debate comes down to the organization of one or more meetings where participants do not receive any feedback on the outcome of their proposals⁸⁷.

In some municipalities there is a practice of publishing decisions on internet web-sites. Decisions are usually not explained. The municipal budget is published in the official journal, while some municipalities publish the approved budget on their web-site and the budget draft in the public debate, whereas some even publish data on the monthly budget execution.

Accountability (Law)

To what extent are there provisions that ensure that local officials must report and be accountable for their actions?

Score: 50

The regulations state that councilors and the Assembly have responsibility towards voters, and given the fact that councilors are elected by a proportional model, in which voters vote for party lists, not for representative of an electoral unit, a direct responsibility of an individual member towards his electoral unit does not exist. A member cannot be held criminally liable, detained or punished for an opinion or vote at the session of the assembly and its working bodies⁸⁸.

The municipality president or the mayor, his deputy and council have a responsibility towards the assembly that elected them. The municipal council supervises the work of the municipal government, abolishes municipal administration acts that are not in accordance with law, statute and other general acts or the decision passed by the assembly⁸⁹. The autonomy of local government does not allow any direct responsibility or subordination of local government by state authorities⁹⁰.

However, there are monitoring mechanisms - administrative and financial. The bodies of the Republic (and territorial autonomy) exercise supervision over the legality of the local government acts and the relevant local government authority is obliged to timely submit the requested information to the republic or autonomous province authorities⁹¹.

83 TS Research “The update of information on the authorities’ websites”, July 2010 and the survey of websites of 18 municipalities and cities for the purpose of NIS

84 Research done by TS

85 Rules of Procedure of the City Council of Sombor

86 Milos Mojsilovic, Department of Prevention, ACA

87 Milos Mojsilovic, Department of Prevention, ACA

88 The Law on Local Self-Government. article 37

89 The Law on Local Self-Government. article 46

90 The Law on Local Self-Government. article 5

91 The Law on Local Self-Government. article 78

The government is required by law⁹² to suspend the implementation of the general act of the local government unit that it considered to be not in compliance with the Constitution and initiate the proceedings to review the constitutionality. Failure to do so within five days will lead to the cancellation of suspension⁹³. Financial monitoring refers to inspecting the budget of the Ministry of Finance and the audit conducted by the Supreme Audit Institution⁹⁴.

As for the civil control, the only mechanisms are complaints against the work of local authorities. The Law on Local Self-Government obliges bodies and services of local governments to openly provide submission of complaints about their work and the improper conduct of their employees⁹⁵. Bodies and agencies of local government are required to respond to these complaints within 30 days, if a complainant requests a response⁹⁶.

Public hearings on the legislation enacted by the assembly of local government units are not regulated by law. Only the Law on Planning and Construction states mandatory public access⁹⁷ to urban planning. The Law on the Budget System provides a calendar for the adoption of local budgets, but not the obligation of public involvement in this procedure⁹⁸.

Explaining the decisions and actions of public officials is not a legal obligation. Only the Code of Ethics, which was adopted by 145 local government units, stipulates that "local government officials will give an explanation for any of their decisions if asked by citizens, including all the facts and circumstances on which the decision was based, and, particularly, which regulations were applied⁹⁹.

In the absence of rules and regulations, the justification of decision will include elements such as: its proportionality, fairness and compliance with the public interest¹⁰⁰.

The protection of whistleblowers at the local level is equally regulated at the national level – very slightly. There is no legal framework governing this area, and the provisions that are applicable to whistleblowers can be found in the Labor Law, the Law on Mobbing and the Law on the Anti-Corruption Agency¹⁰¹. In accordance with the ACA law, ACA has adopted the Regulation that defines the protection of whistleblowers, but only for civil servants who report corruption¹⁰².

Accountability (Practice)

To which extent is there effective control over the activities of local government in practice?

Score: 25

In the practice of local governments, as well as at the level of central government authorities, there are various ways of interpreting what constitutes a public hearing on a regulation. Most frequently this involves setting up proposals and draft decisions on the web-site and collection of viewpoints or organizing round table discussions, after which the public has no insight in the actions taken regarding the collected suggestions and reasons why they were accepted or rejected¹⁰³.

92 The Law on Local Self-Government. article 81-84

93 The Law on Local Self-Government. article 81

94 The Law on Budget System, article 84, The Law on Supreme Audit Institution, article 35

95 The Law on Local Self-Government, article 71

96 The Law on Local Self-Government, article 71

97 The Law on Planning and Construction, article 50

98 The Law on Budget System, article 31

99 Ethical code of conduct for local governments officials in Serbia, Article 15

100 Ethical code of conduct for local governments officials in Serbia, Article 15

101 http://www.acas.rs/sr_lat/zakoni-i-drugi-propisi/zakoni/zakoni-o-agenciji.html, article 56, http://paragraf.rs/propisi/zakon_o_sprecavanju_zlostavljanja_na_radu.html, http://www.paragraf.rs/propisi/zakon_o_radu.html

102 http://www.acas.rs/sr_lat/zakoni-i-drugi-propisi/ostali-propisi/pravilnici.html

103 Joint assessment of ACA and SKGO representatives, interview

The Standing Conference of Cities and Municipalities, the national association of local authorities in Serbia, advocates the policies of public debate on all important issues (budget, planning documents, strategies, decisions on large investments) from baseline to the adoption of the initiative in the assembly, i.e. creation of a process which would involve everyone – municipalities, NGOs, media and business sector.

Although the Code of Ethics recommends officials to explain their decisions and actions, there is no mechanism for the implementation of this (non-binding) recommendation. The Needs Analysis, a document made along with the Anti-Corruption strategy draft 2012-2016 recommends the introduction of an official obligation for officials to answer all public requests to explain their conduct and operation of services under their responsibility¹⁰⁴.

In practice, the supervision of republic bodies over the work of local self-government comes down to formal administrative control. A Ministry or the government may only suspend the implementation of a general act and start assessing the constitutionality, and no one is estimating the usefulness and appropriateness of local government actions and the existence of plans and goals. It is considered to be an exclusively political issue on which voters decide in the election¹⁰⁵.

The usefulness of expenditures is another aspect that is disregarded during the audit of the financial statements of the local government.

The State Audit Office (SAI) conducted an audit of the financial statements and the regularity of operations of 10 municipalities and cities in 2010. Given that Serbia has 168 municipalities and cities, and that SAI is gradually, but very slowly increasing its capacities, it is clear that it is unlikely that future audits of financial statements of local governments will be conducted more frequently than once every five years¹⁰⁶.

After the audit of financial statements of municipalities and cities in 2010¹⁰⁷ SAI pointed out a huge number of irregularities – wrongly accounted expenses, direct violations of the Law on Public Procurement and incorrectly calculated salaries, taxes and benefits for employees. Local officials often refuse to accept responsibility for mistakes that were identified. Such a case happened with the mayor of Nis, the second largest city in Serbia. The State Audit Office found that more than 1.1 billion RSD (15 million USD) from the city budget was spent contrary to the Law on Public Procurement, which is nearly one-fifth of the budget¹⁰⁸. The mayor, an official of the ruling party, claimed that SAI allegations were not true, that the auditor did not want to accept the explanations of professional services of the City and that the disputed procurements were conducted “in accordance with the opinion of the ministry”¹⁰⁹.

The local government, as well as the entire Serbia, has no special system for the protection of whistleblowers. There are no known cases that the employees in local administration acted as whistleblowers recently. In small communities people are more reluctant to point out irregularities - the power of a group of people is crucial to the lives of many, jobs are hard to find and employees of local administrations are forced to remain silent¹¹⁰.

104 Needs analysis of Republic of Serbia in the fight against corruption (not published yet).

105 Milos Mojsilovic, Department for the Prevention, ACA

106 <http://SAI.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

107 <http://SAI.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

108 <http://SAI.rs/images/pdf/revizija2011/izv-ni2010.pdf>

109 <http://www.juznevesti.com/Drushtvo/Simonovic-tendenciozan-izvestaj-SAI.sr.html>

110 Secretary General SKGO, Djordje Stanisic, interview

Integrity (Law)

To what extent are there any mechanisms that ensure the integrity of local government bodies?

Score: 75

Anti-corruption provisions, especially those concerning conflicts of interest that relate to local officials can be found in the Law on Local Self-Government, Law on the Anti-Corruption Agency and Code of Ethics Conduct for Local Officials.

The Law on Local Self-government stipulates that¹¹¹ “no member of the committee may be employed in the municipal administration and nominated or appointed by the municipal assembly”. It also states that both regulations governing conflict of interest when exercising public functions and provisions of the Law on Local Self-Government on duties which are incompatible with the mandate in the Municipal Assembly should be implied on local public officials¹¹².

The Regulation governing conflict of interest is the Law on the Anti-Corruption Agency and it applies to all public officials in Serbia – elected or appointed. In municipalities and cities these are councilors, heads of municipal/city governments, council members, mayors/city mayors and their deputies, members of the management and supervisory boards of public companies and directors of companies and institutions under the jurisdiction of local governments¹¹³.

According to ACA Law, public officials whose function requires permanent engagement or full time engagement, like mayors, cannot perform other jobs or activities¹¹⁴. Public officials are obliged to transfer management rights in any business they control within 30 days of election or appointment and to inform the Agency on that. For two years after the termination of the function officials must not take employment or establish business cooperation with a legal entity, entrepreneur or international organization engaged in activity related to the office, except under approval of the Agency¹¹⁵.

There are neither special limitations nor obligation of recording meetings with representatives of legal entities that could have the interest to engage public officials after the termination of their functions. There is no law that specially regulates lobbying, nor provisions of other regulations that could regulate this area.

The Law on the Anti-Corruption Agency regulates gifts (including goods and services). According to these provisions, an official cannot accept gifts related to performing a function, besides from protocol or appropriate ones; but not even then if it is money and stocks. All gifts must be recorded and the body is obligated to deliver the copy of the records once a year to ACA that publishes it on the web-site. An official must not keep the gift of 5 percent value of the average salary in Serbia (app 20 USD)¹¹⁶.

For the violation of these provisions, the ACA law states penalties ranging from a public reprimand to a recommendation for dismissal and misdemeanor fines¹¹⁷.

The Code of Ethics contains provisions that are defined by the Law on the Anti-Corruption and thus states that local government official would not perform his duty, or use the power of his office to gain personal or group interests, that he would avoid any behavior that could lead to a preference for private over public interests, even if such behavior is not formally banned, that he would comply with all applicable regulations that define the obligation to provide information about the

111 The Law on Local Self-Government, Article 30

112 The Law on Local Self-Government, Article 30

113 The ACA Law, article 2

114 The ACA Law, article 30

115 The ACA Law, articles 31, 35, and 36

116 The ACA Law, article 39, 40

117 The ACA Law, article 51, 74

financial status, that he would respect the legal restrictions in regard to performing multiple functions at the same time and avoid performing other public functions or activities that impede the performance of his duties¹¹⁸.

The Code also states that, in performing his duties, a local government official shall “refrain from any conduct that could be described as active or passive bribery under the applicable international or domestic criminal law” and that he shall be “actively engaged in detecting and fighting against all forms of corruption in the local community¹¹⁹.”

“An official of the local government would not seek, accept or give any gift, favor, hospitality or any other advantage in connection with the performance of his function other than occasional and protocol gifts of minimal value, neither will he allow any other person to do so on his behalf or for his benefit” stipulates the Code¹²⁰.

The Code of Ethics contains a provision on (revolving doors), which states that “an official of the local government will not undertake activities in organizations and companies which he oversees, with which he has established contractual relationships or which were established during his term, in order to provide a personal and professional benefits for himself or somebody else upon termination of office¹²¹.”

For the violation of conflict of interest rules are set in the law, local officials may be fined and if there are elements of criminal liability (e.g. for abuse of power) they can even be imprisoned. There are no penalties for ethics violations, and the implementation of the Code should be in charge of working groups formed specifically for this purpose in each unit of local government that has adopted the code. Several cities and municipalities adopted rules where the Monitoring Board may impose quasi - sanctions (i.e. warning or recommendation for officials to be resolved)¹²².

Procurements at the local level are subject to the Law on Public Procurement which makes no difference in regards to the size and capacity of the client. This means that the limit for small procurements, which are conducted by a less transparent procedure, is the same for ministries and the largest public companies in the state and for the smallest municipalities and their public companies and institutions¹²³. There are neither on the local, nor on the central level special rules that would ensure the integrity and ethical actions of officials in charge of planning, implementation and control of public procurement¹²⁴.

Integrity mechanisms (Practice)

To what extent is the integrity of local officials ensured in practice?

Score: 25

In 2010, at the beginning of its application, the Law on the Anti-Corruption Agency introduced stricter rules on conflicts of interest and dual functions; and it was evident that there is no political will to apply the law strictly. Some of the biggest obstacles were dual functions of mayors who were also MPs in Serbia and Vojvodina, which is illegal as performing two functions - in the legislative and executive branches¹²⁵.

118 Ethical code of conduct for local governments officials in Serbia, article 7-9

119 Ethical code of conduct for local governments officials in Serbia, article 16

120 Ethical code of conduct for local governments officials in Serbia, article 17

121 Ethical code of conduct for local governments officials in Serbia, article 24

122 <http://www.skupstinans.rs/latinica/radna-tela/71-savet-za-pracenje-primene-etickog-kodeksa>

123 The Law on Public Procurement

124 Research done by TS

125 <http://www.ustavni.sud.rs/page/view/sr-Latn-CS/90-101277/vojvoanski-poslanici-cekaju-skupstinu-srbije>.

The province of Vojvodina Assembly was recorded to have 18 members who were also mayors, and the Serbian Parliament had six members who were mayors or deputy mayors¹²⁶. The Assembly of Vojvodina tried to preserve double functions by adopting a conflict of interest resolution that arranged this area in an almost identical manner as the ACA Law but the transitional provision left the possibility to keep dual functions until the end of the current term¹²⁷. Once the Anti-Corruption Agency refused to accept this decision as authoritative, the Serbian Parliament adopted amendments to ACA Law which enabled all mayors to retain double functions until the end of their terms¹²⁸. ACA initiated proceedings before the Constitutional Court to review the constitutionality of the amended provisions, and the court reached its decision only after a year, in July 2011¹²⁹. Some local officials further resisted, trying to keep dual functions, and one example was striking - the mayor of Kragujevac whose legal team argued that the "local government is not part of a government but civil society; hence the mayors are not public officials"¹³⁰.

By keeping multiple functions mayors have violated the Code of Ethics, a document adopted by almost all municipalities and cities in Serbia - 145 out of 168¹³¹. However, there are no sanctions for the violation of the Code of Ethics, and only 31 local governments formed a local assembly's committee that monitors the implementation or violation of the Code¹³².

Violation of public procurement rules is present in the local government as well as in other units that have access to public money. The auditors' reports on the financial statements of 11 municipalities and cities in 2010¹³³ point out numerous cases of violations. One of the most common cases is scheduling public procurement under non-transparent procedures and with no conditions met; the implementation of small purchases, although purchasing value is above the permitted limit; and dividing purchases into small lots so that it could be conducted as a small value purchase¹³⁴. The case of Jagodina is typical, where the purchase of travel arrangements (students' summer vacation at the expense of the local government) resulted in conducting 12 bids for 12 small groups of students who all travelled at different times. Everything was purchased from the same supplier, through a nontransparent procedure, by direct invitation to three different bidders selected by the contracting authority to submit their offers¹³⁵. The auditors also pointed out some very serious offenses that entail the criminal liability under the Law on Budget System, such as organizing procurement although there was no money allocated in the budget. Among the violations and omissions there was also the launching of a procurement procedure before the formation of the Public Procurement Commission or the lack of information that the purchased goods or services were fully delivered¹³⁶.

126 Anti-Corruption Agency data

127 <http://www.blic.rs/Vesti/Tema-Dana/182949/Dve-fotelje-hoce-da-zadrzi--1500-funkcionera>

128 <http://www.vesti.rs/Vesti/Usvojene-izmene-Zakona-o-Agenciji-uz-Baticev-amandman.html>

129 <http://www.novimagazin.rs/vesti/vise-javnih-funkcija-za-poslanike-i-odbornike---neustavno>

130 <http://www.novimagazin.rs/vesti/gradonacelnik-se-proglasio-civilnim-sektorom>

131 <http://www.skgo.org/projects/details/13>

132 SKGO data

133 <http://SAI.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

134 Research of SAI reports, <http://SAI.rs/cir/revizije-o-reviziji/poslednji-revizorski-izvesta.html>

135 <http://SAI.rs/images/pdf/revizija2011/izv-ja2010.pdf>

136 <http://SAI.rs/images/pdf/revizija2011/izv-ja2010.pdf>

ROLE

Local administration (Law and practice)

To what extent are the authorities of local government and officials engaged and committed to good management of the local administration?

Score: 25

Municipalities started introducing the principles of good governance, opening the municipal service centers, business incubators, simplifying operation and effective relations between citizens and economy - the principle of “one counter only” (“one stop shop”) for economy and electronic services for citizens¹³⁷. However, most often this is not an independent awareness of local government about the need to improve their work, but the acceptance of incentives that come from international organizations and international and local NGOs¹³⁸.

Local governments have no system of incentives for employees who work in a transparent and accountable manner.¹³⁹ The Civil Service Act from 2005 that contains anti-corruption provisions, provisions on conflicts of interest and detailed provisions on the evaluation and promotion does not apply to local administrations. They fall under the Law on Labor Relations in public administration from 1991. The adoption of the Law on local staff and salaries in local authorities has been announced several times, but has not been implemented. The adoption of this regulation, which would include a system of incentives for the promotion, rewards and education, is also supported by the Standing Conference of Towns and Municipalities¹⁴⁰.

The Law on labor relations in public administration provides advancement on the basis of evaluation, but leaves the Government to define the kind of assessment and evaluation procedure¹⁴¹. In practice this often opens opportunities for advancement based on party affiliations¹⁴². Even the working and management positions in the public sector, particularly in public companies, are treated as “post-election party loot” and serve to please party activists, or as a “token of appreciation of parties for engaging in the pre-election campaign¹⁴³.”

The nomination of party leaders in local public companies is more prominent than at the national level¹⁴⁴ which has been identified as a serious problem. Local areas have no media that can freely address these subjects, there is no critical public, so local politicians remove and appoint staff and hire people at their own will¹⁴⁵. In addition, the notion of control of the local administration has acquired a negative connotation – there is no control over the output, plans or activities, but it is controlled as party property¹⁴⁶.

Politicians often directly interfere with the functioning of the local administration. Although the Law on Local Self-Government clearly defines individual jurisdictions – the president, council, municipal government, politicians (presidents and council members) all interfere in administrative work, insist on making individual decisions or acts, rather than to create the conditions for the management, headed by the chief of administration, to enforce the law¹⁴⁷.

137 Milos Mojsilovic, Sector for Prevention, ACA, interview

138 Milos Mojsilovic, Sector for Prevention, ACA, interview

139 Milos Mojsilovic, Sector for Prevention ACA, interview and SKGO Secretary General, Djordje Stanistic, interview

140 SKGO Secretary General, Djordje Stanistic, interview

141 http://www.paragraf.rs/propisi/zakon_o_radnim_odnosima_u_drzavnim_organima.html

142 Quotes from a president of a parliamentary party, interview

143 Quotes from a president of a parliamentary party, interview

144 Milos Mojsilovic, Sector for Prevention ACA, interview

145 Milos Mojsilovic, Sector for Prevention ACA, interview

146 Milos Mojsilovic, Sector for Prevention ACA, interview

147 SKGO Secretary General, Djordje Stanistic, interview

The Code of Ethical Conduct for local government officials, provides that “local government officials must seek to ensure that the role and tasks of the employees are fully implemented” and that he would “take action and encourage activities that contribute to the improvement of the services or departments for whose work he is responsible, as well as to motivate the employees who perform that work¹⁴⁸.”

There is no information about any proceedings initiated against any local official before the working body responsible for overseeing the implementation of the Code because he did not take measures “to motivate employees¹⁴⁹.”

However, there were some reverse cases - dismissal without cause of the officers who claimed to have worked well and even questioned possible cases of abuse. In late 2008 the director of the Budget Revision of the City of Belgrade was replaced. He claimed that he had been dismissed when he started “serious control” of operations of several large budget users¹⁵⁰. Earlier he found several irregularities in a number of city’s businesses, and he chaired the Agency that published the report that led the city Secretary for health to initiate proceedings for the removal of a director of one health institution founded by the city of Belgrade. This case has seriously shaken the ruling coalition in Belgrade, and finally, the city’s secretary was forced to resign¹⁵¹. The removed director was replaced by the former chief executive of the city government investments unit, unit through which a large part of the budget was spent. This official now controls work of the unit where he previously worked¹⁵². The following year it was not possible to obtain information on the Agency’s budget for the inspection¹⁵³.

Fight against corruption

To what extent do the authorities of local governments and the officials set as their priority the issues of public accountability and the fight against corruption in the country?

Score: 50

Fighting against corruption is not a priority for Local Governments and it is seen as something that is the task of central authorities, particularly prosecutors, police and the Anti-Corruption Agency¹⁵⁴. In the second year of ACA law implementation it is still evident that public officials at the local level had begun to fulfill their obligations, although not in the same percentage as at the national level¹⁵⁵. In 2010 and 2011, the meetings organized by ACA regarding the implementation of the National Strategy for the Fight against Corruption reported an unsatisfactory response of local authorities on those meetings - 128 representatives from 98 bodies of local governments. Thus, in the implementation of the obligations of local government much of the commitments were fulfilled not because local governments followed the Strategy and Action Plan, but on the basis of other laws and documents¹⁵⁶. The fulfillment of the obligations under the ACA Strategy was reported by only 72 bodies¹⁵⁷.

Several municipalities started anticorruption initiatives, launched by non-governmental organizations from the national level „BIRODI“ - Local plans for fighting against corruption were adopted and Local anti-corruption forums (LAF) were established. In 2011 they were formed in Kragujevac, Zrenjanin, Nis and Pozega, and the process of developing local plans for the fight against corruption continued in 9 other cities and municipalities in Serbia¹⁵⁸.

148 The Code of Ethical Conduct for local government officials, article 23

149 SKGO data

150 <http://www.blic.rs/Vesti/Beograd/62131/Osnovao-instituciju-pa-ga-razresili>

151 <http://www.blic.rs/Vesti/Beograd/62131/Osnovao-instituciju-pa-ga-razresili>

152 <http://www.blic.rs/Vesti/Beograd/62270/Nezakonito-sam-smenjen>

153 <http://vesti.krstarica.com/vesti-dana/tajni-rad-budzetskih-revizora>

154 Milos Mojsilovic, Sector for Prevention, ACA

155 ACA data, interview – Milos Mojsilovic, Sector for Prevention, ACA

156 Dragana Granic, Department of Strategy ACA, The Conference on Anti-Corruption mechanism in local governments, June 30th, 2011

157 Dragana Granic, Department of Strategy ACA, The Conference on Anti-Corruption mechanism in local governments, June 30th, 2011

158 Interview with Zoran Gavrilovic, NGO *Birodi*

Among other things, local plans anticipate the development of annual reports on the state of anti-corruption, organized civil debates on draft proposals of local authorities decisions, as well as the institutions financed from the local budget, monitoring and evaluation of assigned grants and sponsorships from local governments and local government users' budgets, public display of the execution of the local government budget and the protection of whistleblowers¹⁵⁹.

However, the first problems arose when the local anti-corruption forums started to criticize the city government¹⁶⁰. After the LAF in Nis issued a press release stating that they expect a response from public authorities, especially the police and prosecution following the findings of the Supreme Audit Institutions on the city budget spending for 2010, the local mayor reacted, claiming that LAF does not have any authority. He claimed LAF was actually not even formed properly, and then announced a competition for the new selection of LAF members.¹⁶¹

The cooperation between local authorities and NGOs (Coalition for Oversight of Public Finance¹⁶²) has been established in several more cities and municipalities during the implementation of the project of civil oversight of public finances.

Out of 31 working bodies for monitoring the implementation of the Code, some were more active in the field of anti-corruption. This includes examples from Kovin (registry of local officials), Vrnjacka Banja (monitoring of local public procurements and privatizations), Lazarevac (publishing of information about abuses in "Kolubara" mining company), Vranje (active collection of citizens' complaints), Zrenjanin (dealing with privatization cases) and few other¹⁶³.

159 Interview with Zoran Gavrilovic, NGO *Birodi*

160 Interview with Zoran Gavrilovic, NGO *Birodi*

161 <http://www.juznevesti.com/Istrazujemo/lpak-raspisan-konkurs-za-LAF.sr.html>

162 <http://www.nadzor.org.rs/>

163 Interviews with members of working bodies in 2010 and 2011

LOCAL SELF-GOVERNEMENT

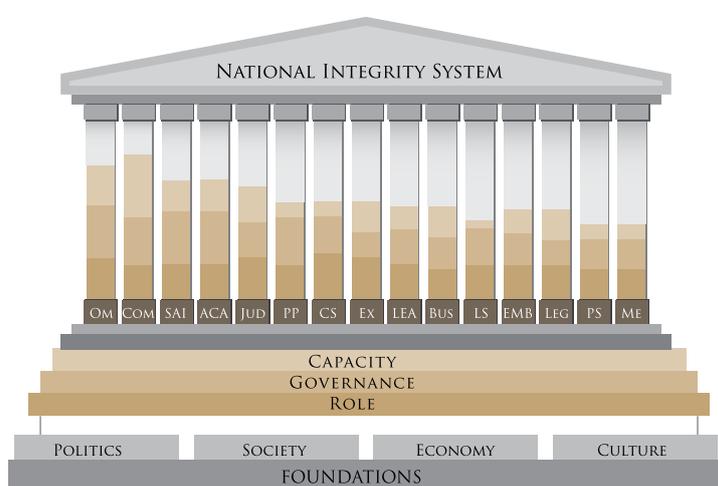
Key findings and recommendations

Local Self-Government is strongly politicized and subject to the influence of political parties and central Government's transfers. There are no regulations on conflict of interest for local administration. Public hearings on the legislation are rare and officials do not give reasons for their decisions. Budget control mechanisms are underdeveloped. Some cities and municipalities introduced locally based anti-corruption initiatives, often with the support from Standing Conference of cities and municipalities.

1. Adopting the Law on Local Administration and Salaries in Local Administration;
2. Harmonizing criterion for determining amount of the transfer to the local self-government from the Republic with the Law on Financing Local Self-government instead of with the Law on balanced regional development;
3. Introducing transparent models of rewarding and stimulating employees in local self-government, based on their work results;
4. Depoliticizing local administration, abandoning practice that the heads of local administrations are replaced after elections, as part of political changes;
5. Depoliticizing appointment of the managers of local public utility companies;
6. Amending local statute to ensure that public hearings are held, with precise procedures, before important decisions are adopted by local parliament and councils;
7. Increasing transparency by introducing obligatory publishing of all local parliament and council's decisions, publishing all information about public procurements, and enabling online posting of petitions and complaints against local administration.



VIII CONCLUSION



OM	Ombudsman	EX	Executive
COM	Commissioner for Information of Public Importance and Personal Data Protection	LEA	Law Enforcement Agencies
SAI	Supreme Audit Institution	BUS	Business
ACA	Anti-Corruption Agencies	LS	Local Selfgovernment
JUD	Judiciary	EMB	Electoral Management Body
PP	Political Parties	LEG	Legislature
CS	Civil Society	PS	Public Sector
		ME	Media

Pillars	Score		Score
Ombudsman	75	Capacity	67
		Governance	83
		Role	63
Commissioner for Information of Public Importance and Personal Data Protection	73	Capacity	56
		Governance	75
		Role	100
Supreme Audit Institution	69	Capacity	58
		Governance	83
		Role	50
Anti-Corruption Agencies	60	Capacity	69
		Governance	54
		Role	58
Judiciary	60	Capacity	56
		Governance	75
		Role	25
Political Parties	58	Capacity	75
		Governance	58
		Role	25
Civil Society	53	Capacity	69
		Governance	38
		Role	50
Executive	52	Capacity	58
		Governance	54
		Role	38
Law Enforcement Agencies	50	Capacity	50
		Governance	50
		Role	50
Business	50	Capacity	56
		Governance	58
		Role	13
Local Self-Government	50	Capacity	56
		Governance	50
		Role	38
Electoral Management Body	48	Capacity	50
		Governance	50
		Role	38
Legislature	46	Capacity	56
		Governance	38
		Role	50
Public Sector	42	Capacity	50
		Governance	46
		Role	25
Media	42	Capacity	50
		Governance	46
		Role	25

The preceding chapters and temple graph demonstrate strengths and weaknesses within each NIS pillar and also highlight imbalances in Serbia's overall National Integrity System.

Serbia's National Integrity System in overall is moderate with notable imbalance between the independent institutions on one side and government/legislative and political parties on the other side.

Legislature in practice does not use independence and oversight mechanisms awarded by regulations, but operates almost exclusively on the initiative of the government. Reports of the independent bodies are formally discussed and there is no monitoring over the implementation of their recommendations. A narrow ruling majority is represented by 16 parties, which makes the Parliament vulnerable to political blackmail.

The **Executive** is under the shadow of the President who is also the chairman of the party which is the backbone of the Government. The Government decision-making process is not transparent enough and depends on the agreement of the ruling party leaders. The Government is not effective in monitoring public companies under its jurisdiction.

Independence of the **Judiciary** is severely compromised by the non-transparent reappointment of judges which led to the termination of functions for more than 800 judges. Independence is also compromised by the changes in the law which ordered the review of decisions on unelected judges, but left the possibility to review functions of the judges elected in the previous process. Prosecution of corruption is extremely slow, and the system of accountability and work evaluation has not yet been established.

The public sector is politicized and under heavy political influence, although there are formal norms and regulations which should prevent that. Appointments, employment and promotions are often associated with party affiliation. There is no adequate protection of whistleblowers, public hearings on the regulations are the exception, and violations of the provisions of public procurement are very common.

The police, as part of the **law enforcement** pillar, has a separate department for fighting against corruption, but it does not have enough staff, given the extent of corruption. During the prosecution of corruption in sensitive cases there is a strong indication that the police is subject to political influence. An internal control system does exist, but with a number of shortcomings. The prosecution, just like the judiciary, has gone through re-election, which has affected its independence and further enhanced "self-censorship" in its work.

The **electoral management body** is not an independent body, but a body that consists of parties' representatives. Despite that fact and due to inter-party control, this body ensures the maintenance of fair elections. The electoral management body's work is mostly transparent.

The **Ombudsman** is independent from the government, works transparently, and is involved in the prevention of corruption through the promotion of good governance. The biggest problem is the lack of capacity and the unsolved problem of permanent accommodation.

After three years of work, **the State Audit Institution** has not solved the problem of permanent accommodation, does not have enough staff, and therefore has a limited scope of audits. Previous audits did not include the most important aspects of control - checking the appropriateness of spending money. Audit and annual reports of SAI do not include recommendations for improving the system of work in areas that SAI is dealing with.

The **Anticorruption Agency** began operating in 2010 and was immediately confronted with the obstruction and political resistance when it tried to implement provisions on conflict of interest. It was followed by a change in the law, which was canceled after one year by the Constitutional Court. In some areas the work of ACA has been slow due to lack of human resources. Number of cases where violation of the law is identified is still small.

Political parties have formal democratic structure, but in practice, all decisions are made by the President and a narrow circle of people around him. All parties violate the Law on Financing Election Campaigns, which remains unpunished, due to serious flaws of the legal framework for its control. The clientelistic approach and secret lobbying are a regular phenomenon.

The **media** is strongly influenced by political and economic power centers or advertisers who are, on the other hand, linked with political power centers. Investigative reporting is not developed and texts on corruption often arise as a result of political confrontation and not as the result of journalists' research.

Civil Society Organizations are extremely numerous and the procedure for registration is simple, but only a few organizations have adequate capacities and that are seriously and systematically engaged in the areas of policy reform and corruption. The system of CSO funding from public resources has not been fully regulated and leaves room for the influence of the government on the work of CSOs.

A **business** is easy to be registered and run, but there are problems with the judicial protection through enforcement proceedings and debt collection. The state is interfering in the functioning of the market and affects the competition through its measures. Anticorruption advocating of the business sector is extremely limited, companies agree to corruption in business, and cooperation with the civil sector in fight against corruption practically does not exist.

Despite the lack of resources, **the Commissioner for Information of Public Importance and Personal Data Protection** has substantially contributed to the right of access to information and the promotion of transparency in the work of state bodies.

Local Self-Government is strongly politicized and subject to the influence of political parties. There are no regulations on conflict of interest for local administration. Public hearings on the legislation are rare, even the cases of budget most often come down to formal public hearings and officials do not give reasons for their decisions.

RECOMMENDATIONS

Recommendations for each pillar of the NIS are listed below. The most important recommendations for the NIS, in general, are:

1. Curbing political corruption, particularly by increasing transparency of decision making in executive authorities, limiting discretion in handling public resources, by controlling the financing of political parties and election campaigns and limiting regulatory and financial interventions by the state.
2. Depoliticization of the management in the public sector, particularly in public companies, public services and local administration.
3. Strengthening the independence of the judiciary and creating conditions for the free and unselective operation of law enforcement authorities.
4. Protection of whistleblowers and introduction of other measures aimed at increasing the number of reported cases of corruption; proactive investigation, based on previously detected cases or other available reports (such as audit reports).
5. Providing sufficient capacities and resources to independent bodies involved in the anticorruption struggle and the creation of mechanisms by which the Parliament will implement the recommendations of independent bodies and thus oversee the Government and other authorities.
6. Regulation of media ownership transparency and the release from the influence of business and politics to it and editorial policy.

Recommendations for specific pillars are following:

LEGISLATURE

1. The Parliament should actively monitor the compliance of draft legislation with the Constitution and the rest of the legal system and with the strategic documents adopted by the Parliament, especially anticipated effects of proposed solutions to corruption and anti-corruption;
2. To improve legislative drafting and the adoption process: to consider whether laws could be implemented with envisaged funds, whether there was a public debate, to discuss legislative proposals of the opposition and citizens;
3. To ensure full implementation of the provisions of the Rules regarding the provision of information and disclosure of documents through the web-site (e.g., submitted amendments, discussion transcripts, biographies of the candidates elected to Parliament functions and some reports the Parliament may debate);
4. Amending the Constitution to exclude the applicability of immunity from prosecution for violations of anti-corruption regulations while retaining the concept that detention is not possible without the approval of the Parliament;
5. To amend the Rules of Procedure in order to ensure the inclusion of representatives of the interested public in the debates before parliamentary committees (at least the possibility of making proposals regarding matters under consideration at the meeting of the committee, with the guarantee that committee members will be acquainted with the proposals);
6. To regulate lobbying (influence or attempt to influence decision-making) in connection with the adoption of laws and other decisions by the Parliament;

7. The Law on the Parliament and the Rules on Procedure to regulate more precisely the issue of parliamentarians' conflict of interest;
8. Adopt a Code of Ethics for Members of Parliament;
9. Improve the practice of considering the report of the independent state institutions before the Parliament within the relevant committees and the plenum of the Parliament. When the Parliament accepts the report that indicates the need to make or change regulations, to initiate proceedings necessary to amend the legislation. When reports indicate a failure of Government or other executive bodies, to request corrective measures and to initiate the process for accountability of managers who failed to comply (e.g. ministers).

EXECUTIVE

1. The Government to submit detailed reports to the Parliament on its activities, which should include a report on the implementation of tasks from the Anti-corruption Strategy and programs related to the fight against corruption;
2. The Law on Ministries, after a public hearing and approval based on wider political structures, should determine the number and structure of line ministries and other public administration bodies in order to avoid frequent changes that are not based on the need for the most efficient performance of state administration, but needs to settle a number of ministerial places during the formation of the government;
3. To enable the public to influence the budget process and to provide explanation on the influence of the planned budget expenditures to the fulfillment of legal obligations of state bodies and implementation of defined priorities;
4. To ensure effective supervision of the constitutionality and legality of the Government decisions, by modifying the Law on the Constitutional Court and through the compulsory publication of Government's conclusions with regulatory effect;
5. To prescribe standards on conflicts of interest that would apply to special advisers in the government and ministries;
6. To regulate lobbying (an attempt to influence decision making and drafting of regulations) in order to reduce inappropriate non-institutional influences on the work of the Government;
7. To introduce an obligation to publish all decisions of the Government, except when it is necessary to protect predominant public interest;
8. Allow the media to attend Government sessions and to publish transcripts of sessions of the Government, except in the area when discussing issues that need to remain confidential; to publish a notice of the agenda of the Government;
9. Publish data on the candidates proposed by the Government, about elected, appointed and dismissed persons, along with the reasons for such decisions;
10. Provide greater public disclosure of data of the entire annual report of the Government (made up of reports of the Ministries). The report should include a review of the plans and implementation of all statutory functions of every administrative body;
11. To publish more data on budget execution and financial commitments of the state;
12. Precisely define the situation when a ministry must organize public hearings before a law is proposed, the method for public participation and the handling of received proposals, thus to

- allow all interested parties to submit proposals that could improve the quality of regulations and to ensure that all proposals are considered;
13. The introduction of the practice to call for responsibility of the government ministers if failure occurs as a delay in fulfilling the obligations – e.g. the delay in delivering to the Parliament the proposed budget and final account statement, non-compliance with decisions of the Commissioner for Information of Public Interest and other agencies, non-compliance with the recommendations of the Ombudsman, Anti-corruption Agency, the Supreme Audit Institutions and other bodies, failure to pass by-laws and failure to comply with the anti-corruption strategy and action plan;
 14. When setting up each new government, to establish and to publish the priorities in the fight against corruption area; these priorities should be in accordance with the general Anti-corruption Strategy and action plan for its implementation;
 15. Timely, thorough and transparent review of the work of public companies and financial plans of other organizations subjected to the Government's approval;
 16. The introduction of the practice to review all reports of the Anti-corruption Council and to solve problems that the report indicates. In case of disagreement about the facts or views of the Government with the Council, to publish the Government's position if the Council did the same;
 17. Continue the good practice of co-ordination of activities of public administration in the fight against corruption. The responsibilities of the Government's coordinator should be clear. There should be no confusion about the role of the Government's coordinator and duties of independent agencies (such as the Anti-Corruption Agency or public prosecutor).

JUDICIARY

1. To apply the rules on the independence of the judicial budget
2. Complete the contentious issues surrounding the general election of judges in 2009, through rapid examination of the complaints, providing reasons for the candidate's non-election and to regulate the status of non-elected judges till the end of the examination process, through the law
3. To determine the number of judges in accordance with the need to resolve all cases within a legal or a reasonable time frame, including the current backlog cases, to reduce the risks of corruption and to pay damages for failing to take a decision within a reasonable time frame
4. To conduct procedures for establishing the accountability of judges' deliberate violations or omissions in the work indicating ignorance of the law or unprofessional conduct
5. To ensure adequate transparency of the courts' work, so that the special rights that have parties and other persons in the proceedings do not constitute an obstacle for other persons to exercise their right of access to information
6. Setting up a web-site of all courts, the publication of bulletins about the work with required content, publication of data on cases in progress, data on public sales and any other data that is currently published on the "notice board" of the court
7. Amendments to the Rules of Court Procedure, so the responsibility of the court's president is stressed for planning, integrity and enforcement of anti-corruption regulations; to introduce a duty for the consideration of complaints in regular intervals; to determine more clearly criteria for the urgency; to ensure control of compliance with the "accidental judge" rule in the court registry office
8. Finalize the establishment of a system for monitoring the flow of cases through a database search on the Internet; to include all courts and all types of cases in such databases

9. Conduct an analysis of procedures in cases where it comes to allegations of corruption crimes, which take a long time and to present to the public reasons for this
10. Publish statistics on the number of legally adjudicated cases related to the corruption cases, and excerpts from the verdict
11. To ensure a right to compensation for victims of corruption, in accordance with the Council of Europe Civil Law Convention, ratified by Serbia
12. Conduct a specialization in the courts for cases of violation of anti-corruption legislation

PUBLIC SECTOR

1. Conduct an analysis of responsibilities and tasks performed by the state administration bodies and other public sector organizations in order to determine whether and in what areas their jobs overlap; to determine who will perform these tasks in the future and thus make public administration more efficient and cost-effective
2. Perform functional analysis within each body of the state administration - to determine the need for human resources to carry out tasks that the government authority has, and change the rules of job classification accordingly
3. To conduct survey on corruption and privilege in employment in the public administration and public services (e.g. testing to test the correlation between political party affiliation of officers from non-political positions with the political party whose representative was in charge of that institution) and based on the findings of the research to carry out further measures
4. Expand the range of norms on conflict of interest for civil servants in areas currently not covered by the law (log of assets, future employment, special rules for deciding on the procurement, rotation of civil servants) and to organize periodic review of the application of these standards in every body of the state administration
5. To regulate the duty of each state administration body to set up a web site, to publish certain information there, to update it regularly and to be responsible for the accuracy and completeness of published information; to ensure full implementation of the Law on free access to information in the state administration
6. Legal protection of whistleblowers to cover the entire public sector; to stimulate the reporting of such irregularities by the vigilant citizens and organizations that monitor the work of state bodies
7. Completion of the process of appointment of "civil servants on positions" through a public recruitment process (deadline passed on January 1st 2011)
8. To introduce a public recruitment procedure for the appointment of all officials that are currently not covered (e.g. directors of public companies)

Public procurements:

1. To improve monitoring mechanisms in public procurement, so that each of the institutions that play a role in this system given clear responsibilities and resources to fulfill these tasks
2. Standardize the identification of needs for procurement wherever possible. Through setting standards to avoid arbitrary decision-making in determining the items and quantities of purchases in a given year or procurement.
3. To provide explanation on why the planned acquisition is determined, why it is conducted

- in a non-competitive process and how the estimated value of procurement was calculated
4. Control of budget planning in order to prevent circumvention of public procurement rules
 5. Reducing the arbitrariness in determining purchasing entities' requirements and criteria for evaluation, related to the weighting of individual elements, the required references, proof of financial and technical qualifications and other requirements.
 6. To regulate problematic proceedings such as negotiating process and the method of collecting data on potential bidders for the procurement of low value
 7. Exclusion and reduction of the impact of the "human factor" in the public procurement procedure, by mandatory use of electronic procurement and electronic auctions, whenever feasible
 8. Identifying, reporting and effective resolution of conflicts of interest for all persons involved in the procurement process
 9. Enabling the filing of a legal suit for the protection of public interest in public procurement procedures (with the limitation of the suspense effect of such procedures) to any interested party.
 10. Detailed regulation on which provisions of public procurement contracts cannot be changed. Instead of additional non-competitive procurement of goods, works and services from the same provider, to implement a simplified procedure with negotiation in which other qualified bidders can participate. Changes to the contract price due to changes in the relevant market should be used only if it was foreseen by the tender documentation.
 11. Standardize procedures for checking compliance with the contract prior to payment. To regulate internal control systems for clients before payment is approved and completed.
 12. Limitation of advance payment before work, services and goods are delivered.
 13. Publication of data on bidders who have not implemented public procurement contracts as it had been planned in a way that will make them available to all clients in the future.
 14. The introduction of the duty to initiate annulment of the contract when the grounds exist
 15. Increasing the number of inspectors and the introduction of budgetary obligations to investigate every case when they reported a violation of the rules on public procurement.

LAW ENFORCEMENT

1. Increase the number of prosecutors and police officers who investigate cases of corruption in order to conduct proactive investigations on the basis of identified patterns of corrupt behavior, which can be assumed or for which there are indications that occur elsewhere;
2. To resolve all disputed cases of election of prosecutors in 2009; the transparent procedure and the rationale for decisions should be available;
3. Provide access to information about work of public prosecutors and police in accordance with the Law on Free Access to Information, and to provide for certain information without request on the prosecution's and police web-sites;
4. On web-sites of the police and prosecution authorities and in their premises, to post a clear explanation for persons that want to report corruption – what one needs to do, what to expect in further proceedings, when they can receive further notice of the proceedings and so on;
5. Commit the police and prosecutors to act on anonymous complaints if they are accompanied with the sufficient evidence;
6. Publish a regular overview of statistical information the prosecution and the police on the number of filed criminal complaints and indictments for criminal acts with elements of corruption;

7. Organize statistical evidence about criminal acts of corruption so that an area where there has been corruption (e.g. health, procurement, judiciary) could be identified;
8. Organize a targeted examination of possible corruption by the internal controls in connection with transactions that are most at risk of corruption;
9. Ensure the publication of decisions of public prosecutors on waiver of prosecution;
10. Provide a separate control for the concluded plea bargaining agreements;
11. Based on experience in the implementation of the confiscation of assets and the provisions of Article 20 of the UN Convention Against Corruption, to examine options for the introduction of the "illicit enrichment" criminal offence into the legal system;
12. Consider measures that would best serve the increasing number of reported crimes of corruption (e.g., release of liability of participants in the illicit transaction, awards for whistleblowers etc.).

ELECTORAL MANAGEMENT BODY

1. Adopting the Law on the State Election Commission, as it was already envisaged by strategic documents;
2. Provide a special budget line for financing REC, for greater transparency of its spending and efficient control;
3. Clearly define the legal status of REC (Parliament body or independent state body);
4. Introduce the practice of REC to submit work reports and for the Parliament to review these reports.

OMBUDSMAN

1. Providing permanent and adequate premises for the work of the Ombudsman
2. Increase the number of employees that deal with the protection of citizens from malpractice of administrative bodies in order to have more efficient proceedings in a large number of requests and even greater engaging of the Ombudsman on the basis of its own initiative
3. Proposing new and changes of existing laws on the basis of constitutional powers of the Ombudsman, and having in mind that corruption leads to serious threats of human rights
4. Ensuring full implementation of the Ombudsman's recommendations from the annual report.
5. To enlist the "right to good management" as a basic civil right.

SUPREME AUDIT INSTITUTION

1. Resolving of problems of premises for the work of the State Audit Institution permanently;
2. Changes of the Rulebook on the work organization and employment, to increase the number of auditors, so all suspicions reported to the SAI could be checked;
3. To include in mandatory audit program of the SAI financing of political parties and to determine the scope of audit so that it doesn't overlap with the control performed by the Anti-corruption Agency, but also in the way that all important aspects of political party financing are covered;
4. To include in the audit program public procurement planning procedures as soon as possible;
5. Strengthening internal audits and budget inspections, so that SAI could focus on matters of appropriateness of public expenditures;

6. Introducing the practice that SAI submits misdemeanor charges even before it submits report on audit;
7. Introduction of checking the regularity and appropriateness of public procurement in the mandatory part of the annual work program of the SAI;
8. Opening a channel for citizens to report irregularities to SAI and determining precise criterion on which SAI makes its auditing plan, including explanations on whether information received from citizens or institutions (PPO, ACAS) were checked.

ANTI-CORRUPTION AGENCIES

1. Reassessing of current plan and structure of employees in the Agency in the sense of accomplishing of all tasks that Agency has to perform, and especially in the context of obligations from newly adopted regulations (Law on Financing of Political Activities, Rulebook on Protection of Whistle-blowers), future anticorruption strategy (currently drafted) and large number of regulations relevant for fight against corruption, where Agency may initiate changes;
2. Proponents of regulation should be obliged to ask for opinion of the Agency regarding norms that might influence corruption or fight against corruption; Agency should be more active in commenting legislation even before introduction of such duty;
3. Publishing at web presentation of the Agency greater number of opinions given to officials regarding performing of other functions or jobs and other matters, without stating of personal data;
4. Publishing in property and income register of officials data on the amount of savings deposits;
5. Publishing of information on data to which officials' verification of accurateness and completeness of data was made;
6. Linking of all public registers or parts of registers managed by the Agency for easier search of data;
7. Providing, through changes of the Law on Agency, accountability of authority organs' heads for fulfillment of obligations from Strategy and Action plan;
8. Initiating misdemeanor procedures against authority organs that didn't deliver data to the Agency and inform the public about that;
9. Publication of names of companies owned by public officials on the webpage of the Anti-Corruption and cooperation of such companies with Agency;
10. Include in the annual financial checks program of the Anti-corruption Agency a number of law enforcement officials; such control for prosecutors and members of police units working to combat organized crime to be carried out at least once every two years.

POLITICAL PARTIES

1. Enabling effective application of the Law on financing political activities, adopting by-laws, and creating preconditions for effective control.
2. To remove loopholes in the Law and clarify provisions that are not precise enough.
3. To determine obligations of the associations founded and registered by the political parties.
4. Political parties should focus more on curbing corruption through systematic measures in their pre-election manifestos.
5. Considering the fact that lobbying isn't regulated by the law, political parties should proactively publish information about their finances and lobbying attempts that could be linked to their stances in parliament and government.

6. Political parties should sustain from influencing public sector through electing direct parties' representatives in state owned enterprises and other parts of public sectors.
7. Introducing internal financial control in political parties.
8. Part of the resources that are received from the budget based on parties' representation in Parliament should be used to increase the quality of the parliamentary groups' work – drafting of laws and amendments

MEDIA

1. Adopting a Law on the transparency of media ownership;
2. Regulating the system of direct and indirect financing of media by state bodies;
3. Monitoring the breach of the Journalists' code of conduct's regulations on conflict of interest and preventing corruption;
4. Adopting individual media's codes on gifts, hospitality and conflict of interest;
5. Supporting investigative journalism, both within the media themselves and by donors, through media projects;
6. Training journalists in reporting on corruption, investigative journalism and about tools, norms and institutions for systematic curbing corruption through preventive measures.

CIVIL SOCIETY

1. Publishing transparent annual financial reports and reports on projects supported by state bodies;
2. Strengthening internal control mechanisms in order to enhance CSO's integrity;
3. Adopting by-laws that will regulate distribution of money from the budget to CSOs. Anti-corruption projects should be financed from the budget;
4. Separating in budget classification funds for CSOs from the funds allocated for political parties, religion organizations and sport organizations;
5. Amending regulations in order to enables greater resources for CSOs for policy making advocacy and oversight of the public authorities;
6. Reassessing the system of oversight of the organizations that are entrusted with public authorities, such as professional chambers, organizations that represent owners of intellectual rights, author rights etc;
7. Professional chambers should be more active in sanctioning their members for breach of the ethical principles and reporting of law violation.

BUSINESS

1. Business should be more active in initiating measures aimed to remove systematic causes of corruption – unnecessary procedures, direct financing from the state, and misuse of inspections' discretion powers etc.
2. Promoting and initiating introduction of integrity plans in private business;
3. Reporting corruption in the private sector instead of covering up such cases. Encouraging whistle-blowers and making internal mechanisms for the protection of whistle-blowers;
4. Businesses should consider the support for CSOs projects aiming at curbing corruption in the public sector, especially in those areas where public and private sectors interfere, such as public procurements.

THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

1. Prescribe the right to free access to information as a constitutional right, as well as the position of the Commissioner as an independent state body;
2. Harmonizing Work Organization Act with the necessity of resolving a large number of complaints;
3. Providing adequate premises for the Commissioner's work;
4. Change the basis for dismissing the Commissioner to be less dependent on arbitrary interpretations;
5. To ensure the execution of the Commissioner's decisions (by the Government) whenever it becomes necessary;
6. Providing access to part of the data on on-going procedures, in a way that doesn't violate personal data protection;
7. Determine as an obligation of the proponent of the law and creators of by-laws to ask for the Commissioner's opinion regarding provisions that could influence the publicity of the authority bodies' work;
8. Changes of the Law on Free Access to Information of Public Importance that will allow the Commissioner to initiate misdemeanor procedures for the violation of that law and organize other matters of importance to increase the publicity of authority bodies' work.

LOCAL SELF-GOVERNEMENT

1. Adopting the Law on Local Administration and Salaries in Local Administration;
2. Harmonizing criterion for determining amount of the transfer to the local self-government from the Republic with the Law on Financing Local Self-government instead of with the Law on balanced regional development;
3. Introducing transparent models of rewarding and stimulating employees in local self-government, based on their work results;
4. Depoliticizing local administration, abandoning practice that the heads of local administrations are replaced after elections, as part of political changes;
5. Depoliticizing appointment of the managers of local public utility companies;
6. Amending local statute to ensure that public hearings are held, with precise procedures, before important decisions are adopted by local parliament and councils;
7. Increasing transparency by introducing obligatory publishing of all local parliament and council's decisions, publishing all information about public procurements, and enabling online posting of petitions and complaints against local administration.

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19. Zakon o lokalnoj samoupravi, Službeni glasnik RS, br 129/2007 (The Law on Local Self-Government)
20. Zakon o Narodnoj skupštini, Službeni glasnik RS, br. 9/2010 (The Law on National Assembly)
21. Zakon o određivanju maksimalnog broja zaposlenih u lokalnoj administraciji, Službeni glasnik RS, br 104/2009 (The Law on Determining the Maximum Number of Employees in Local Administration)
22. Zakon o određivanju maksimalnog broja zaposlenih u republičkoj administraciji, Službeni glasnik RS, br 104/2009 (The Law on Determining the Maximum Number of Employees in the Republican Administration)

23. Zakon o oduzimanju imovine proistekle iz krivičnog dela, Službeni glasnik RS, br 97/2008 (Law on Seizure of Proceeds of Criminal Offence)
24. Zakon o opštem upravnom postupku, Službeni glasnik RS, br 30/2010 (The Law on Administrative Procedure)
25. Zakon o organizaciji i nadležnosti državnih organa u suzbijanju organizovanog kriminala, korupcije i drugih posebno teških krivičnih dela, Službeni glasnik RS, br. 2/2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004 - dr. zakon, 45/2005, 61/2005, 72/2009 (The Law on organization and Competence of State Organs in Combating Organised Crime, Corruption and Other Serious Crimes)
26. Zakon o parničnom postupku, Službeni glasnik RS, br 125/2004 i 111/2009 (The Law on Civil Procedure)
27. Zakon o planiranju i izgradnji, Službeni glasnik RS, br 72/2009, 81/2009 (The Law on Planning and Construction)
28. Zakon o podsticanju građevinske industrije u uslovima ekonomske krize, Službeni glasnik RS, br 45/2010 (Law on Promoting of Construction Industry in Economic Crisis)
29. Zakon o policiji, Službeni glasnik RS, br. 101/2005 i 63/2009 - odluka US (The Law on Police)
30. Zakon o političkim strankama, Službeni glasnik RS, br. 36/2009 (The Law on political parties)
31. Zakon o prekršajima, Službeni glasnik RS, br. 101/2005, 116/2008 i 111/2009 (The Law on Misdemeanors)
32. Zakon o privatizaciji, Službeni glasnik RS, br. 8/2001, 18/2003, 45/2005, 123/2007, 123/2007 - dr. zakon i 30/2010 - dr. zakon (The Law on Privatization)
33. Zakon o privrednim društvima, Službeni glasnik RS, br. 125/04 (The Law on Enterprises)
34. Zakon o računovodstvu i reviziji, Službeni glasnik RS, br. 46/2006, 111/2009 (The Law on Accounting and Auditing)
35. Zakon o radiodifuziji, Službeni glasnik RS, br. 42/2002, 97/2004, 76/2005, 79/2005 - dr. zakon, 62/2006, 85/2006, 86/2006 - ispr. i 41/2009 (Broadcasting Law)
36. Zakon o radnim odnosima u državnim organima, Službeni glasnik RS, br 48/91, 66/91, 44/98 - dr. zakon*, 49/99 - dr. zakon**, 34/2001 - dr. zakon***, 39/2002, 49/2005 - odluka USRS, 79/2005 - dr. zakon, 81/2005 - ispr. dr. zakona, 83/2005 - ispr. dr. zakona (The Law on labour relations in public administration)
37. Zakon o radu, Službeni glasnik RS, br 4/2005, 61/2005 i 54/2009 (The Labour law)
38. Zakon o registraciji privrednih subjekata, Službeni glasnik RS, br. 55/2004, 61/2005 i 111/2009 - dr. zakoni (The Law on Registration of Legal Entities)
39. Zakon o slobodnom pristupu informacijama od javnog značaja, Službeni glasnik RS, br 120/2004, 54/2007, 104/2009 i 36/2010 (Free Access to Information Law)
40. Zakon o sprečavanju zlostavljanja na radu, Službeni glasnik RS, br. 36/2010 (The Law on Prevention of Harassment at Work aka Law on Mobbing)
41. Zakon o sredstvima u svojini Republike Srbije, Službeni glasnik RS, br. 53/95, 3/96 - ispravka, 54/96, 32/97 i 101/05 - dr. zakon (The Law on Public Property)
42. Zakon o stečaju, Službeni glasnik RS, br. 104/2009 (Bankruptcy Law)

43. Zakon o sudijama, Službeni glasnik RS, br 16/2008, 58/2009 - odluka US, 104/2009, 101/2010 (The Law on Judges)
44. Zakon o teritorijalnoj organizaciji Republike Srbije, Službeni glasnik RS, br 129/2007 (The Law on Territorial Organization)
45. Zakon o udruženjima, Službeni glasnik RS, br. 51/2009 (The Law on Civic Associations)
46. Zakon o uređenju sudova, Službeni glasnik RS, br 16/2008, 104/2009, 101/2010 (The Law on Courts' Organization)
47. Zakon o Visokom savetu sudstva, Službeni glasnik RS, br 116/2008, 101/2010 (The Law on Supreme Judges Council)
48. Zakon o vladi, Službeni glasnik RS, br. 55/2005, 71/2005 - ispr., 101/2007 i 65/2008 (The Law on Government)
49. Zakon o zaštitniku građana, Službeni glasnik RS, br. 79/2005 i 54/2007 (The Law on Ombudsman)



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