



Transparentnost Srbija  
Transparency Serbia

# **NATIONAL INTEGRITY SYSTEM ASSESSMENT Serbia 2015**

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# **NATIONAL INTEGRITY SYSTEM ASSESSMENT**

## **SERBIA 2015**



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

Transparency Serbia

Belgrade

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# I INTRODUCTORY INFORMATION

Transparency International (TI) is the global civil society organization leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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.

The National Integrity System Assessment (NIS) of Serbia is prepared by Transparency Serbia (TS), in cooperation with Transparency International Secretariat in Berlin (TI-S).

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## List of interviewees

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2. Aleksandar Bratkovic, director of Center for Development of Non-Profit Sector NGO
3. Dordje Popovic, advisor at government's Office for Cooperation with Civil Society
4. Vukosava Crnjanski, NGO CRTA
5. Veljko Milicevic, NGO CRTA
6. Pavle Dimitrijevic, Birodi NGO

7. Zoran Gavrilovic, Birodi NGO
8. Nenad Konstantinovic, REC member and former MP
9. Djordje Vukovic, representative of non-governmental organizations specialized for monitoring of elections and election activities CESID
10. Veljko Odalovic, deputy secretary of REC
11. Mijat Lakicevic, journalist, economic analyst
12. Ljiljana Gradinac, journalist
13. Zlata Djordjevic, journalist, member of ACAS Board
14. Marija Bogunovic, journalist
15. Predrag Blagojevic, journalist
16. Dinko Gruhonjic, journalist
17. Zoran Kosanovic, journalist
18. Zoran Zivkovic, MP
19. Gordana Comic, MP
20. Zoran Babic, MP
21. Elvira Kovac, MP
22. Mirjana Radakovic, Assistant to the General Secretary of National Assembly
23. Rasim Ljajic, vice president of the Government
24. Aleksandar Stoilkovski, judge and SJC member
25. Omer Hadziomerovic, judge, vice-president of Judges' Association
26. Vida Petrovic Skero, former Supreme Casation Court judge
27. Olgica Miloradovic, deputy Republican Public Prosecutor and head of Organised Crime Department in RPP Office
28. Slobodan Beljanski, attorney at law, former member of ACAS Board
29. Slavisa Orlovic, political analyst, professor at Faculty of Political Science
30. Zoran Stoilkovic, political analyst, professor at Faculty of Political Science, member of ACAS Board
31. Djordje Vukadinovic, political analyst
32. Milka Babic, Administrative Court's spokesperson
33. Aleksandra Kovacevic, spokesperson of Employers' Union of Serbia
34. Nenad Gujanicic, broker at Wisebroker
35. Radojko Obradovic, former MP
36. Milos Oparnica, Head at Sector for Internal Control, Ministry of Interior
37. Nenad Popovic, Chief Inspector in Department for fighting financial crime, Criminal Police Department in charge of the fight against organized crime
38. Vladimir Bozovic, advisor at Ministry of Interior and former State Secretary at Mol
39. Mila Bodrozic, Court of Honor, Chamber of Commerce

40. Slavica Jokovic, Chamber of Commerce
  41. Gordana Todorovic, Chamber of Commerce
  42. Sasa Radulovic, former minister of economy
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  44. Dubravka Drakulic, Ministry of Economy
  45. Milan Todorovic, Ministry of Economy
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  47. Zoran Sekulic, Fonet News Agency, Association of Media
  48. Sasa Mirkovic, State Secretary at Ministry for Culture and Information
  49. Dragan Janjic, Independent Journalists' Association of Serbia
  50. Nino Brajovic, Journalists' Association of Serbia
  51. Tatjana Babic, director of ACAS
  52. Vladan Joksimovic, deputy director of ACAS
  53. Rodoljub Sabic, Commissioner for Information of Public Importance
  54. Sasa Jankovic, Ombudsman
  55. Radosav Sretenovic, President of SAI
  56. Dragana Aleksic, Republican Secretariat for Public Policies
- and other who asked to remain anonymous.



# ACRONYMS AND ABBREVIATIONS

|         |   |
|---------|---|
| ACAS    | Anti-Corruption 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 Register's Agency                                  |
| BTI     | Bertelsmann Stiftung's Transformation Index                         |
| CCS     | Chamber of Commerce of Serbia                                       |
| CESID   | Center for Free Elections and Democracy, civil society organization |
| CINS    | Center for Investigative Journalism in Serbia                       |
| 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  |
| FH      | Freedom House   |
| FOIA    | Freedom of Information Act  |
| GCB     | Global Corruption Barometer   |
| GNI     | Gross National Income   |
| GOPAC   | Global Organization of Parliamentarians against Corruption          |
| GRECO   | Group of States against Corruption of the Council of Europe         |
| GRECO   | Group of States against Corruption of the Council of Europe         |
| HDI     | Human Development Index   |
| HJC     | High Judiciary Council  |
| HRMS    | Human Resource Management Service                                   |
| IAS     | International Accounting Standards                                  |
| ICS     | Internal Control Sector   |
| IFRS    | International Financial Reporting Standards                         |
| IJAS    | Independent Journalists' Association of Serbia                      |
| IMF     | International Monetary Fund   |
| 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                             |
| Mol     | Ministry of Interior  |
| 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 Cooperation in Europe  
OSCE Organization for Security and Co-operation in Europe  
PE Public enterprises  
PPO Public Procurement Office  
PPL Public Procurement Law  
PPP Public Procurement Portal  
PTT Public Enterprise of PTT Communications “Srbija” (POST)  
REC Republic Election Commission  
RPP Republic Public Prosecutor  
RSD Serbian Dinar  
RTS Radio Television of Serbia  
RWB Reporters Without Borders  
SAI State Audit Institution  
SB Supervisory Board  
SBA Serbian Broadcasting Agency  
SBPOK Police Service for Fighting Organised Crime  
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  
SNS Serbian Progressive Party  
SOE State Owned Enterprises  
SPC State Prosecutors Council  
SPS Serbian Socialist Party  
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  
WEF World Economic Forum

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## II EXECUTIVE SUMMARY

The evaluation of the National Integrity System (NIS) Assessment 2015 represents an update of NIS 2011. It assesses the period from 2011 to 2015, concluding in December 2015. It is an objective assessment of the legal basis and regulations of 16 pillars of integrity and assessment of their functioning in practice, with a special focus on progress or setbacks since 2011. The NIS is not an assessment of corruption within institutions<sup>1</sup> or merely the efforts that institutions invest in the fight against corruption. It is also an assessment of the pillars' potential to fulfill their social role in the fight against corruption and to resist corruption. This depends on both the legal framework and the functioning of institutions (pillars). The huge discrepancy between the laws and their implementation has continued and represents probably the biggest cross-cutting issue in Serbia's NIS.

In 2014 Serbia held early elections which resulted in the formation of a government made up of nearly the same parties as before the elections. Previous elections were held in 2012, and at the time, the leading party, the Serbian Progressive Party, gave the position of the Prime-minister to a minor partner (Socialist party of Serbia), as they couldn't form a government on their own. Following the 2014 elections, the vice prime-minister and prime-minister swapped their positions, as the Progressive Party won a majority but still decided to form a coalition government. This means that the government has been stable since 2014, and not vulnerable to political blackmail. However, this has also resulted in diminished control and oversight by the Parliament in practice. All parties are centered around strong leadership, and in the current balance of parties' strengths it means that the leader of the Progressive Party and Prime-minister holds huge political power in his hands. Political parties have strong influence over the public sector, which remains unprofessional and politicized.

In such circumstances the importance of watchdogs, such as independent oversight agencies for fighting corruption, civil society organisations and

the media become even greater. However, their ability to perform their watchdog role has remained rather limited. Although most of the independent agencies have increased their resources and quantity of work, their legal powers remain insufficient to fully achieve their mission. Failure of the Executive and Parliament to improve the legal framework and to resolve problems identified in annual reports of these institutions demonstrates insufficiency of political will to make systemic progress in fighting corruption. While most civil society organisations involved in fighting corruption maintain a critical point of view, and propose systemic reforms, most of the media has limited oversight potential, as they report favorably on the prime-minister and/or local leaders.

According to Transparency International's Corruption Perception Index, Serbia is amongst those countries with widespread corruption, with a score of 40 out of 100 in 2015, 41 in 2014 and 42 in 2013. The score is stagnating since 2007<sup>2</sup>. Results of 'Transparency International's Global Corruption Barometer for 2013'<sup>3</sup> show that more than a half of Serbian citizens consider political parties, the judiciary, public officials and health services to be extremely corrupt, while slightly fewer people have such an opinion of the police, parliament and the country's educational system. Citizens identified political parties (74%), health care (73%), and police (64%) as particularly corrupt<sup>4</sup>. There haven't been significant changes in this poll since 2011.

There has been a slight rise in the number of corruption-related charges in recent years. Most of the charges are for misuse of office and misuse of position, while the number of charges for accepting and giving bribes is very low, especially when compared with research on direct experience of citizens with corruption<sup>5</sup>.

The country's Anti-Corruption Strategy was adopted in July 2013. However, merely 16% of tasks from the Action Plan for implementation

<sup>2</sup> Scores before CPI 2012 are not fully comparable.

<sup>3</sup> Research was implemented in the period from 7 to 14 September 2012, two months after new government was formed

<sup>4</sup> UNDP and Medium Gallup poll from July 2014,

<sup>5</sup> UNDP Cesisid Research, February 2014, <http://www.mc.rs/upload/documents/istrazivanje/2014/02-12-14-Korupcija-u-Srbiji.pdf>

<sup>1</sup> With exception being made with new chapter State Owned Enterprises, in which susceptibility to corruption was measured

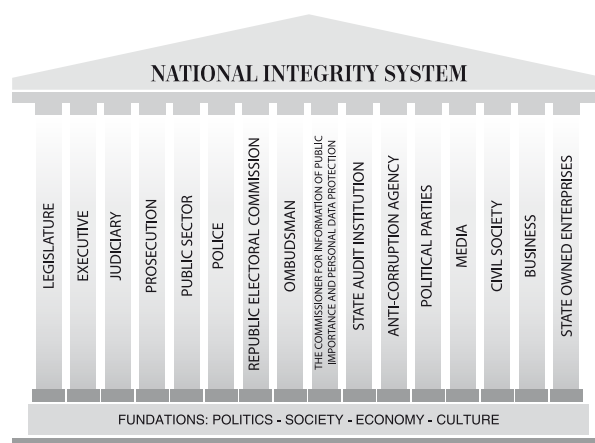
of the Strategy were completed in a proper and timely manner in the first year. Some of the tasks from the Action Plan were postponed in the draft Action Plan for Chapter 23<sup>6</sup> of the *Acquis Communautaire*. Implementation of the Action has plan faced similar challenges in 2015. Overall, the potential of the process of EU integration to establish a more effective and sustainable system of fighting corruption is far from being capitalized on. There have obviously been some positive results from that process through EC oversight of Serbian reforms and much more may be expected by 2020 (regarding, for example, the importance of independent bodies, a more pro-active approach and stronger track record in fighting corruption etc.). However, the process of integration has serious limitations and is also open to abuse. When Serbia circumvents its own competition rules through inter-state agreements, there is nothing in the *Acquis* to prevent this; when Serbian CSOs ask for a change to a draft law or initiate a public debate, ministries sometimes respond that the issue in question has “already been agreed with Brussels”<sup>7</sup>.

Apart from the Anti-Corruption Strategy and Action Plan, other important normative activities have included the adoption of the Whistle-blowers’ Protection Law (December 2014, in force since June 2015), the new Law on Public Procurement and the Law on Public Enterprises (December 2012). Media laws which increased transparency of ownership of the media (although not fully<sup>8</sup>) were adopted in 2014. The 2011 Law on Financing Public Activities, whose implementation began in 2012, was amended in 2014.

Despite this progress, there are still serious legal obstacles for the systematic suppression of corruption. Some laws need to be amended (Law on Anti-Corruption Agency, Law on Free Access to Information of Public Interest, Law on Financing Political Activities), some laws need to be implemented (Law on Public Enterprises in the field of professionalization and departicipation) and some laws still need to be adopted (regulating lobbying). Transparency of public institutions, especially of the Government, raises concerns.

6 <http://www.mpravde.gov.rs/tekst/2986/pregovori-sa-eu.php>  
7 [http://www.transparentnost.org.rs/images/dokumenti\\_uz\\_vesti/Zasto\\_nema\\_JR\\_o\\_Nacrtu\\_ZoJP.doc](http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Zasto_nema_JR_o_Nacrtu_ZoJP.doc), [http://www.transparentnost.org.rs/images/dokumenti\\_uz\\_vesti/Javne\\_rasprave\\_najvazniji\\_nalazi\\_maj\\_2015.doc](http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Javne_rasprave_najvazniji_nalazi_maj_2015.doc)  
8 More in Chapter Media

## NIS Pillars



The average score for the entire NIS 2015 is 58, which is three points higher than average score for NIS 2011. It should be noted that a great discrepancy between laws and practice remains, with practice scores being significantly lower than laws scores. However, there have been some improvements in practice within some pillars and within some areas (such as independence, transparency and accountability of ACAs, independence of the Executive, accountability of Political Parties’ and the Judiciary, and transparency of the Legislature). Scores for role indicators have remained generally low, which indicates that pillars do not recognize their anticorruption role, or that they are simply not being fulfilled.

Three pillars, all of them being independent bodies, scored more than 70 (the Commissioner for Information of Public Importance and Personal Data Protection, the Ombudsman and the State Audit Institution). These are all independent institutions with a strong role in the fight against corruption, but they lack adequate resources. Six pillars are rated 50 or less. At the very bottom are the unreformed Public Sector and State Owned Enterprises, which are found to be corruption-prone, and the Republican Electoral Commission (Electoral Management Body) that is structured as a partisan body.

| Pillar   | Score 2015 | Score 2011 |
|--|------------|------------|
| Commissioner for Information of Public Importance and Personal Data Protection | 79         | 73         |
| Ombudsman  | 77         | 75         |
| Supreme Audit Institution  | 73         | 69         |
| Anti-Corruption Agency   | 67         | 60         |
| Judiciary  | 67         | 60         |
| Political Parties  | 65         | 58         |
| Civil Society  | 55         | 53         |
| Executive  | 54         | 52         |
| Prosecution  | 52         | NA         |
| Police   | 52         | NA         |
| Legislature  | 50         | 46         |
| Media  | 50         | 42         |
| Business   | 50         | 50         |
| Public Sector  | 49         | 42         |
| Electoral Management Body  | 43         | 48         |
| State Owned Enterprises  | 41         | NA         |

**The Commissioner for Information of Public Importance and Personal Data Protection** still faces the problem of limited resources, primarily with the number of staff, but this has begun to improve since NIS 2011. There have been no attempts to interfere with the activities of the Commissioner, apart from occasional verbal attacks against the head of the institution. The operational independence of the institution largely depends on the skills and qualities of the commissioner himself. The work of the institution is transparent, even beyond the limits laid down by the law. The Commissioner is recognized as being active in the Anti-Corruption field, in particular through raising awareness regarding the role of free access to information and pro-active transparency in the prevention of corruption.

**The Ombudsman** acts independently from the executive authority, but there are attempts to draw him into political debates or to politicize his reports. The Ombudsman's work is transparent and its results are visible. As noted in NIS 2011, the Ombudsman faces the problem of lack of resources.

Over the past seven years, the situation regarding **the State Audit Institution's (SAI)** capacities and resources has improved, but is still far from satisfactory. There have been no changes regarding the legal framework for independence since NIS 2011. In practice, the SAI seems to act independently, but the fact that criteria according to which the subjects of audits are selected are not transparent could

raise questions over whether that selection could be done under the influence of other actors, outside the SAI. Overall, both the scope and transparency of SAI work has increased since NIS 2011, although there have been no relevant changes in the regulations since NIS 2011. SAI regularly files criminal and misdemeanor charges for violations discovered during audits.

**The Anti-Corruption Agency** has improved its transparency, independence and accountability in practice, since NIS 2011. It operates mostly in a professional and non-partisan manner and it publishes all the information it is obliged to. Its web site has improved significantly since NIS 2011, but it is still not comprehensive enough and not up-dated regularly. The agency still does not have adequate resources and it is facing obstruction in its attempts to make changes to the law which would give it greater competences and investigation powers. Prevention is one of the Agency's main jurisdictions and it is fully engaged in this field - with improvement noted in comparison with NIS 2011. The Agency is also active in the field of anti-corruption training and education, with its scope being limited by the Agency's scarce resources.

**The Judiciary's** independence is jeopardized by interference from the Government and representatives of political parties in its work. After the unsuccessful reform of the judiciary described in NIS 2011, almost all judges returned to their functions. Without effective instruments for appraisal of judges and evaluation, this resulted



in problems with the quality of judges' work. Most of the mechanisms for ensuring integrity of members of the judiciary now function in practice. Also, since the NIS 2011 disciplinary charges and sanctions, as the most important accountability mechanisms, have become operative. On the other hand, complaints are still not treated as mechanisms for establishing responsibility or accountability of judges, but instead just as a mechanism to solve individual problems in procedures. Effectiveness of judicial oversight of the executive has also improved since NIS 2011, but the Administrative court is still lacking capacities, while the timing of the Constitutional Court's decisions in "politically sensitive" cases sometimes raises criticism. The number of convictions for corruption-related criminal acts has risen. However, statistics also include some cases that could hardly be considered "corruption" and the majority of penalties are below the legal minimum. Court procedures in some of the largest corruption cases last very long.

There has been significant improvement regarding transparency of **political parties'** financial information since NIS 2011. That improvement is mostly a result of compliance with the new legal provisions, in force since 2012. Another change of the legislation since NIS 2011 has resulted in parliamentary parties and especially large ones having abundant resources available. New parties and those that fail to reach the threshold are facing problems with insufficient resources for functioning unless they have abundant private financing. Regarding independence, there have not been significant changes since NIS 2011. However, parties' representatives claim that the practice of putting pressure on a party's donors, by frequent financial and tax check-ups, noted in NIS 2011, has ceased. Legal safeguards to prevent unwarranted interventions in the activities of political parties are sufficient. There has been a notable improvement in financial oversight of political parties in practice since NIS 2011. All major parties deliver to the Anti-Corruption Agency their annual financial reports, reports on donations and reports on election campaign costs. All parties have regulated democratic internal procedures, but most follow a leader-centric political style, with decisions being made by the party's president and his/her closest associates. The fight against corruption is one of the top issues in political campaigns, but there

is no genuine commitment to curb corruption. On the contrary, influence of political parties in the public sector is considered to be among the main causes of corruption.

There have been some changes regarding **Civil Society Organizations** since 2011. Namely, there is some improvement in the area of public funding - the law stipulates that public funds are allocated solely on the basis of competition rules and the by-law that specifically regulates this area was adopted in 2012. On the other hand, these rules are not always respected and there is no comprehensive and verified information available about the level of budget support for CSOs. The procedure for registration of CSOs is simple and CSOs are numerous. There has not been any improvement regarding the Code of Ethics for CSOs which was presented in the first half of 2011. Only a few organizations have adequate capacities and are seriously and systematically engaged in the areas of policy reform and anti-corruption. The capacity of CSOs to act as public watchdogs is low, especially at the local level. As was the case in 2011, CSOs experience undue influence, such as pressure from local authorities, during the implementation of the monitoring activities and therefore, they are avoiding working in this field.

The **Executive** is no longer under the shadow of the President, as it was in NIS 2011, since the prime-minister, who is also the president of the ruling party, is the most powerful political figure in the country. Therefore, the Government is much more independent than before - it has real political power and it is a genuine decision maker. The Government has committed to reforming the public sector, but the public sector is still highly politicized (see below). Government's publically declared commitment to fighting corruption is undisputable, but the results are limited. There are instances in which genuine political will to fight corruption could be questioned, including instrumentalisation of that fight for political benefits. There hasn't been any improvement in transparency of the government since NIS 2011.

**The Prosecution** still faces self-censorship and political influence. Just as in 2011, the prosecution suffers from lack of resources which is an obstacle for proper performance of prosecutors' functions. Regarding independence, there have

not been major changes of legislation since 2011. In practice, vulnerability of the prosecution, caused by the influence of executive and legislative branches via election of public prosecutors, and the prosecution's own hierarchical organisation causes concern for influence from political authorities in cases. Legal powers for efficient prosecution of corruption exist and the number of corruption related investigations has increased. However, this is still not in line with the actual level of corruption, due to limited use of pro-active measures and lack of incentives for reporting corruption. Moreover, investigation of high-profile corruption cases partly depends on political considerations.

**Police** resources cannot be considered sufficient. Its independence is endangered by politicization of investigations, *ad hoc* task forces for investigation of abuse cases prioritized by politicians, and political parties' interference in recruitment and promotions. Since 2011 there has not been any change in legislation regarding independence of the police. Although a certain level of accountability of the police and the Ministry of Interior is achieved in practice through the mechanism of citizens' complaints, the work of the Internal Control Sector and the Ministry's reports to parliamentary committees, integrity of the police is severely compromised by scandals leaked to the media, without any official reaction or information on outcomes. The number of uncovered, reported and investigated cases has constantly increased during the last decade. However, when compared with surveys on citizens' direct experience with corruption, the real number of undiscovered corruption cases remains extremely high. The new Law on Public Procurement, adopted in 2012, has improved the legal framework, providing preconditions for more transparency in procurements for police.

**The Legislature** is still facing the problems noted in NIS 2011. It doesn't use its power in practice and it doesn't use oversight mechanisms. Some new mechanisms have been introduced since NIS 2011, but they are not exercised in practice or they are used very restrictively. There hasn't been any major change regarding Parliament's independence in legal terms, since the NIS 2011 assessment. Reports of independent bodies are discussed but there is no monitoring of the implementation of their recommendations.

Integrity mechanisms for parliamentarians are underdeveloped. The Parliament has adopted some anti-corruption related legislation in the past two years. However, some of the adopted laws had important flaws but the parliamentary majority expressed very limited will to accept suggestions for changes

**Media** and journalists face a lot of pressure and self-censorship. Media is still, as noted in NIS 2011, strongly influenced by political and economic power centers or advertisers who are linked with political power centers. Investigative reporting is not developed and reporting on corruption is mainly based on government and police press issues and "leaked" information from on-going investigations. Since NIS 2011, new media legislation (adopted in 2014) has significantly improved the legal framework, but the implementation of these laws still needs to be tested in practice.

In the **business** area, there have been no major changes since NIS 2011. There is a huge discrepancy between laws and practice in this sector. Establishing a business is simple, but operating one isn't, due to problems with slow contract enforcement, as identified in NIS 2011. The Law on Terms of Settlement of Financial Obligations in Commercial Transactions is not implemented in practice. State presence in the economy is significant. Legal unpredictability and uneven implementation of laws, as well as unpredictable policy related to charging various taxes and levies are forms of unwarranted interference of the state in the business sector. General data on registered companies are available to the public. It is, however, questionable, how reliable financial reports and auditing reports are. The business sector is not active enough in engaging the government on anti-corruption and it provides practically no support to anti-corruption efforts of CSOs.

**The public sector** is still politicized. Regulations on professionalization of the public administration have been directly violated since 2011, and a significant number of top civil servants are still in an "acting" position. Appointments, employment and promotions of other civil servants are often associated with party affiliation. Transparency of public sector activities is not fully ensured. There is no evidence that the Law on Whistleblowers, adopted since NIS 2011 (in



force since June 2015), has led to an increase in the number of reported cases of wrongdoing, while several cases of people asking for the protection on the basis of this law are publically known. There have been no relevant changes to the Civil Service Act. As in NIS 2011, existing regulations on professionalization of public administration are not fully implemented.

The 2014 public administration reforms, driven by budget concerns and announcements of new policies (“hard reforms”) has not resulted in major changes yet. Institutional oversight of state owned companies is ineffective and non-transparent (see below). There have been slight improvements in comparison to the NIS 2011 in areas such as public procurements and preparation of draft laws. The public procurement legal framework is mostly in line with EU standards and recognizes protection from corruption as a priority. However, the rules are not always enforced and competition levels are still low. Similarly as in 2011, notifications on corruption and the fight against corruption are not done in a comprehensive manner. A small number of administrative bodies have adopted their own anti-corruption plans and a few administrative bodies organized their own programs and allowed citizens to assist in fighting against corruption.

There haven’t been any major changes regarding the **Electoral Management Body** since NIS 2011 in terms of legislation, practice or in their role. It is not an independent body, but a body that consists of party representatives. Despite this fact and due to inter-party control, this body ensures the maintenance of fair elections. Its transparency has decreased since NIS 2011 because basic data about the Republican Electoral committee (REC) - funds used by the REC and other information as stipulated by the Law on Free Access to Information of Public Importance - are either not available or are outdated since the REC’s Information Directory hasn’t been updated for more than three years.

**State Owned Enterprises (SOEs)**, a new pillar, not included in NIS 2011, are under the control of political parties. In most central government public enterprises, legal measures aimed to narrow the influence of the executive, including open recruitment procedures, are not implemented and SOEs are managed by discretionally ap-

pointed “acting directors” or persons appointed politically, based on previous legislation. SOEs frequently violate rules regarding transparency of their work, as well as provisions of other laws on public procurement and accounting. The quality of supervisory boards’ work proves that the system of accountability, set by laws, does not function fully in practice.

The NIS analysis recommends:

- *increasing transparency, primarily in the work of the Executive with regards to the contracting, cost-benefit analysis, oversight, lobbying and appointment decisions of state owned enterprises;*
- *depoliticizing management in the public sector and in particular in state owned companies;*
- *further strengthening the independence and accountability of the judiciary and creating conditions for free and unselective operation of law enforcement authorities;*
- *introduction of measures aimed at increasing the number of reported cases of corruption, such as in-depth research, proactive investigations, credible protection of whistle blowers and promotion of real-life cases investigated on the basis of their reports;*
- *providing sufficient resources and legal powers to independent bodies involved in the anticorruption struggle and wider use of independent bodies’ reports for parliamentary oversight of government, in particular the Anti-Corruption Agency’s report on implementation of key strategic documents;*
- *introducing the practice of preparing and considering anti-corruption risks in laws and regulations and assessing the impact of anti-corruption laws and strategies;*
- *fully implementing media laws, and creating conditions for media to operate without pressure and influence from political and economic centers of power.*

# III ABOUT THE NIS ASSESSMENT

## 3.1. Introduction

Corruption is a serious problem in Serbia. Citizens have ranked the fight against corruption among the three biggest priorities<sup>9</sup>. Each government since 2000 has vowed to curb corruption. And still, corruption remains a problem, indicated by both national and international actors, such as the EU's in its regular reports on Serbia's progress towards European integration.

The fight against corruption has been mostly based on periodic initiatives by the police and prosecution, encouraged by politicians and sometimes used for political purposes as well – either to impress potential voters or to display political will to international stakeholders.

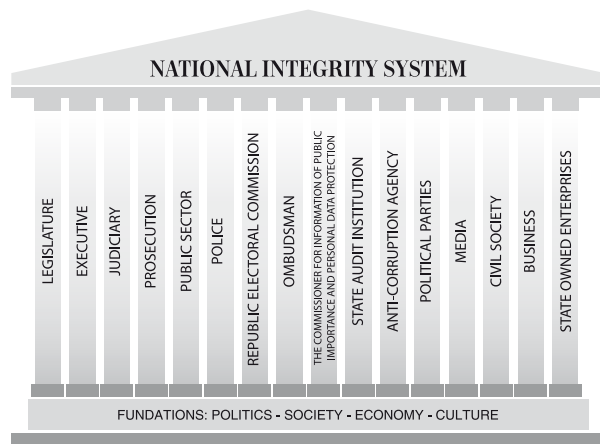
In efforts to formally meet European standards, new laws have been adopted and new institutions formed, but in general it has been overlooked that institutions of society and their anti-corruption potential are the key to long-term, sustainable and lasting fight against corruption. All of this was indicated in the NIS 2011 assessment.

For these reasons the NIS 2015 analysis is important as an impartial expert assessment of the vulnerability of social institutions and their potential for combating corruption. Comparison with NIS 2011 offers the chance to assess whether there has been a shift in society in practice over the last two governments, which won elections in 2012 and 2014 on anti-corruption rhetoric.

## 3.2. The aim of the assessment

The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The

framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media and civil society (the 'pillars' as represented in the diagram below).



The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.

A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country's institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbors systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

<sup>9</sup> <http://www.mc.rs/upload/documents/istrzivanje/2014/02-12-14-Korupcija-u-Srbiji.pdf>

The NIS assessment is neither an evaluation of the level of corruption in individual parts of the system nor an evaluation of their effectiveness. 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.

The key objectives of the National Integrity System assessment are to generate:

- an improved understanding of the strengths and weaknesses of Serbia's National Integrity System within the anti-corruption community and beyond
- momentum among key anti-corruption stakeholders in Serbia for addressing priority areas in the National Integrity System

The primary aim of the assessment is therefore to evaluate the effectiveness of Serbia's institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Serbia to advocate for sustainable and effective reform.

This report represents an update to the previous NIS assessment conducted in 2011. The primary purpose of this NIS update is to: (a) assess whether there has been any progress over time with regards to the country's integrity system, (b) identify specific changes (both positive and negative) which have occurred since the previous NIS report was published, and (c) identify recommendations and advocacy priorities for improving the country's integrity system.

## Definitions

The definition of 'corruption' which is used by Transparency International is as follows:

**'The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.'**<sup>10</sup>

'Grand corruption' is defined as 'Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.'<sup>11</sup>

'Petty corruption' is defined as 'Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.'<sup>12</sup> 'Political corruption' is defined as 'Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.'<sup>13</sup>

## 3.3. Methodology

In Transparency International's methodology, the National Integrity System is formed by 16 pillars.

The Serbia NIS report addresses all 16 "pillars" or institutions believed to make up the integrity system of the country. Some individual pillars have a huge number of individual institutions and / or organizations (CSOs, State Owned Enterprises, Political Parties, Business, Media). Compared to NIS 2011, Police and Prosecution pillars, which were comprised in one pillar (Law Enforcement Agencies) are now separate pillars, Local Self- Government pillar which existed in NIS 2011 is not included in NIS 2015, and new pillar, State Owned Enterprises, is now included in the analysis.

<sup>10</sup> The Anti-Corruption Plain Language Guide, Transparency International, 2009, p.14.

[http://www.transparency.org/whatwedo/pub/the\\_anti\\_corruption\\_plain\\_language\\_guide](http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide) [accessed 21 December 2012].

<sup>11</sup> Ibid., p.23.

<sup>12</sup> Ibid., p.33.

<sup>13</sup> Ibid., p.35.

| CORE GOVERNANCE INSTITUTIONS | LAW ENFORCEMENT INSTITUTIONS | INDEPENDENT INSTITUTIONS   | NON-GOVERNMENTAL ACTORS |
|------------------------------|------------------------------|--|-------------------------|
| Legislature                  | Police                       | Commissioner for Information of Public Importance and Personal Data Protection | Political parties       |
| Executive                    | State Prosecutor             | Ombudsman  | Media                   |
| Judiciary                    |                              | Supreme audit institution  | Civil society           |
| Public sector                |                              | Anti-Corruption Agency   | Business                |
|                              |                              | Electoral management body  | State Owned Enterprises |

Each of the 16 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

| DIMENSION                     | INDICATORS (LAW AND PRACTICE)               |
|-------------------------------|---|
| Capacity                      | Resources<br>Independence                   |
| Governance                    | Transparency<br>Accountability<br>Integrity |
| Role within governance system | Pillar-specific indicators                  |

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritize areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the ‘foundations’ – in which the 16 pillars operate.

|          |         |         |         |
|----------|---------|---------|---------|
| POLITICS | SOCIETY | ECONOMY | CULTURE |
|----------|---------|---------|---------|

The National Integrity System assessment is a qualitative research tool. It is guided by a set of ‘indicator score sheets’ developed by Transparency International. These consist of a ‘scoring question’ for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

|                     |  |
|---------------------|--|
| PILLAR              | Judiciary  |
| INDICATOR NUMBER    | 3.1.2  |
| INDICATOR NAME      | Resources (practice)   |
| SCORING QUESTION    | To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?   |
| GUIDING QUESTIONS   | Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary's budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge's knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest? |
| MINIMUM SCORE (1)   | The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.   |
| MID-POINT SCORE (3) | The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.   |
| MAXIMUM SCORE (5)   | The judiciary has an adequate resource base to effectively carry out its duties.   |

The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions<sup>14</sup>.

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were inter-

viewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants that are people 'in the field', were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

### 3.4 Scoring system

While the NIS is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system.

Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than

<sup>14</sup> These indicator score sheets provide guidance for the Curaçao assessment, but when appropriate the lead researcher has added questions or left some questions unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website: [www.transparency.org/policy\\_research/nis/methodology](http://www.transparency.org/policy_research/nis/methodology).



focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system's overall robustness.

|             |        |
|-------------|--------|
| VERY STRONG | 81-100 |
| STRONG      | 61-80  |
| MODERATE    | 41-60  |
| WEAK        | 21-40  |
| VERY WEAK   | 0-20   |

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

For this NIS update, the scores for the previous NIS assessment are presented alongside the updated scores to allow for comparison over time in Serbia.

### 3.5 Consultative approach and Validation of findings

The assessment process in Serbia had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives. The consultative approach to work on NIS was conducted on two levels.

The authors of the report conducted more than 50 interviews during the research phase and consulted with experts in each field analyzed.

Preliminary findings were shared with Advisory Group, whose members were senior representatives of institutions or other prominent experts in the surveyed fields and counted a total of 8 members.

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.

The consultations helped to further refine the report, particularly by adding and prioritizing recommendations. Final discretion over the content and scores remained with Transparency Serbia.

Finally, the full report was reviewed and endorsed by the TI Secretariat, and an external academic reviewer provided an extensive set of comments and feedback.

### 3.6 Background and history of the NIS approach

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 be best 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 actual 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. To date, 40 assessments using the new methodology have been published across the globe. These are available at [http://transparency.org/policy\\_research/nis/](http://transparency.org/policy_research/nis/)





# 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**

Political institutions in the country are not fully functional; sometimes they act in accordance with political will of other centers of power<sup>15</sup>, and therefore they cannot be considered fully supportive to an effective national integrity system. As presented by BTI 2014 Serbia Report, “democratic institutions continue to perform their functions, but often are inefficient due to frequent friction between departments, lack of an adequate financial and human resources, and the prevailing influence of political parties represented in the executive branch”. BTI 2014 report for Serbia noted that “the parliament and judiciary have yet to become fully independent institutions. In practice, power is concentrated in the executive and the ability of the parliament and judiciary to hold the executive accountable is questionable”<sup>16</sup>.

Serbia is an electoral democracy. The President, elected by citizens to a five-year term, plays a largely ceremonial role according to the Constitution. The Parliament is unicameral, with 250 members, elected to four-year terms in a proportional election system, from party lists. The Prime Minister is elected by the Parliament. After early parliamentary elections in 2014, OSCE/ODIHR Limited Election Observation Mission noted in its final report that elections offered voters a genuine choice and “fundamental freedoms were respected throughout the campaign, but credible reports about cases

of intimidation of voters overshadowed the campaign environment”<sup>17</sup>. Previous elections were held in 2012. There was no need for early elections, the government didn’t lose support, but one of the parties, a member of the coalition, grew stronger in opinion polls and they wanted this confirmed via elections. Although they could have formed the Government on their own, they decided to form the same coalition as before the elections. In this situation, the Parliament and minor coalition partners have almost no influence on decision-making which depends entirely on the major ruling party (Serbian Progressive Party), or more precisely, its president and Prime Minister Aleksandar Vucic.

The controversial practice of “blank resignations,” which could formerly be handed by the elected members of Parliament to their respective parties, is now prohibited. Opposition members of Parliament chair four of 19 standing committees, including the Committee for European integration. However, opposition members of Parliament no longer chair the committees for finance, security or internal affairs<sup>18</sup>.

The freedoms of association and assembly are constitutionally guaranteed, and the government generally respects these rights in practice<sup>19</sup>. However, the EU 2015 Progress Report on Serbia warned that although “the legal and institutional framework for the respect of fundamental rights is in place.[...]consistent implementation across the country needs to be ensured, including as regards protection of minorities. More needs to be done to ensure conditions for the full exercise of media freedom and the freedom of expression”. Freedom House ranked Serbia in 2014 as “free” with a score of 2.0 (on a scale of 1 to 7, where 1 is completely free) in a “Freedom in the World 2015 ranking”. The score remains unchanged

15 See Chapter Legislative

16 <http://www.bti-project.org/reports/country-reports/ecse/srb/2014/index.nc>

17 <http://www.osce.org/odihr/>

18 <http://www.bti-project.org/reports/country-reports/ecse/srb/2014/index.nc>

19 <http://www.bti-project.org/reports/country-reports/ecse/srb/2014/index.nc>

from previous years. Both in areas of civil liberties and political rights, the score is 2.0<sup>20</sup>. However, in the FH “Nations in Transition” 2015 ranking the average “democracy score” slightly increased compared to the previous report, from 3.64 to 3.68 (on a scale of 1 to 7, where 1 is democratic and 7 is authoritarian), with deterioration in the field of independent media while the situation remained the same as last year in the areas of the electoral process, civil society, democratic governance at the national and local level, judicial framework and corruption<sup>21</sup>.

According to the Worldwide Governance Indicators of the World Bank, the quality of governance is rated low in most areas, with minor increases or decreases in some areas in recent years. Ranks for 2013 are: in the field of combating corruption 50.7 (compared to 49.1 in 2010), the rule of law 44.5 (41.7), the quality of regulation 51.2 (52.6), government efficiency 50.2 (51.7), political stability 42.7 (30.7) and accountability of government 56.9 (55.9), where the indices range from 0 (worst) to 100<sup>22</sup>.

## 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

Given current relations among social groups and between social groups and the political system in the country, it could be concluded that establishing an effective national integrity system might not be considered as a top priority by most actors in the society.

One of the major problems mentioned in NIS 2011 remains- social cohesion is threatened by socioeconomic disparities between the regions and continuing poverty, enhanced by austerity measures since 2011.

The Constitution guarantees freedom of religion, which is generally respected in practice.

Serbia is defined by Constitution as a secular state, and its society is largely secular. Religious dogmas have no noteworthy influence on politics or the law.

Serbia has established a strong system for guaranteeing and protecting civil rights, and for protecting citizens from discrimination. However, the most effective practical measures and efficient ways of implementing the legislation have not been fully developed yet. According to 2012 research, Roma, poor and disabled persons, old people, women and members of the LGBT population continue to face discrimination in Serbia<sup>23</sup>. Discrimination against Roma is still prevalent in employment, education, health care and housing<sup>24</sup>.

On several occasions the Government banned public activities by human right groups, including LGBT groups, after right wing groups announced they planned to hold “counter activities”. The explanation was “safety”. The pride Parade, after several years of cancelations for “safety reasons” following riots in 2010, took place in 2014, without major incident, and it was marked in EU 2014 Progress Report as “ an important milestone towards the effective exercise of human rights in general and lesbian, gay, bisexual, transgender and intersex (LGBTI) rights in particular<sup>25</sup>.”

The Constitution guarantees all minorities a number of individual and collective rights and the political parties of national minorities are represented in the parliament. Parties of national minorities are exempted from thresholds to enter the national, provincial and municipal assemblies. Ethnic minorities have access to media in their own languages, their own political parties, and other types of associations. The political leadership has sought to integrate national minorities, but occasionally faces problems with the “Presevo Valley”, the ethnic Albanian majority region in southern Serbia and in Sandzak, region with predominant Muslim – Bosniak population.

Women make up 34percent of the Parliament, which is higher than 22 percent in 2011. Four women currently serve as cabinet ministers, two

20 <http://www.freedomhouse.org/report/freedom-world/2014/serbia-0>  
21 <http://www.freedomhouse.org/report/nations-transit/2014/serbia>  
22 [http://info.worldbank.org/governance/wgi/sc\\_chart.asp](http://info.worldbank.org/governance/wgi/sc_chart.asp)

23 Center for Free Elections and Democracy, or CESID, opinion poll, December 2012

24 <http://www.bti-project.org/reports/country-reports/ecse/srb/2014/index.nc>

25 EU 2014 Progress Report

of them being vice-presidents of the government at the same time. According to electoral regulations, women must account for at least 30 percent of a party's candidate list.

Serbian civil society is well developed with a huge number of organizations - around 23,500 registered SCOs which employ 7,000 staff along with 5,000 part-time employees and volunteers<sup>26</sup>. Civil society is mainly focused on social and community services and charitable activities. Advocacy for change in government policy is conducted by a small number of (semi-)professionally organized NGOs<sup>27</sup>. The main problems that civil society faces include the misuse of public funds for political party financing and the sustainability of civil society initiatives. Some civil society associations argue that the authorities have their own CSOs, which they favor by ascribing so-called political eligibility to them<sup>28</sup>.

## 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**

There is a significant level of poverty and the economy and business sector are rather unstable. Although corruption is recognized by citizens as one of the major problems in the country, the socio-economic situation cannot be considered as supportive enough to an effective national integrity system.

With a gross national income of \$11,272<sup>29</sup> (Gross domestic product valued at purchasing power parity) in 2013 (compared to \$10,380 in 2010), Serbia is among the upper-middle income countries of the world. The economy contracted in 2012 and 2014 (after a short export-led recovery in 2013). It was severely affected by 2014 floods which caused direct damage estimated

at €1.5–€2 billion, particularly affecting agriculture, power generation, mining, and transport infrastructure<sup>30</sup>.

The Government's austerity measures have particularly struck pensioners, with pensions being reduced. Average pension in March 2015 was RSD 23,159 (USD 215), which is 53% of an average salary (RSD 43,121, USD 400).

The number of employed people has been on a steady decline in the past 10 years, dropping from over 2 million in 2001 to 1.7 million in September 2014<sup>31</sup>. Official unemployment fell from 26% in 2012 to 21% in 2014, after the methodology of calculating the percentage changed<sup>32</sup>. However, the absolute number remained unchanged – around 780,000.

Social exclusion is quantitatively and qualitatively on the increase and absolute poverty is growing. According to data from the 2014 survey on income and living conditions, the at-risk-of-poverty rate in Serbia is 24.6 %<sup>33</sup>.

Serbia's Human Development Index HDI value for 2014 is 0.771, positioning the country at 66 out of 188 countries<sup>34</sup>, amongst countries with high human development. There hasn't been significant change since 2008 when the HDI value was 0.743.

The unions have not been very influential and enjoy the confidence of only 15% of people. Social dialogue in Serbia remains limited and ineffective<sup>35</sup>. The Social and Economic Council, established in 2001 as an institution of interest mediation and economic policy coordination, has in fact thus far been consulted more often about draft laws<sup>36</sup>. The Labor Law has been amended in 2014 in order to attract more foreign direct investments and it reduced some of labor rights.

Social services are limited in scope and quality due to financial constrictions and a widespread employer avoidance of paying social security, pensions and other contributions for workers<sup>37</sup>.

26 According to Serbian Business Register Agency data, as presented by USAID in August 2014, also Civil Initiatives' data, interview with Civil Initiatives NGO Executive Director Maja Stojanovic, October 2014

27 2013 CSO Needs Assessment Report Serbia, TACSO, December 2013

28 BTI 2016 Report on Serbia

29 International Monetary Fund, World Economic Outlook Database (April 2014 edition), as presented by WEF

30 World Economic Forum The Global Competitiveness Report 2014–2015

31 <http://webzrzs.stat.gov.rs/>

32 <http://webzrzs.stat.gov.rs/> Labor Force Survey

33 <http://webzrzs.stat.gov.rs/>

34 [http://hdr.undp.org/sites/default/files/2015\\_human\\_development\\_report.pdf](http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf)

35 BTI 2014 Serbia Report

36 BTI 2014 Serbia Report

37 BTI 2014 Serbia Report

Business tycoons still have considerable political influence, with opaque informal links with political parties and media<sup>38</sup>.

## 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**

Social trust is still underdeveloped in Serbia. Trust in institutions has stagnated after a 2012 rise following the elections and change of the Government. Citizens are increasingly losing patience with efforts to tackle corruption that have to date failed to yield the expected results, at least in the economic sphere<sup>39</sup>. Citizens show a higher level of trust in the army, church, police and ombudsman<sup>40</sup>. When it comes to general confidence in the people, or interpersonal trust, Serbia is in the group of countries with the lowest degree of mutual trust: there is a very high degree of caution in relations<sup>41</sup>.

In December 2012, following the election and formation of a new government with a strong anti-corruption rhetoric, the UNDP/CESID survey recorded a major drop in both direct and indirect experiences of Serbian citizens with corruption. The number of respondents who had indirectly learned about corruption (such as from friends or family members) fell from 35% (June 2012) to 20% (December 2012). After a sudden rise in 2013 (26%), this percentage remained stable in following surveys (19% in December 2013 and 21% in July 2014). Personal contact with corruption fell from 14% to 8% and remained pretty much stable at this level<sup>42</sup>. Most bribes are still initially offered by citizens. More than one-half of those polled (54 percent) who had direct experiences with giving bribes offered them first. One-half of respondents aware of cor-

ruption amongst people close to them claim that these individuals would offer bribes themselves in return for a service or to achieve a benefit. However, surveys<sup>43</sup> show that the percentage of citizens who were asked for bribes has increased in past few years at the expense of the group who offered to bribe public officials.

The positive result is that citizens are becoming increasingly more aware of the negative impact that taking and giving bribes may have on all aspects of life. Nearly one-half of those polled in July 2014 (48 percent) claim that corruption has a moderate or very great impact on their personal lives. A total of 72 percent of all respondents believe corruption adversely affects Serbia's business environment, whilst as many as 81 percent are convinced that corruption has a moderately negative or very negative impact on the political situation in Serbia. Also, fewer respondents are tolerant of the various types of corruption - 87 percent of those polled in 2014 believe giving teachers and doctors gifts (a widespread practice in Serbia) is a form of corruption<sup>44</sup>.

There is also an increase in the number of respondents who would refuse to pay a bribe if asked for one - 45% in July 2014, compared to 33% in June 2012.

As those who should be leading the fight against corruption citizens point to the government (47%), police (44%) and judiciary and Anti-Corruption Agency (34% each).

38 BTI 2014 Serbia Report

39 "Public Perceptions of Corruption In Serbia" Ninth Research Cycle UNDP Serbia/CESID Research July 2014

40 Research by CESID, March 2015, <http://rs.n1info.com/a54773/Vesti/Gradjani-veruju-Sasi-Jankovicu.html>

41 "Between Sicilia and Lombardy: relation between trust, civil norms and social participation among citizens of Serbia", Dragan Stanojevic, Dragana Stokanic 2014

42 "Public Perceptions of Corruption In Serbia" Ninth Research Cycle UNDP Serbia/CESID Research July 2014

43 "Public Perceptions of Corruption In Serbia" Ninth Research Cycle UNDP Serbia/CESID Research July 2014

44 "Public Perceptions of Corruption In Serbia" Ninth Research Cycle UNDP Serbia/CESID Research July 2014



# V CORRUPTION PROFILE

Corruption in Serbia is widespread. Most available data is about petty corruption. Results of the Global Corruption Barometer 'Transparency International' for 2013<sup>45</sup> shows significant increase in percentage of citizens paying bribes "in the past year" (26% of those who had contact with respective public services, compared to 17% in GCB 2010). On the other hand, as much as 55% of Serbian citizens thought that the level of corruption "in the past two years" had decreased to a large extent or at least a little. This is compared to just 14% in 2010. This paradox can be explained by the timing of this research. In the period of conducting interviews several important investigations were initiated, with great media coverage. It is therefore reasonable to conclude that the answers of the citizens reflect much more their hopes and expectations, than an insight into reality. More than a half of Serbian citizens consider political parties, judiciary, public officials and health services as extremely corrupt, while slightly less people have such opinion of police, the Parliament and the country's educational system. In almost all monitored areas there has been a large increase in the number of bribery cases.

Research of the UN Office on Drugs and Organized Crime, conducted in June 2012 (published in 2013) shows that 17 percent of companies that had a contact with public officials in the last 12 months before the research, had paid a bribe. Companies paying a bribe did so seven times per year in average. None of the companies included in the research reported cases of bribery to the state bodies, which indicates that the business sector felt "obliged" to take part in corruption.

It should be noted that in research conducted a few months later, after the establishment of the new Government which won the elections on its anti-corruption rhetoric, as many as 58% of citizens claimed to have reported corruption, which was not in line with the number of reported cases in reality. In other words, the research suggested that in Serbia several hundreds of thousands of cases of corruption occurs annually. On the other hand, the number of submitted criminal charges for all criminal acts of corruption is only several thousand.

According to the Corruption Perception Index of Transparency International, Serbia is amongst countries with widespread corruption, with a score of 40 in 2015, 41 in 2014, 42 in 2013 and 39 in 2012 (on a scale of 0 to 100, where 100 denotes a society free of corruption). Progress made in 2013 could have been the consequence of the anti-corruption rhetoric, or some change of stance amongst civil servants and public officials, after several high profile investigations were launched. However, in 2014 and 2015 scores proved that systematic reforms were not conducted and that fear of investigations, even if a factor, had a short lasting effect.

A public opinion survey on corruption from July 2014 (UNDP and CESID) showed that 21% of respondents or someone in their closest social environment were giving bribes, while 9% reported their own involvement in corruption. This regularly conducted survey recorded a significant decrease in a number of those claiming they have paid bribe (or someone in their social environment did) in December 2012 (from 39% in June 2012 to 20% in December 2012). This could be attributed to the change of the Government at the time, and respondents were giving answers which could be considered socially acceptable. Since December 2012 the percentage was stable at around 20% for indirect and 9% for direct experience with corruption.

Average amount of money given as a bribe has been on a constant increase since June 2012 from 103 Euros till December 2013 when it reached 250 Euros. In July 2014 it suddenly dropped to 134 Euros. In several research cycles, corruption was ranked as the third most important issue in society, behind unemployment and poverty, coming second only in December 2012, which again could be attributed to the anti-corruption rhetoric at the time.

There is not enough data on the capture of institutions, political protection from prosecution for corruption, abuse of public funds for personal or group interests. There were a few cases presented by the prosecution, police and the Government, mostly with former Government officials involved, but none of those judicial proceedings have been completed yet.

<sup>45</sup> Research was implemented in the period from 7th to 14th September 2012, two months after the new Government was formed.



# VI ANTI-CORRUPTION ACTIVITIES

Serbia has adopted the most important anti-corruption legislation and established institutions for preventing and fighting corruption. However, in the meantime, practice has proved that some of the laws need to be amended while some of the institutions have been obstructed, ignored or not provided with sufficient resources.

The Government has presented investigations into 24 cases noted by the Anti-Corruption Council and the EU as “suspicious privatizations” as the most important anti-corruption activity and as proof that the Government is willing to fight corruption. Those cases, however, still haven’t reached their final judicial solution. On the other hand, the Government has invested a lot of effort to show that it controls all aspects of suppression of corruption, including those in charge of other institutions, even at the cost of ignoring other institutions (especially independent bodies) or obstructing their work<sup>46</sup>.

EU 2014 Progress Report on Serbia concluded that “several investigations into high-level cases have been conducted and efforts have been made to improve coordination and institutional leadership in this area. However, corruption remains prevalent in many areas and remains a serious problem”. Also, EU 2015 Progress Report noted that “Serbia has some level of preparation in preventing and fighting corruption, which remains widespread. The anti-corruption effort has yet to yield significant results. The institutional set-up is not yet functioning as a credible deterrent. A track record of effective investigations, prosecutions and convictions in corruption cases is required, including at high level”.

A new Anti-corruption Strategy was adopted in July 2013, as a result of work of a group which included representatives of different segments of anti-corruption society (Anti-Corruption Agency, Anti-Corruption Council, CSOs, Bar associations, Chamber of Commerce, judiciary, police, several ministries). However, credit for the development of the Strategy is attributed to the Ministry of Justice. The Prime Minister has been appointed as the coordinator for the implementation of the Action Plan. The fact that only 16 percent of the

Action Plan was implemented in the first year, was completely ignored. Some of the activities from the Action Plan for implementation of the National Anti-corruption Strategy were postponed in the draft Action Plan for Chapter 23<sup>47</sup> of the *Acquis Communautaire*<sup>48</sup>. First drafts were criticized by the Anti-Corruption Agency, Commissioner for Information of Public Importance and Transparency Serbia. The “Final version” (not yet adopted) was published in September 2015<sup>49</sup>.

The working group for drafting amendments to the Law on Anti-Corruption Agency was formed in January 2015, four months after the deadline for the adoption of the amendments to the Law as set by the Anti-corruption Strategy’s Action Plan. However, according to claims from the Agency, there is disagreement regarding the Agency’s future competences and its independence<sup>50</sup>.

Apart from the Anti-corruption Strategy and the Action Plan, other important normative activities include the adoption of the Law on Protection of Whistle-blowers (December 2014) and the new Law on Public Procurements and the Law on Public Enterprises (December 2012). Media laws which increased transparency of ownership of media (although not fully<sup>51</sup>) were adopted in 2014. Implementation of the 2011 Law on Financing Political Activities began in 2012, while new amendments to this Law were adopted in 2014. A draft of the new Law on Police, which should introduce some new anti-corruption measures (probe of integrity, internal assets declaring) was presented in early 2015.

According to 2012 Law on Public Procurement, an independent body, the Commission for Protection of Rights (of bidders in public procurements) was established with new competences in 2013. However, it’s President, considered to be very experienced in this matter<sup>52</sup>, resigned in June

46 <http://rs.n1info.com/a39205/Vesti/Mora-se-unaprediti-saradnja-vlasti-i-nezavisnih-institucija.html>

47 <http://www.mpravde.gov.rs/tekst/2986/pregovori-sa-eu.php>

48 [http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index\\_en.htm](http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index_en.htm)

49 <http://www.mpravde.gov.rs/files/Akcioni%20plan%20PG%2023%20Treci%20nacrt-%20Konacna%20verzija1.pdf>

50 <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7664-prave-farsu-od-kontrolnih-tela>

51 More in Chapter Media

52 <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7678-ostavka-predsednika-komisije-za-zastitu-prava-opterecenje-ili-pritisci>



2015 because he “couldn’t efficiently deal with a large number of cases within the short deadlines stipulated by the Law”. The Law on Public Procurement was again amended in July 2015.

Professionalization and departization of the state owned enterprises was never conducted, although 2012 Law laid foundations for it<sup>53</sup>. In 2014, GRECO (Group of States against Corruption) concluded that Serbia had successfully fulfilled tasks from the third round of evaluations (Incrimination and Transparency of Party Funding), but that it was necessary as well to monitor implementation of those regulations<sup>54</sup>. Recommendations for the Criminal Code that were implemented refer to: sanctioning of bribery related to activities out of official authorities, sanctioning of bribery of foreign arbiters and judges, changes of provisions on corruption in the private sector, sanctioning of bribery abroad and termination of the possibility for returning a bribe to the person that reports the corruption before it gets revealed. Although the report (with tasks) was published (2010) before adopting the new Law on Financing of Political Activities, it turned out that numerous problems remained in this piece of legislation. The reason is primarily because the GRECO mission was limited to consideration of certain aspects of party financing, therefore certain matters were left behind. In 2014 the Working Group for amending the Law on Financing of Political Activities was formed. Instead of their draft, based on Strategy, the Parliament adopted unrelated changes, at the proposal of the ruling party.<sup>55</sup>

In the fourth round of evaluations (legislative bodies, judiciary and conflicts of interest), GRECO in 2015 issued 13 recommendations to Serbia<sup>56</sup> on whose implementation, a report should be submitted by the end of 2016.

In order to improve inclusion of CSOs in public debates on laws, the Government has adopted non-binding guidelines. The Government’s Office for Cooperation with CSO’s coordinated inclusion of CSO’s in several public debates<sup>57</sup>. However, despite some improvement the general level of public debates remain slow<sup>58</sup>.

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53 <http://www.transparentnost.org.rs/images/stories/inicijativei-analize/Efekt%20novog%20Zakona%20o%20javnim%20preduzeccima-politizacija%20ili%20profesionalizacija,%20oktobar%202014.pdf>

54 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282014%2915\\_Second\\_Serbia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282014%2915_Second_Serbia_EN.pdf)

55 More details in Chapter Political Parties

56 <http://www.acas.rs/wp-content/uploads/2015/07/Greco-Eval-IV-Rep-2014-8E-Final-Serbia-PUBLIC-1.pdf>

57 <http://goo.gl/6bXmsR>

58 [http://www.transparentnost.org.rs/images/dokumenti\\_uz\\_vesti/Javne\\_rasprave\\_najvazniji\\_nalazi\\_maj\\_2015.doc](http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Javne_rasprave_najvazniji_nalazi_maj_2015.doc)

# **VII THE NATIONAL INTEGRITY SYSTEM**





# LEGISLATURE

## National Integrity System

**Summary:** The Parliament does not have sufficient resources to perform all of its duties. Although it could decide on its own budget, the Parliament follows the Governmental restrictive budget policy, and there is a lack of staff and technical equipment. By law, the Parliament is independent. In practice, however, it mainly follows the Government's policies and it insufficiently exercises its oversight powers. Parliamentary transparency is rather high, especially when compared with the executive branch, but improvements are still needed. The main mechanism aimed to ensure the accountability of Parliament within its legislative function – procedure before the Constitutional Court – is not efficient. Parliament participates in some anti-corruption initiatives and adopts anti-corruption legislation, but its response to recommendations made by independent anti-corruption bodies and follow-up actions in that regard are weak. Mechanisms for ensuring the integrity of members of the Parliament are underdeveloped.



| LEGISLATURE  |                     |                           |                         |
|--|---------------------|---------------------------|-------------------------|
| Overall Pillar Score (2015): 50 / 100<br>Overall Pillar Score (2011): 46 / 100 |                     |                           |                         |
| Dimension  | Indicator           | Law                       | Practice                |
| <b>Capacity</b><br>56 / 100  | Resources           | 75 (2015),<br>50 (2011)   | 50 (2015),<br>50 (2011) |
|  | Independence        | 100 (2015),<br>100 (2011) | 25 (2015),<br>25 (2011) |
| <b>Governance</b><br>46 / 100  | Transparency        | 50 (2015),<br>50 (2011)   | 75 (2015),<br>50 (2011) |
|  | Accountability      | 25 (2015),<br>25 (2011)   | 50 (2015),<br>50 (2011) |
|  | Integrity           | 50 (2015),<br>50 (2011)   | 25 (2015),<br>0 (2011)  |
| <b>Role</b><br>50 / 100  | Executive Oversight | 50 (2015), 50 (2011)      |                         |
|  | Legal reforms       | 50 (2015), 50 (2011)      |                         |

**Structure** – The Parliament is the supreme representative body and the holder of constitutional and legislative power in Serbia<sup>59</sup>. The Parliament adopts and amends the Constitution, 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, and ratifies international contracts. The Parliament elects the Government, supervises its work and decides on the expiry of the term of office of the Government and ministers. The Parliament also appoints and dismisses judges of the Constitutional Court, presidents of courts, Republic Public Prosecutor, Governor of the National Bank, Ombudsman, Commissioner for Information of Public Importance, and Anti-Corruption Agency's Board members. The Parliament also elects public prosecutors and judges for their first 3-year term.

The Parliament has 250 members ("peoples' deputies), elected through a proportional representation electoral system. Representation of different genders and members of national minorities in parliament is partly ensured through the provisions of the Law on Elections of Members of Parliament (at least one third of each gender, 0.4% threshold for national minority parties' election lists). A minimum of five members of the Parliament can form a parliamentary group. Currently, there are 12 groups.

The Parliament adopts decisions by a majority vote of members of the Parliament, at sessions where a majority of members of the Parliament are present. The Speaker of Parliament represents the Parliament, convenes and chairs its sessions. The Speaker has deputies, some of them being from opposition parties. The number of Speaker's deputies is specified by a decision of parliament. The Collegium of the Parliament is a body composed of the Speaker of Parliament, Deputy Speakers of the Parliament and heads of parliamentary groups. It is supposed to be a mechanism for consultations regarding the work of the Parliament. The Parliament has standing working bodies – committees, currently 20, and it may establish ad hoc working bodies - inquiry committees and commissions.

The committees consider bills and other acts submitted to Parliament before plenary sessions, and may organize public hearings about draft laws and current issues. The committees are supposed to carry out reviews of the Government's policies and to supervise the work of the Government and other bodies and institutions whose work is overseen by Parliament.

The Secretary General of the Parliament is appointed by the Parliament upon a proposal of the Speaker. The Secretary General is the head of the Parliament Service, which provides technical and other support for the Parliament.

59 The Constitution of Serbia, Article 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: 75/2015 (50/2011)**

The Parliament of Serbia drafts its budget plan for the next year and submits it to the Ministry of Finance<sup>60</sup>. Unlike other budgetary beneficiaries, who cannot further influence the final budget and the approval of their needs, the Parliament is given the right to negotiate its draft budget with the Ministry of Finance<sup>61</sup>. The Parliament has even more financial independence than other budgetary beneficiaries - the government is not authorized to stop, delay or restrict budget allocations for the Parliament during the fiscal year, without the prior consent of the Speaker of the Parliament<sup>62</sup>.

Because the parliament adopts the budget, members of the Parliament are entitled to propose budgetary changes during parliamentary debate and to increase the budget of their institution, provided that the budget is kept balanced – an equal amount must be decreased for some other beneficiary<sup>63</sup>.

The number of staff and their work description is defined by the Act on Work Organization of the Parliament Service<sup>64</sup>.

### Resources (Practice)

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

**Score: 50/2015 (50/2011)**

The parliament has some resources, but not enough to carry out all of its duties efficiently. The parliament follows the Governmental restrictive budget policy and as a result, it reduced its budget for 2014, and further reduced its budget for 2015. The budget for 2013 was 2,279 billion RSD (20,04 million EUR) or 0,21% of the Serbian budget's total expenses, in 2014 it was 2,117 billion dinars (18,47 million EUR) or 0.19%, and the budget for 2015 is 1,782 billion dinars (14,62 million EUR) or 0,16%. Cuts were made to salaries of members of parliament and parliament services' staff, as well as to MP's travel expenses<sup>65</sup>.

<sup>60</sup> Law on Budget System

<sup>61</sup> Law on National Assembly, articles. 64, 65

<sup>62</sup> Law on National Assembly, articles. 64, 65

<sup>63</sup> Law on National Assembly, articles. 15, 40

<sup>64</sup> <http://www.parlament.gov.rs/aktivnosti/informator/sadr%C5%BEaj-informatora.1023.html>

<sup>65</sup> [http://www.danas.rs/danasrs/iz\\_sata\\_u\\_sat/skupstinski\\_budzet\\_manji\\_za\\_350\\_miliona\\_dinara.83.html?news\\_id=86648](http://www.danas.rs/danasrs/iz_sata_u_sat/skupstinski_budzet_manji_za_350_miliona_dinara.83.html?news_id=86648)

Budget cuts are reflected in the work they perform – for instance, seven members of the Parliament attend sessions of the Parliamentary Assembly of the Council of Europe, their deputies do not travel to sessions, and they are accompanied by one technical secretary. The translator hasn't travelled to these sessions since 2014.

Almost 25% of the positions in the Parliament's Service are vacant, according to the data provided by the Parliament. The number of positions envisaged by the Work Organization Act has been raised since 2010. There were a total of 340 employees in September 2010, out of 392 envisaged in the Act<sup>66</sup>. The Work Organization Act was changed in 2013 – there are now 536 positions, but in November 2013 only 410 were filled<sup>67</sup>. Members of the Parliament claim this affects the functioning of parliament. Committees have only one secretary, who provides support to the committee's chair, while other members are not supported by staff<sup>68</sup>.

The situation with working premises has been problematic for years, because the Parliament uses two buildings 300 meters apart from each other. Most of the Parliament Services are located in one building (with 160 offices), while the cabinets of the members of the Parliament are in the other building where sessions are held (100 offices). The parliament has total of 6.600 square meters of office space<sup>69</sup>.

Technical equipment is also not adequate. Parliament Services are equipped with PCs, but members of the Parliament use their own lap tops on which e-parliament software is installed. The Parliament's Committees are equipped with computers.

The Parliament has its own library, which has more than 60.000 publications<sup>70</sup>. However, members of the Parliament and parliamentary groups are often unable to use these resources to prepare for debate, because most acts are adopted in urgent procedures, and the parliament services' research department is not able to provide information in a timely manner<sup>71</sup>.

## Independence (Law)

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

**Score: 100/2015 (100/2011)**

There hasn't been any major change regarding Parliament's independence in legal terms, since the NIS 2011 assessment. Parliament is independent from other actors. It can be dissolved by the President of the Republic, upon the "elaborated proposal of the Government"<sup>72</sup>. 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 a state of war or emergency<sup>73</sup>. Simultaneously with the dissolution of Parliament, the President of the Republic shall schedule elections for deputies,

<sup>66</sup> NIS 2011

<sup>67</sup> Data provided to TS by the Parliament

<sup>68</sup> Remarks made by representatives of the parliamentary groups, interviews, October/November 2014. Zoran Zivkovic, Elvira Kovac, Gordana Comic

<sup>69</sup> <http://www.parlament.gov.rs/aktivnosti/informator/sadr%C5%BEaj-informatora.1023.html>

<sup>70</sup> <http://www.parlament.gov.rs/aktivnosti/informator/sadr%C5%BEaj-informatora.1023.html>

<sup>71</sup> Remarks made by representatives of the parliamentary groups Zoran Zivkovic, Gordana Comic, Elvira Kovac, interviews, October and November 2014.

<sup>72</sup> Constitution, Article 109.

<sup>73</sup> Constitution, Article 109.

so that elections finish no later than 60 days from the day of their announcement<sup>74</sup>.

The Parliament is convened for two regular sessions per year – starting in March and October, and lasting no longer than 90 days<sup>75</sup>. 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<sup>76</sup>. The Parliament is free to determine its agenda for regular sessions. The Speaker of the Parliament and 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 the MP's salary<sup>77</sup>.

Members of the Parliament enjoy immunity; they may not be held liable for their expressed opinion or for casting a vote when performing the deputy's function. An MP who calls for 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 Parliament<sup>78</sup>.

However, an MP, 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 Parliament<sup>79</sup>. There is no statute of limitations stipulated for criminal or other proceedings in which immunity is established. Even if an 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 MP<sup>80</sup>.

Parliament adopted a resolution in December 2013 aimed at its close involvement in the accession negotiations process, together with other stakeholders, including civil society, and a decision in August 2014 further regulating the internal consultation procedure on government draft negotiating positions<sup>81</sup>.

## Independence (Practice)

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

**Score: 25/2015 (25/2011)**

According to some political analysts, journalists and especially the opposition, Parliament is fully subordinated to the Government<sup>82</sup>. "The Legislature is an extended arm of the executive, and sessions of the Parliament are just folklore", claims opposition MP Zoran Zivkovic<sup>83</sup>. The Prime Minister is the head of the party that has the absolute majority in the Parliament. In his exposé in April 2014, the Prime Minister told members of the Parliament that they would "eat, sleep and wash" in the Parliament building, until they adopt all laws necessary for reforms that Government is planning.<sup>84</sup> Indeed, almost all laws that Parliament has passed are on the basis of governmental initiative, - in 2013 Parliament adopted 147 Laws, 143 of them submitted by the Government<sup>85</sup>. Furthermore, a large part of the legislative work is done through an "urgent procedure" with limited

74 Constitution, Article 109.

75 Law on National Assembly, Article 48

76 Law on National Assembly, Article 48

77 Law on National Assembly, Article 42, 43

78 Constitution, Article 103

79 Constitution, Article 103

80 Constitution, Article 103

81 <http://www.parlament.gov.rs/akti/ostala-akta/doneta-akta/doneta-akta.1039.html>

82 Interviews with MP Zoran Zivkovic, with journalist Zlata Djordjevic, also <http://www.nspm.rs/politicki-zivot/teska-rec-aleksandra-vucica-u-narodnoj-skupstini.html?alphabet=l>

83 Interview with MP Zoran Zivkovic, October 2014

84 [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2014/08/01/feature-03](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2014/08/01/feature-03)

85 "Overview of the Activities of the National Assembly in 2013"

possibilities for parliamentary debate, leaving sometimes only a few days for amendment drafting and less opportunity for discussion<sup>86</sup>.

Analysts further point out that the 2015 budget discussion in the Parliament, when the Prime Minister was present, and when he addressed opposition members of the Parliament as “cowards”, has shown the absolute dominance of the executive branch, in the form of the Prime Minister, over the legislative branch, since he “derogated and overturned the importance of legislative power as the primary source of legality and legitimacy of any government”<sup>87</sup>.

Opposition members of the Parliament claim that even Parliament’s agenda and time schedule is dictated by the Government, to prove this they cite the fact that agreements made in the Parliament Collegium regarding scheduling sessions are suddenly broken, due to “outside influence”<sup>88</sup>. The ruling party’s representatives, on the other hand, claim that Parliament works in accordance with its Rules of Procedure. “There is no pressure by the executive in order to adopt or not to adopt any act. There is, of course communication (with the executive)”, said the head of the ruling party parliamentary group, Zoran Babic<sup>89</sup>.

# 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: 50/2015 (50/2011)**

Provisions regarding public access to parliament’s activities and decision-making processes are broad but they could be interpreted in different ways - there is a provision that enables the Parliament to exclude the public from its work, and publishing documents is envisaged “as a rule”, not as a mandatory obligation.

According to law, the publicity of the work of the Parliament is ensured by: “creating conditions for the television and internet broadcasting of the sessions of Parliament, press conferences, issuing official statements, enabling the following of the work of Parliament by 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 (on the National Assembly) and the Rules of Procedure”<sup>90</sup>.

Rules of Procedure claim that “as a rule”, on the Parliament’s website shall be published the draft agenda and adopted agenda of the Parliament and its committees, adopted minutes of the sessions, bills and other documents submitted to the National Assembly, and those adopted by the Parliament, amendments to draft laws and other acts, a voting record, time and agenda of the

86 “Overview of the Activities of the National Assembly in 2013” and EU’s Serbia 2014 Progress Report

87 <http://www.nspm.rs/politicki-zivot/teska-rec-aleksandra-vucica-u-narodnoj-skupstini.html?alphabet=l>

88 Interview with MP Zoran Zivkovic, November 2014

89 Interview with MP Zoran Babic, October 2014

90 The Law on the National Assembly, Article 11

meeting of the Collegium, Parliament's Information Directory, daily information about the work of the National Assembly and its committees, a report on the work of the committees, as well as "other information and documents which are of importance for informing the public"<sup>91</sup>.

The publicity of the work, both of plenary sessions and sessions of committees, may be excluded by the decision of members of the Parliament<sup>92</sup>. Journalists accredited to cover the work of the Parliament are allowed to attend the sessions of Parliament and its working bodies and have access to draft laws and other acts debated by Parliament, stenographic transcripts of the sessions, documents and the archive of Parliament<sup>93</sup>.

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 two parliamentary committees. Other committees' sessions can be recorded, on demand by committee members. These audio recordings are part of the session proceedings<sup>94</sup>.

The Law and Rules of Procedure provide the possibility for "representatives of domestic and foreign associations and organizations and citizens" to follow the work of the Parliament directly<sup>95</sup>.

The Law prescribes the jurisdiction of the deputies to receive citizens, but this requirement is not specified<sup>96</sup>. Citizens have the right to submit petitions and proposals to the Parliament, conduct of parliamentary services to the submitted initiatives, petitions, complaints and suggestions is regulated<sup>97</sup>, as well as jurisdiction of parliamentary committees and their chairpersons to discuss these initiatives<sup>98</sup>. However, there are no regulations regarding further obligations of committees or parliamentary groups related to the submitted documents and/or proposals.

As far as asset declarations of members of the Parliament and other officials of the Parliament are concerned, they 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 (income from public sources, information about real estates, vehicles, stocks) is available to the public<sup>99</sup>.

## 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: 75/2015 (50/2011)**

The public can obtain most of the relevant and important information about the work of Parliament, in a timely manner. Draft laws are published on the web site as soon as they are submitted, while adopted laws are published soon after they are adopted, along with voting records and stenographic notes of the plenary sessions. Plenary sessions are broadcast live on TV and on the Parliament's web site, while committee sessions are also broadcast on the Parliament's web site. The Information Directory of the Parliament is published on its web-page and it contains useful information such as money spent on salaries, equipment, business trips. However, information about the number of

91 Rules of Procedure, Article 260

92 The Law on the National Assembly, Article 11

93 The Law on the National Assembly, Article 11

94 Rules of Procedures, Article 81

95 Rules of Procedures, Article 259

96 The Law on the National Assembly, Articles 11 and 15

97 <http://www.parlament.gov.rs/upload/documents/activities/UPUTSTVO%20za%20postupanje%20sa%20incijativama...%20upucenim%20Narodnoj%20skupstini.doc>

98 Rules of Procedures, Articles 44 and 70

99 Anti-Corruption Agency Law, Article 46, 47

employees can be found in the FAQ section, whilst the section about the organization links to the obsolete 2011 Work Organization Act. There is no English version of the Information Directory, which existed in 2011. The Legislature's budget is fully published.

According to recent research on the transparency of parliaments in the Western Balkans<sup>100</sup>, the Serbian Parliament was rated at 72%. Research focused on the promotion a culture of openness (civic engagement), transparency of information on the work of parliament and access to parliamentary information (media coverage, citizens' visits and physical access to plenary sessions, access to information, updated websites, and possible monitoring via new technologies). The research concluded that the National Assembly of Serbia "significantly improved its transparency in the previous period", but with room for further improvements. Most of the improvements concern information that still cannot be found on parliament's web site: all data regarding members of the Parliament, such as CVs, their official and direct contact details and asset declarations. There are also suggestions to make already published data on the Parliament's web page mechanically readable, to publish amendments and documents adopted on committee sessions, to publish documents being considered and adopted by committees, and information on attendance and voting of members of the Parliament at the committee sessions<sup>101</sup>. Meanwhile, on the website of the Parliament, additional information about committee meetings are being published as "related documents" - committees' agenda, minutes, reports, conclusions<sup>102</sup>.

Namely, while sittings of parliamentary committees are broadcast, written minutes from these sessions contain only a minimal amount of information. For instance, after a debate on laws in procedure before the Committee, published minutes from the session showed only how many amendments were proposed and accepted, without information on what amendments were accepted<sup>103</sup>. Ministries quarterly reports are not published either. Those reports are discussed at committees' sessions, and the committees' conclusions are delivered to Parliament "for information, and not for further discussion"<sup>104</sup>.

As for proposed agenda for the session of the Parliament, it is common to publish it a few days before the session. Unlike before, (NIS 2011) agenda of sessions of committees is published in advance<sup>105</sup>.

The media generally does not have a problem obtaining information about the work of the legislature and the committees<sup>106</sup>. There are 500 accredited reporters<sup>107</sup>. The Parliament received 114 requests for information based on the Freedom of Information Act. All of them were replied to, two requests were rejected<sup>108</sup>.

It should be noted that there is a practice, even without clear legal duty, to produce annual work reports of committees and about foreign relations that the Parliament established<sup>109</sup>. Regarding the openness of the parliament to citizens and their problems, the Parliament's Service received 1,694 individual complaints and petitions by citizens between May 31<sup>st</sup> 2012 and January 31<sup>st</sup> 2014<sup>110</sup>. Complaints and petitions can be filed in writing or electronically<sup>111</sup>, or citizens can address the authorities by phone. Complaints and petitions are considered by committees within their jurisdic-

100 Centre for Research Transparency and Accountability, 2014, <http://www.otvoreniparlament.rs/wp-content/uploads/2014/11/Parliamentary-Openness-Index-Serbia-and-region.pdf>

101 <http://www.otvoreniparlament.rs/wp-content/uploads/2014/11/Parliamentary-Openness-Index-Serbia-and-region.pdf>

102 [http://www.parlament.gov.rs/32\\_sednica\\_Odbora\\_zaljudska\\_imanjinska\\_prava\\_i\\_ravnopravnost\\_polova.26272.941.html](http://www.parlament.gov.rs/32_sednica_Odbora_zaljudska_imanjinska_prava_i_ravnopravnost_polova.26272.941.html)

103 [http://www.parlament.gov.rs/33rd\\_Sitting\\_of\\_the\\_Committee\\_on\\_Finance\\_State\\_Budget\\_and\\_Control\\_of\\_Public\\_Spending.23846.537.html](http://www.parlament.gov.rs/33rd_Sitting_of_the_Committee_on_Finance_State_Budget_and_Control_of_Public_Spending.23846.537.html)

104 Interview with Assistant to the General Secretary of National Assembly Mirjana Radakovic, October 2014

105 <http://www.parlament.gov.rs/activities.536.html>

106 Interview with journalist and editors Ljiljana Gradinac, Zlata Djordjevic, October 2014

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

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

109 Interview with Assistant to the General Secretary of National Assembly Mirjana Radakovic, October 2014, <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/izvestaji/2014/izvestaj%20o%20radu%20odbora%209.%20saziv%20Lat.pdf>

110 <file:///C:/Documents%20and%20Settings/Administrator/My%20Documents/Downloads/izvestaj%20o%20radu%20odbora%209.%20saziv.pdf>

111 <http://www.parlament.gov.rs/citizens-corner/ask/initiatives,-petitions-and-proposals-.693.html>



tion. Citizens are received by Parliament's Service three days a week<sup>112</sup>.

Members of the Parliament assets are partially made public, in accordance with the Anti-Corruption Agency Law<sup>113</sup>.

## 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: 25/2015 (25/2011)**

There have not been any changes regarding legislature's accountability since the NIS 2011. There are no special procedures for possible complaints against decisions of the Parliament or actions of individual members of the Parliament. The legislative activity of the parliament can be reviewed by the Constitutional Court. Every central government body, body of the autonomous province and local government, group of 25 members of the Parliament, or the Constitutional Court can launch a procedure for reviewing the constitutionality of the law. Any citizen may also initiate such a review, but the Constitutional Court does not have the duty to start a procedure upon such an initiative<sup>114</sup>.

The Constitutional Court may determine that certain provisions of the law or a whole act is unconstitutional, it can suspend its execution, but has no right to change it<sup>115</sup>.

It is also possible to review laws which are adopted but not promulgated yet<sup>116</sup>, and to review laws which are not in force anymore, within the 6 months deadline<sup>117</sup>.

Legal provisions give committees to organize "public hearings" about topics of public interest and to invite experts to committee sessions. The purpose of public hearings is to "obtain information, or professional opinions on proposed acts which are in the parliamentary procedure", to clarify certain provisions, as well as "for the purpose of monitoring the implementation and application of legislation, i.e., the realisation of the oversight function of the National Assembly"<sup>118</sup>.

## Accountability (Practice)

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

**Score: 50/2015 (50/2011)**

The main mechanism aimed at ensuring the accountability of Parliament within its legislative function – procedure before the Constitutional Court – is not efficient. The Constitutional Court is burdened with more than 20.000 constitutional complaints, and it is rather slow on deciding on initiatives and demands for determining the constitutionality of laws. In 2013, the Constitutional Court received 138 such demands and initiatives. It had 168 pending from previous years and it

112 Interview with Assistant to the General Secretary of National Assembly Mirjana Radakovic, October 2014

113 [http://www.acas.rs/sr\\_lat/registri.html](http://www.acas.rs/sr_lat/registri.html)

114 Constitution of Serbia, Article 168

115 Constitution of Serbia, Article 168

116 Constitution of Serbia, Article 169

117 Constitution of Serbia, Article 168

118 Rules of Procedure, articles 83, 84 [http://www.parlament.gov.rs/national-assembly/important-documents/rules-of-procedure-\(consolidated-text\)/entire-document---rules-of-procedure.1424.html](http://www.parlament.gov.rs/national-assembly/important-documents/rules-of-procedure-(consolidated-text)/entire-document---rules-of-procedure.1424.html)

resolved 131 cases. Most of them (105) were resolved by rejecting initiatives: in 20 cases which were opened, the Court found 18 laws to have unconstitutional provisions. For the sake of comparison, the Parliament adopted 52 laws in 2011, 131 in 2012 and 145 in 2013<sup>119</sup>. The opposition claims that their initiatives are pending too long before the Constitutional Court<sup>120</sup>. Among other things, the Constitutional Court has not decided on two such initiatives that are of high importance for the overall legal system, related to the constitutionality of the inter-state agreement with United Arab Emirates that the Parliament ratified<sup>121</sup>.

The parliament was asked by Constitutional Court to submit its opinion in 38 instances in 2013, and it replied in 13 cases only<sup>122</sup>. It usually takes long (2-3 months) for a reply, one of the reasons being that Parliament asks the proponent of the Law, usually the Government, for its opinion<sup>123</sup>. The head of the ruling party's parliamentary group claims that this practice is now abandoned and that this will speed up the procedure<sup>124</sup>.

The Parliament has stepped up the practice of organizing public hearings on important topics, including occasionally about laws while they are still in the drafting phase<sup>125</sup>. In the period 2008-2012, there were 27 public hearings, and in the period 2012-2014, there were 36<sup>126</sup>.

The Legislature regularly provides information to other relevant bodies, such as the Commissioner for Information of Public Interest and the Public Procurement Office, in accordance with the provisions of relevant laws<sup>127</sup>.

MP immunity is removed in practice when it is demanded by a court or prosecution. There have been two such cases since 2012 – immunity was removed for a former minister, and current opposition MP, who was under investigation for alleged misuse of office in 2012, and from a ruling coalition MP under investigation for the same offence in 2014<sup>128</sup>.

## Integrity mechanisms (Law)

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

**Score: 50/2015 (50/2011)**

Integrity rules for members of the Parliament, as for other public officials, are set by the Anti-Corruption Agency Law. There are some provisions for members of the Parliament in the Constitution regarding dual functions. There is no law on lobbying. There is no code of conduct for legislators.

The Anti-Corruption Agency Law forbids public officials from receiving gifts and hospitality “related to the performance of a public function”, aside from protocol related gifts, and requires them to report such gifts and forbids keeping received gifts over a certain value - 5% of the average salary

119 The Constitutional Courts' report on work for 2013, also data provided to TS from Constitutional Court

120 Interview with members of the Parliament Gordana Comic and Zoran Zivkovic, October 2014

121 That agreement enables to avoid competition in public-private partnership or privatization agreements.

122 Annual report of the Constitutional Court for 2013 [http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/%D0%9F%D1%80%D0%B5%D0%B3%D0%BB%D0%B5%D0%B4\\_2013.pdf](http://www.ustavni.sud.rs/Storage/Global/Documents/Misc/%D0%9F%D1%80%D0%B5%D0%B3%D0%BB%D0%B5%D0%B4_2013.pdf)

123 Interview with Assistant to the General Secretary of National Assembly, Mirjana Radakovic, October 2014.

124 Interview with MP Zoran Babic, October 2014

125 Interview with MP Gordana Comic, October 2014, and with Assistant to the General Secretary of National Assembly Mirjana Radakovic, October 2014.

126 Interview with Assistant to the General Secretary of National Assembly Mirjana Radakovic, October 2014.

127 Interview with Assistant to the General Secretary of National Assembly, Mirjana Radakovic, October 2014

128 Interview with Assistant to the General Secretary of National Assembly Mirjana Radakovic, October 2014. [http://www.rtv.rs/sr\\_ci/politika/skupstina-ukinula-imunitet-poslaniku-sns-draganu-tomicu\\_461952.html](http://www.rtv.rs/sr_ci/politika/skupstina-ukinula-imunitet-poslaniku-sns-draganu-tomicu_461952.html)<http://www.rts.rs/page/stories/sr/story/135/Hronika/1187560/Ukinut-imunitet+Oli-veru+Duli%C4%87u.html>

in Serbia – around 18 EUR<sup>129</sup>.

There are restrictions on post-employment for public officials, but they are not applicable to public officials directly elected by citizens, such as members of the Parliament.

Conflict of interest rules include MPs' duty to report such conflicts and to excuse themselves from the decision making process<sup>130</sup>. There is however no clear definition of what can be considered a conflict of interest for members of the Parliament. There are suggestions that this could be resolved by a Code of Conduct, once it is adopted<sup>131</sup>. The Code of Conduct for members of the Parliament has been in the draft phase since 2011<sup>132</sup>. According to the Assistant to the General Secretary of the National Assembly and a member of the working group for drafting the Code of Conduct, the draft is nearly finished and it contains provisions regarding reporting conflicts of interest for MP's, an area that is not defined by existing provisions of the Anti-Corruption Agency Law<sup>133</sup>.

Parts of the assets and income declarations of members of the Parliament are published on the Anti-Corruption Agency web – site, in accordance with the Anti-corruption Law. Information about income from public sources, possession of real estate and vehicles, possession of shares in companies are made public<sup>134</sup>.

## Integrity mechanisms (Practice)

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

**Score: 25/2015 (0/2011)**

In practice the integrity of legislators is not sufficiently ensured. The Anti-Corruption Agency launched 99 procedures, from January 1<sup>st</sup> 2013 till October 1<sup>st</sup> 2014, against MPs or former MPs. The Agency filed 62 misdemeanor charges - most of them, 58, for failing to submit asset declarations upon entry to functions, and 4 for failing to submit asset declarations upon termination of the function. In the same period, the Agency filed three criminal charges against MPs or former MPs for "failing to report property to the Agency or giving false information about the property with the intent to conceal information about the property". One charge was dismissed by the prosecution, one is still pending, and in one case the former MP was given a suspended sentence of six months imprisonment<sup>135</sup>.

Members of the Parliament usually claim that failing to reporting upon entry to a function is a misunderstanding that happens with members of the Parliament which were in office in the previous term, and had already reported their assets and income. For most of the parties represented in the parliament, party staff would inform MPs of their obligations, but it is up to them to fulfill it<sup>136</sup>. Members of the Parliament are at the beginning of their mandate also given a guide for MPs with all their rights and obligations.

There was no case that any legislator reported a conflict of interest or contact with lobbyists in relation to the decision making process, due to absence of clear legal provisions in that regard.

129 The Anti-Corruption Agency Law, articles 27-42

130 The Anti-Corruption Agency Law, articles 27-42

131 [http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=06&dd=20&nav\\_id=864792](http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=06&dd=20&nav_id=864792)

132 Interview with former MP and member of working group Nenad Konstantinovic, October 2014

133 Interview with Assistant to the General Secretary of National Assembly, Mirjana Radakovic, October 2014 and with former MP and member of working group Nenad Konstantinovic, October 2014

134 [http://www.acas.rs/sr\\_lat/registri.html](http://www.acas.rs/sr_lat/registri.html)

135 Data from ACA's Sector for Control <http://www.acas.rs/organizacija/sektor-za-kontrolu-imovine-i-prihoda/?pismo=lat>

136 Interview with members of the Parliament Zoran Babic, Zoran Zivkovic, Gordana Comic, Elvira Kovac, October and November 2014.

# Role

## Executive Oversight (law & practice)

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

**Score: 50/2015 (50/2011)**

The effectiveness of the oversight of the executive is limited. Some new mechanisms were introduced since NIS 2011, but they are not exercised in practice. The Parliament formally has the power to control the government, to supervise the work of independent bodies and to monitor the implementation of their recommendations related to the independent bodies' annual reports. In practice these powers are not used or they are used very restrictively.

Ministries do not fulfill their obligations of regular quarterly reporting to the parliamentary committees, and they are not held accountable by the Parliament for failing to do so. Even when they do file reports, they are not considered by the competent committee. TS research shows that out of 48 reports that were supposed to be filed in 2014 (first three quarters, January-October) only 23 were filed and merely four were discussed at committee sessions. The Government's annual report, comprising all ministries' reports, is not considered by the Parliament at all<sup>137</sup>.

Once a month the Government is supposed to come to the Parliament and the Prime Minister and ministers are supposed to answer the MPs' questions. These "hearings" are organized if the Parliament's session is on-going. It occurred on several occasions that a session was suddenly terminated just before the day determined for this questioning<sup>138</sup>.

It is regular practice that ministers attend sessions when laws from the jurisdiction of their ministries are being considered and to reply to MPs' remarks<sup>139</sup>.

The Parliament regularly discusses the annual reports of the independent bodies, which comprise recommendations concerning both Parliament and the Government. However, so far the Parliament has not monitored what actions were taken regarding those recommendations. In 2014 the Government was obliged, by parliamentary committees' conclusions, to report on actions taken. In 2014, the Government submitted to the National Assembly only a report of the state administration regarding the regular annual report of the Ombudsman for 2013. Other reports could not be found on the Parliament's web site six months after the dead line (at the time of the preparation of this report)<sup>140</sup>. The Parliament did not discuss committees' conclusions in 2015.

The Parliament has the authority to establish inquiry committees. Such committees have no right to conduct investigations or other legal actions, but are 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 and to provide truthful statements, data, documents and information<sup>141</sup>. There has been one such investigative committee since 2012 – about the spending and misuse of Serbian public funds in AP Kosovo and Metohija. The committee made the report, but it was not considered by the plenary. The Parliament elects the Government by a majority of all members of the Parliament and can dissolve it or make a vote of "no confidence" against the whole government or individual members of the government<sup>142</sup>. There has been no such practice since 2008.

137 Research done by TS „Reporting and accountability as a mechanism to combat corruption“, December 2014

138 Interview with members of the Parliament, Zoran Zivkovic and Gordana Comic, October 2014.

139 Interviews with members of the Parliament Zoran Babic, Zoran Zivkovic, Gordana Comic, Elvira Kovac, October/November 2014

140 <http://www.transparentnost.org.rs/index.php/en/ts-and-media/press-issues/7604-new-reports-same-problems>

141 Rules of Procedure, Article 68

142 The Constitution of Serbia, Articles 99, 127, 129-131

The Parliament elects the Ombudsman by a majority of the total number of deputies on the proposal of the Committee on Constitutional Affairs<sup>143</sup>, and it elects the president and members of the State Audit Institution by a majority of votes of all members of the Parliament on the proposal of the parliamentary committee<sup>144</sup>. The Parliament elects the members of the Republic Electoral Commission upon the proposal of parliamentary groups<sup>145</sup>. In the past, the Parliament has effectively exercised these jurisdictions. In 2014, REC's president and general secretary resigned following their party decision, and no one was elected to replace them.

The Parliament also regularly carries out its responsibilities in the election of other public officials in accordance with special laws. In some instances the opposition complains that CVs submitted with applications for elections do not provide enough information to estimate whether a suitable candidate was nominated<sup>146</sup>. There is no legal provision which stipulates what a candidate's CV should comprise. However, when the parliamentary committee proposes a candidate, it has to organize an interview with the candidate<sup>147</sup>.

In 2013 the Parliament adopted the Resolution on Legislative Policy, with principles for improving legislative procedures and the quality of legislation. The resolution obliged all bodies entitled to propose bills (Government, National Bank, Parliament of Vojvodina Province and Ombudsman) to report once a year on the implementation of the resolution<sup>148</sup>. No such report has been discussed yet.

## Legal reforms (law and practice)

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

**Score: 50/2015 (50/2011)**

The Parliament adopted some anti-corruption related legislation. In the past four years the Parliament has adopted a new National Anti-corruption Strategy, the Law on State Owned Enterprises, the Law on Public Procurements, the Law on the Legalization of Buildings, the Law on Misdemeanors, changes of the Law on Criminal Procedure, the Law on Seizure and Confiscation of the Proceeds from Crime, changes of the Law on Protection of Competition, the Law on Civil Servants, the Law on Public Administration, the Law on the Protection of Whistleblowers, and media-related laws with provisions regarding the transparency of media ownership.

However, some of the adopted laws had important flaws but the parliamentary majority expressed very limited will to accept suggestions for changes. The Anti-Corruption Agency's suggestions regarding changes of the Law on Financing Political Activities were ignored. The same stands for ACA's suggestions regarding the Whistleblowers Act and media laws. TS also sent dozens of initiatives to parliamentary groups for amendments to anti-corruption and corruption related laws (the Law on Financing Political Activities, Whistleblowers Act, the Law on Misdemeanors, the Law on Civil Servants, the Law on Public Administration). Only few were accepted<sup>149</sup>. In the process of law drafting the impact of the Law on Anti-Corruption Agency and corruption practices is not assessed, and discussion of this subject in the Parliament depends on the expertise of MPs and their willingness to adopt the observations of public experts. However, as noted in monitoring Parliamentary sessions, discussions are often not linked directly to the topic of the session. On some

<sup>143</sup> The Law on Ombudsman, Article 4

<sup>144</sup> The Law on State Audit Institution, Article 19

<sup>145</sup> The Law on Election of members of the Parliament, Article 33

<sup>146</sup> Interview with members of the Parliament, October and November 2014. List of interviewees in NIS 2015 Acknowledgements

<sup>147</sup> Rules of Procedure, Article 203

<sup>148</sup> [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala\\_akta/2013/RS30-13Lat.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala_akta/2013/RS30-13Lat.pdf)

<sup>149</sup> <http://www.politika.rs/rubrike/Politika/Tatjana-Babic-Zakon-SNS-a-otezava-kontrolu-finansiranja-stranaka.lt.html>. [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=Article&id=467&Itemid=41&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=Article&id=467&Itemid=41&lang=sr)



discussions about corruption related draft laws, that TS monitored, 10-20% of discussions about law in general were spent on discussions about provisions of the law or problems it could tackle, while the rest was about issues that are somehow “related”<sup>150</sup> to the general topic, but without any clear reference to the draft law itself or amendments. As noted previously, laws are also usually adopted under urgent procedures with limited possibility for parliamentary debate<sup>151</sup>.

The Parliament further proved its lack of genuine will to support efforts to combat corruption, when it adopted the interpretation of the Anti-Corruption Agency Law, in order to solve alleged problems in the practice caused by one unclear provision. According to this interpretation managers in some state owned enterprises will not be considered public officials, and thus anti-corruption measures and obligations will not be applicable to them<sup>152</sup>. The Parliament could have changed unclear provision of the law, instead of confirmation of the loop hole in the anti-corruption legislation<sup>153</sup>.

According to MP Gordana Comić, the Parliament reflects the general stance of society towards corruption – declarative and formal will to curb it, but lack of will when it comes to individual action. There are no public hearings about corruption in general, no cooperation with CSOs, no will to amend laws and correct identified problems, and no will to monitor action upon the recommendations of independent bodies<sup>154</sup>.

Parliament has also established a number of independent anti-corruption bodies in the past decade, but does not prioritize the implementation of their recommendations. The Anti-Corruption Agency’s annual reports are considered by the Parliament, parliamentary conclusions regarding ACA’s recommendations are accepted, but the Parliament has not considered action by the Government or Parliament itself, upon those recommendations. The same stands for other independent bodies whose activities are important for the prevention of corruption (Commissioner for Information of Public Interest, State Audit Institution and Ombudsman). Conclusions of the Parliament regarding reports in 2014 were more detailed than in previous years, but their implementation is not monitored. Members of the Parliament argue that the major problem in this field is the inactivity of their colleagues<sup>155</sup>.

As stated by the European Commission, „a smoother and more trusting relationship has yet to be established with independent regulatory bodies and a more proactive approach taken to examine and promote their findings and recommendations, including by organising an effective debate on their reports. Parliament still needs to develop a genuine relationship with independent regulatory bodies, supporting their independence and promoting their findings”<sup>156</sup>.

Serbia still lacks the legislation to regulate lobbying and it also lacks legislation which would comprehensively regulate the organization of public hearings and public debates on draft laws.

The national chapter of the Global Organization of Parliamentarians against Corruption (GOPAC) was formed by Parliament in May 2013<sup>157</sup>. Its goals are to develop the capacity of parliamentarians to monitor the activities of the government and other state bodies, making them more accountable; to promote the measures in Parliament aimed at effectively dealing with corruption and raising awareness about the importance of combating corruption; to spread knowledge and information about lessons learned regarding anti-corruption measures and to work with national and regional anti-corruption bodies to mobilize resources for the implementation of anti-corruption programmes.

GOPAC has focused to date on introducing an electronic system of monitoring budget expenses,

150 Such are discussion on corruption in general or about concrete cases of alleged corruption.

151 EU’s Serbia Progress report 2014

152 [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala\\_akta/2013/RS89-13Lat.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala_akta/2013/RS89-13Lat.pdf)

153 [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=362%3Aza-kontrolu-direktora-zavisnih-javnih-preduzea-&catid=40%3Aaoptenje&Itemid=52&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=362%3Aza-kontrolu-direktora-zavisnih-javnih-preduzea-&catid=40%3Aaoptenje&Itemid=52&lang=sr)

154 Interview, October 2014

155 Interviews with members of the Parliament, October and November 2014

156 EU’s Serbia Progress report 2014

157 <https://gopacsrbiija.wordpress.com/>



which would be available to members of the Parliament. So far no significant results are visible in the field of monitoring activities of the government or cooperation in anti-corruption legislative activities. TS has not succeeded in establishing institutional cooperation with GOPAC regarding corruption-related initiatives, but merely with individual MPs, members of the group. Former GOPAC president and head of the ruling party's parliamentary group Zoran Babic claims that this body will expand its scope of work and goals after it "establishes itself in the network of anti-corruption bodies"<sup>158</sup>.

# Legislature

## Recommendations

1. The Parliament should actively monitor draft legislation to make sure it aligns with the Constitution and the rest of the legal system and with the strategic documents adopted by the Parliament, especially with the anticipated effects of proposed solutions to corruption; when ratifying inter-state agreements, this consideration should also cover risks coming from the possibility to circumvent the implementation of transparency and competition provisions of existing legislation.
2. The Parliament should involve independent state bodies and civil society to a greater extent in combating corruption risks and in reviewing the anti-corruption effects of legislation, by seeking and discussing their opinions and comments on special public hearings or committee sessions;
3. The Parliament should 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 of citizens;
4. The Parliament should further improve its transparency by publishing amendments, Government's opinions on amendments, CV's of candidates to be elected by the Parliament, documents adopted on committee sessions, documents being considered and adopted by committees and budget execution documents that are currently available to members of the Parliament only;
5. The Parliament should amend 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;
6. The Parliament should 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) the way it was done in the area of ecology and in the Committee for Environmental Protection;
7. The Government and the Parliament should regulate lobbying (influence or attempt to influence decision-making) in connection with the adoption of laws and other decisions by the Parliament;

158 Interview, October 2014

8. The Parliament should regulate more precisely the issue of parliamentarians' conflict of interest by the Law on the Parliament and the Rules on Procedure, and not merely through the envisaged Code of Conduct;
9. The Parliament should improve the practice of monitoring the implementation of parliamentary conclusions upon reports of the independent state institutions. 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);
10. The Parliament should consider thoroughly Government's annual report and annual financial statement, in order to identify to what extent the plans were fulfilled, including the achievement of non-financial indicators; to call for the accountability of ministers that fail to submit quarterly reports to the committees.
11. The Parliament should organize inquiry committees on systemic corruption related problems more frequently and act upon conclusions of such committees.



# EXECUTIVE

## National Integrity System

**Summary:** The Government is independent, according to the Constitution and laws. In practice, the decision making process depends on the structure of the ruling coalition and the individual strength of parties, leaders and members of the cabinet. Since real political power is in the hands of the ruling party leaders and not in governmental institutions, there is a substantial difference from the situation in 2011. At that time, the work of the Government was significantly influenced by the president of Republic, leader of strongest ruling party; since 2012 the leader of strongest party is either “first deputy Prime Minister” or “Prime Minister” himself. It means that the Government is much more independent then before - it has real political power and it is a genuine decision maker.

While other state institutions have a low level of influence on the work of the Executive, the level of influence that other external actors have is insufficiently known, due to the lack of transparency and the lack of lobbying legislation. The Government publishes acts and decisions and members of the Government regularly report their assets and income, thus fulfilling formal obligations prescribed by the Law. However, in practice a significant portion of the Government’s activities are insufficiently transparent. There is insufficient oversight of executive activities in practice, with the weakest link being the Parliament. The Government has declared that it is committed to reforming the public sector, but the public sector is still highly politicized and certain laws intended to make changes in that regard are not implemented. The Government’s publically declared commitment to fighting corruption is undisputable, but the results are limited. There are instances in which genuine political will to fight corruption could be questioned, including the utilization of that fight for political benefits.



| EXECUTIVE  |                          |                                       |                                       |
|--|--------------------------|---------------------------------------|---------------------------------------|
| Overall Pillar Score (2015): 54 / 100<br>Overall Pillar Score (2011): 52 / 100 |                          |                                       |                                       |
| Dimension  | Indicator                | Law                                   | Practice                              |
| <b>Capacity</b><br>58 / 100  | Resources                |                                       | <b>50</b> (2015),<br><b>50</b> (2011) |
|  | Independence             | <b>75</b> (2015),<br><b>75</b> (2011) | <b>75</b> (2015),<br><b>50</b> (2011) |
| <b>Governance</b><br>50 / 100  | Transparency             | <b>75</b> (2015),<br><b>75</b> (2011) | <b>50</b> (2015),<br><b>50</b> (2011) |
|  | Accountability           | <b>75</b> (2015),<br><b>75</b> (2011) | <b>50</b> (2015),<br><b>50</b> (2011) |
|  | Integrity                | <b>50</b> (2015),<br><b>50</b> (2011) | <b>25</b> (2015),<br><b>25</b> (2011) |
| <b>Role</b><br>38 / 100  | Public Sector Management | <b>50</b> (2015), <b>50</b> (2011)    |                                       |
|  | Legal System             | <b>25</b> (2015), <b>25</b> (2011)    |                                       |

**Structure** – The Government is the holder of executive power in Serbia<sup>159</sup>. It is a collective body, consisting of the Prime Minister, one or more deputy Prime Ministers (one being “first deputy”) and other ministers. The structure of ministries is regularly changed after each election, as it is regulated by the Law on Ministries, agreed by the political coalition.

The Government disposes with public property, establishes administrative bodies in public enterprises and establishes agencies. Professional services are performed by the General Secretariat of the Government.

The President of Serbia proposes a candidate for Prime Minister and the Parliament elects the Prime Minister and the cabinet, selected by the Prime Minister, by a majority vote of Parliament. The Parliament dismisses the Government by the same majority.

The Government adopts regulations and other general acts for the purpose of law enforcement.

<sup>159</sup> The Constitution of Serbia, Article 122





# Assessment

## Capacity

### Resources (Practice)

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

**Score: 50/2015 (50/2011)**

The General Secretariat, which supervises and harmonizes the work of ministries, had 80 employees in 2010 and 108<sup>160</sup> in 2014 (128 by work systematisation). Thus, the General Secretariat lacks almost 20% of the staff envisaged by jobs' systematization act. The budget for the General Secretariat, as well as for the whole Government has been cut as part of austerity measures.

Political affiliation is the key factor in personnel selection in state authorities<sup>161</sup>. After the 2012 elections, when the Serbian Progressive Party replaced the Democratic Party in the Government, even some assistant ministers, which were supposed to be civil servants were replaced. What is more, a special provision was introduced in the Law on Ministries, which allowed Government to dismiss assistant ministers, on proposals made by ministers, without applying the Law on Civil Servants procedures, but merely on the base of a statement explaining that the assistant did not have satisfying results<sup>162</sup>. There was no such provision after the 2014 election, when the political structure of the Government largely remained the same.

It is believed that loyalty criteria have been crucial in determining state administration appointments, and not competency<sup>163</sup>. This largely affects the capacity of the Government. On the other hand, some of the senior staff from the previous (2008) Government remained and some non-partisan figures and individuals from the CSO sector were engaged in administration as well. Analysts, however, claim that those appointments are mere "decoration" with the purpose of "stifling criticism of party dominance"<sup>164</sup> and an "illusion" because "personal relations with the Prime Minister are even more important than party affiliation"<sup>165</sup>.

The current Government, elected after the March 2014 elections, has a Prime Minister, a first deputy, three more "regular" deputies, all of them with portfolios, 12 ministers with portfolios, and two ministers without portfolios. With total of 19 members, it is one of the smaller governments in the past decade. However, merging portfolios resulted in a large number of politically appointed state secretaries – 46. Assistant ministers (heads of sectors within the ministry) are supposed to be appointed as state servants. The Prime Minister and Deputy Prime Ministers have cabinets and

<sup>160</sup> Data from Information Directory – 95 permanently employed and 13 temporarily

<sup>161</sup> Based on opinion by three political analysts, interviews with Zoran Stojiljkovic, Djordje Vukadinovic and Slavisa Orlovic, November and December 2014

<sup>162</sup> The Law on Ministries, 2012, Article 38 <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2012/2047-12.zip> Special provision was used in only five cases, while many more assistant ministers related to the previous ruling party resigned.

<sup>163</sup> Based on opinion by three political analysts, interviews with Zoran Stojiljkovic, Djordje Vukadinovic and Slavisa Orlovic, November and December 2014

<sup>164</sup> Political analyst Zoran Stojiljkovic, professor at the Faculty of Political Science Belgrade, interview December 2014

<sup>165</sup> Political analyst Djordje Vukadinovic, interview December 2014

they are allowed to appoint advisors. Ministers have the right to hire a total of 50 special advisors<sup>166</sup>. Since 2012 the Prime Minister had several foreign advisors, presented in public as “Government advisors”. The Government never published information about their exact duties and salaries<sup>167</sup>. The Prime Minister has the right to establish an economic council, a council for state bodies and public services, and “other councils”<sup>168</sup>.

The budget of the General Secretariat of the Government for 2015 is RSD 261 million (USD 2.6 million), which is 26% less than 2014 budget (original budget for 2014 was RSD 353 million, it was revised to RSD 537 million – out of which RSD 117 million was a donation to another Government, and RSD 100 million for organisation of summit in Belgrade). In 2013 budget for GS was RSD 315 million (USD 3.6 million).

The budget of the Government in a wider sense (including cabinets of the Prime Minister and deputies, all Government offices and services) was RSD 8,6 billion in 2013 (USD 86 million), RSD 12 billion<sup>169</sup> in 2014 (USD 141 million) and RSD 7,1 billion (USD 71 million<sup>170</sup>) in 2015. Those figures, however, cannot be compared because the structure of services changed after the 2014 elections and this affected the budget revision for 2014 and the budget for 2015. In general, due to austerity measures, there were cuts in almost every single budget item in 2015. The biggest cuts were in allocations for the General Secretariat, the Government’s air service, the Prime Minister’s cabinet and the Office for Media Relations.

The Government has not publicly disclosed the adequacy of accommodation and space. The Administration for Joint Services of the Republic Bodies is in charge of administrating and maintaining all state institutions, including the Government. The Administration has a total budget of RSD 3.99 billion (USD 39.9 million) for 2015 (RSD 1.3 billion for software licenses) but it is impossible to separate the part intended for the executive authority from other state bodies. The Budget for 2015 is almost the same as the revised budget for 2014 (RSD 3.98 billion) and is slightly above the budget for 2013 (RSD 3.79 billion).<sup>171</sup>

## Independence (Law)

*To what extent is the executive independent by law?*

**Score: 75/2015 (75/2011)**

There is a constitutional and legal system of interrelation between the President, the Government and the Parliament, which gives the Government large independence, but determines rules on cooperation, duties and accountability. In general terms, the Government is “independent within its competences”<sup>172</sup>.

According to the Constitution, the President proposes to the Parliament a Prime Minister that would subsequently choose the Government<sup>173</sup>. The Parliament elects the Government, supervises its work and decides the expiry of the term of office of the Government and ministers.<sup>174</sup> The President

<sup>166</sup> Decision on number of special advisors, Official Gazette 107/2012, 93/2013, 71/2014

<sup>167</sup> Transparency Serbia filed request by the Law on Free Access to Information. The Government did not provide information.

<sup>168</sup> The Law on Government, Article 28

<sup>169</sup> RSD 4.5 billion were donations after floods in May 2014.

<sup>170</sup> Exchange rate for USD in January 2014 was RSD 85, and in January 2015 it was RSD 100.

<sup>171</sup> Such information is not available in Information Booklet, even if it is mandatory. It should be noted that General Secretariat of the Government did not respond to Transparency Serbia request for interview with secretary or deputy, Therefore this chapter lacks some information that should have been provided by GS, such as adequacy of the Government’s accommodation, of staff number, skills and education, available resource – financial, technical, IT.

<sup>172</sup> The Law on Government, Article 7

<sup>173</sup> Constitution of Serbia, Article 112

<sup>174</sup> Constitution of Serbia, Article 99

may dissolve the Parliament, upon the elaborated proposal of the Government<sup>175</sup>. However, the Government may not propose dissolution of the Parliament, if a proposal has been submitted for the vote of no confidence to the Government or if the issue of its confidence has been raised<sup>176</sup>.

There are however some provisions to limit the independence of the executive. There is the possibility of interpellation – at least 50 members of the Parliament can submit formal questions to the Government or particular member of the Government, which must be answered 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 takes a vote of confidence on the Government or on one of its members. The issue which was a subject of interpellation may not be discussed again before the expiry of the 90-day deadline<sup>177</sup>.

Also, at least 60 (out of 250) members of the Parliament 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 MPs vote for that proposal (at least 126 from total of 250). If the National Assembly fails to pass a vote of no confidence in the Government or the member of the Government, signatories of the proposal may not submit a new proposal for a vote of no confidence before the expiry of the 180-day deadline<sup>178</sup>.

## Independence (Practice)

*To what extent is the executive independent in practice?*

**Score: 75/2015 (50/2011)**

The executive is independent from unjustified interference from other formal authorities, to the point that there is not enough oversight<sup>179</sup>. Political analysts also believe that many of the Government's decisions are politically opportunistic or intended to boost the Government's popularity<sup>180</sup>. However, the Government is, or it has been, under the influence of several other outside actors.

Since real political power is in hands of ruling party leaders and not in governmental institutions there is a substantial difference from the 2011 situation. At that time, the work of the government was significantly influenced by the President of the Republic, leader of the strongest ruling party; since 2012 the leader of strongest party is either "first deputy Prime Minister" or "Prime Minister" himself. This has meant that the Government is much more independent then before - it has real political power and is a genuine decision maker.

On the other hand, the executive, according to analysts, is strongly influenced by the EU and USA, partly by Russia, international financial institutions (IMF, World Bank) and domestic business circles or "tycoons"<sup>181</sup>. For example, the former president of Serbia Boris Tadic, after losing in the 2012 elections, claimed that a local businessman, usually depicted as the most influential tycoon, insisted that the Serbian Progressive Party should form a Government with socialists and the URS party<sup>182</sup>. This businessman, however, was arrested a few months after the new Government was formed, in a move that Prime Minister Aleksandar Vucic<sup>183</sup> presented as proof of the political will to fight corruption. He was charged with the misuse of his position in the private firm and with tax

<sup>175</sup> Constitution of Serbia, Article 109

<sup>176</sup> Constitution of Serbia, Article 109

<sup>177</sup> Constitution of Serbia, Article 129

<sup>178</sup> Constitution of Serbia, Article 130

<sup>179</sup> See Chapter on Legislative branch.

<sup>180</sup> Zoran Stojiljkovic and Djordje Vukadinovic, interviews, November and December 2014

<sup>181</sup> Based on opinion by three political analysts, interviews, November and December 2014

<sup>182</sup> <http://www.naslovi.net/2012-07-03/telegraf/tadic-miskovic-zeli-vladu-sns-sps-urs/3619067>

<sup>183</sup> Vucic was deputy prime minister at the time but practically he had all the power in his hands

evasion (the process is still on-going). The Prime Minister rejected allegations<sup>184</sup> that Western and Russian ambassadors played an important role when he formed the 2014 Government<sup>185</sup>. After a reshuffle in which the URS party dropped out of the Government, the leader of URS and former deputy prime minister was installed in the Committee for Cooperation with United Arab Emirates because, as it was explained, officials from UAE insisted on this<sup>186</sup>.

Moves by the Prime Minister, such as the replacement of some ministers, are interpreted as an attempt to diminish influence of the president of Serbia on the Government. Tomislav Nikolic was president of Serbian Progressive Party, but he resigned from this position after being elected President of Serbia in 2012. He is still, however, influential in the party<sup>187</sup>. On several occasions President demonstrated willingness to participate more in the design of public policies (e.g. in Kosovo negotiations). He also insisted on appointing the chairperson to the National Security Council, the special body for coordination of security services, chaired by Vucic since 2012, but later failed to come up with a concrete nomination.

# Governance

## Transparency (Law)

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

**Score: 75/2015 (75/2011)**

The Law on Government and its Rules of Procedure proclaim that the Government's work should be public. The Law on Free Access to Information of Public Importance regulates access to information. However, the protection of that right is not efficient: one cannot complain to the Commissioner for Information against Governmental denial to allow free access or ignoring the request, but can only file a complaint with the Administrative Court.

The Government is obliged, by law, to publish certain documents (regulations, decisions, rules on procedure, fiscal strategy) in the Official Gazette, while other (declarations, strategies, conclusions) can, but do not have to be published<sup>188</sup>. Those documents, such as conclusions, which are not mandatorily published, theoretically can be requested through the mechanism of free access to information, provided that one knows what to ask for. Otherwise, their list is available in the annual report of the Government delivered to the Parliament only.

Minutes of the sessions of Government, considered to be information of public importance, are available to the public<sup>189</sup>. On the other hand, discussions of Government members and other participants in the session of the Government are considered an official secret, unless specified otherwise in each particular case, by the Prime Minister<sup>190</sup>. Also, shorthand notes and audio re-

184 <http://www.vreme.co.rs/cms/view.php?id=1062366>

185 <http://www.politika.rs/rubrike/dogadjaji-dana/Dacic-kandidat-za-spoljne-poslove-Antic-za-energetiku.lt.html>

<http://www.telegraf.rs/vesti/politika/697846-iza-kulisa-rusi-cuvaju-bajatovica>

186 [http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=08&dd=25&nav\\_category=11&nav\\_id=746240](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=08&dd=25&nav_category=11&nav_id=746240)

187 [http://pressrs.ba/sr/vesti/vesti\\_dana/story/41854/Vu%C4%8Di%C4%87+se+re%C5%A1ava+Dinki%C4%87a+i+ljudi+Tome+Nikoli%C4%87a+-+htmlhttp://www.blic.rs/Vesti/Politika/414308/Vucic-Nema-mojih-i-Tominih-ljudi-u-SNS](http://pressrs.ba/sr/vesti/vesti_dana/story/41854/Vu%C4%8Di%C4%87+se+re%C5%A1ava+Dinki%C4%87a+i+ljudi+Tome+Nikoli%C4%87a+-+htmlhttp://www.blic.rs/Vesti/Politika/414308/Vucic-Nema-mojih-i-Tominih-ljudi-u-SNS)

188 The Law on the Government, Article 46

189 The Rules on Procedure, Article 63

190 The Rules on Procedure, Article 96

cordings of the sessions are considered an official secret<sup>191</sup>. Journalists and other representatives of the public are not allowed to attend the sessions<sup>192</sup>.

According to The Rules on Procedures<sup>3</sup>, transparency of the Government is ensured through press conferences, web-presentations of the Government and its other bodies, press releases and “other IT means”<sup>193</sup>. The Government’s Media Office deals with the transparency of the Government’s work and that of state administration bodies<sup>194</sup>.

The Budget Law is public<sup>195</sup>. The Government adopts a Draft Fiscal Strategy by June 15<sup>th</sup>, (document should be public), and adopts the final Fiscal Strategy by October 1<sup>st</sup>, revised on the basis of comments and suggestions by Parliament. The Minister of Finance delivers to the Government a Draft Budget Law by October 15<sup>th</sup>, the Government adopts a Proposal for the Budget by November 1<sup>st</sup> and delivers it to Parliament which makes the budget transparent<sup>196</sup>.

All public officials, including executive authorities, such as the prime minister, deputy prime ministers, ministers, secretary general of the Government and his deputy, state secretaries in the ministries, and assistant ministers are obliged to declare assets and income to the Anti-Corruption Agency within 30 days of taking office<sup>197</sup>. They are also obligated to report changes in the value of their property higher than the annual average salary in Serbia. A report is also filed within 30 days of the day of termination of office. Part of the data from the register of the assets and incomes is public, on the web-site of the Agency<sup>198</sup>.

## Transparency (Practice)

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

**Score: 50/2015 (50/2011)**

The Government publishes acts and decisions, thus fulfilling formal obligations prescribed by the Law on Government. However, in practice, a significant part of the Government’s activities is insufficiently transparent. The Government published, only after severe pressure from some media and CSO<sup>199</sup>, two contracts with foreign investors, but other agreements are still not published, because foreign investors insisted on the confidentiality of the entire contract.<sup>200</sup> There is a lack of information about lobbying and a reluctance to provide, in a timely manner, information on governmental contracting with foreign investors<sup>201</sup>.

The Government does not comply with the Law on Free Access to Information of Public Importance. Ten requests sent by Transparency Serbia in recent years were ignored. After Administrative court ruled that the Government must provide information requested by Transparency Serbia in one case, the General Secretariat replied to another request. That was the first reply received

191 The Rules on Procedure, Article 62

192 The Rules on Procedure, Article 96

193 The Rules on Procedure, Article 93

194 The Rules on Procedure, Article 94

195 <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2014/4598-14.pdf>

196 The Law on Budget System, Article 31

197 The Anti-Corruption Agency Law, Articles 43-49

198 The Anti-Corruption Agency Law, Article 47

199 <http://www.blic.rs/Vesti/Politika/463103/Vucic-Objavicemo-ugovore-sa-Fijatomi-i-Etiihadom>

200 [http://www.rtv.rs/sr\\_lat/politika/vucic-ugovor-sa-fijatomi-nece-biti-pokazan\\_507167.html](http://www.rtv.rs/sr_lat/politika/vucic-ugovor-sa-fijatomi-nece-biti-pokazan_507167.html)

201 For example, Government published some documents on cooperation with UAE company Etihad more than a half year after this cooperation was widely promoted by government representatives on [http://www.media.srbija.gov.rs/medsrp/dokumenti/air\\_serbia\\_ugovori2014.zip](http://www.media.srbija.gov.rs/medsrp/dokumenti/air_serbia_ugovori2014.zip)



by Transparency Serbia from the Government after nearly two years and a dozen requests. The requests were about fees for the Prime Minister's foreign advisors (earlier Deputy Prime Minister's advisors), contract and memorandums with potential investors, and information about appointing in state owned enterprises. Since 2011 data on compliance with requests by citizens, media, other CSOs and other information seekers in the Government's Information Booklet has been removed. Nevertheless, according to data the Government has sent to the Commissioner, in 2013, there were 97 requests and the Government provided information in 76 cases<sup>202</sup>.

As noted above, the Law on Free Access to Information envisages that the information seeker cannot complain to the Commissioner when the Government refuses to provide information. The only legal remedy is to submit charges to the Administrative Court, a procedure which discourages most information seekers<sup>203</sup>. The Commissioner's annual report claims that in 2013 were 13 charges filed to Administrative Court regarding free access to information, and five of them were against the Government<sup>204</sup>. The Government's report to the Commissioner claims, however, that there was only one charge filed to Administrative Court<sup>205</sup>.

As far as ministries are considered, out of 3.300 complains sent to the Commissioner, 666 were against ministries.

Nevertheless, in some instances, the Government reacts to public demands for greater transparency. One example is when the Government reacted to requests by CSOs, initiated by Transparency Serbia, and supported by the Commissioner for Information of Public Importance, to increase the transparency of data concerning the collecting and spending of money after floods in spring 2014. Four months after the floods, and after several delays, the transparency of this data had reached what could be considered a decent level<sup>206</sup>.

According to political analysts, the laws that the Government proposes and the Parliament adopts sometimes leave unclear provisions. This results in the fact that policies in practice are implemented through the Government's by-laws. Sometimes by-laws are overdue for months or even years, and the implementation or non- implementation of the regulation is left to unwritten decisions by the Government and prime minister<sup>207</sup>.

Also, the way the Government presents regulations does not allow citizens to understand its activities. Furthermore, some effects are deliberately hidden from the public. Such cases include the adoption of the Labor Law, austerity measures, presentation of the data about unemployment and employment, public debt and about implementation of the Brussels Agreement (regarding relations between Belgrade and Pristina)<sup>208</sup>.

There are no public debates as envisaged by the regulations. Monitoring conducted by Transparency Serbia in three periods from 2012 to 2014<sup>209</sup> concluded that the minimum, required by regulations is not respected. In a sample of 21 laws developed, public debates were organized in nine cases, and only three drafts were published on the e-Government Web Portal, even though publication is mandatory. The e-Government Portal was renovated in September 2014. That also brought notable improvement in publishing draft laws for public debate: 17 drafts till the end of December 2014, compared with five, from January till September 2014<sup>210</sup>.

202 Data provided to Transparency Serbia by the Commissioner

203 Observation by Commissioner for Free Access to Information, annual report for 2013

204 Commissioner's 2013 Annual Report, <http://www.poverenik.rs/en/o-nama/annual-reports.html>

205 Data provided to Transparency Serbia by the Commissioner

206 [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=892%3Ajavnost-podataka-o-pomoi-za-poplavljenje&catid=34%3Afacebook-naslovi&Itemid=27&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=892%3Ajavnost-podataka-o-pomoi-za-poplavljenje&catid=34%3Afacebook-naslovi&Itemid=27&lang=sr)

207 Based on opinion by three political analysts, interviews with Zoran Stojiljkovic, Djordje Vukadinovic and Slavisa Orlovic, November and December 2014

208 Based on opinion by three political analysts, interviews with Zoran Stojiljkovic, Djordje Vukadinovic and Slavisa Orlovic, November and December 2014

209 [http://www.transparentnost.org.rs/index.php?view=details&id=1506%3Ajavnost-rada-vlade&option=com\\_eventlist&lang=srhttp://www.transparentnost.org.rs/images/stories/materijali/Povecana%20transparentnost%20i%20javnost/javne%20rasprava%20praksa%20%20jun%202014.doc](http://www.transparentnost.org.rs/index.php?view=details&id=1506%3Ajavnost-rada-vlade&option=com_eventlist&lang=srhttp://www.transparentnost.org.rs/images/stories/materijali/Povecana%20transparentnost%20i%20javnost/javne%20rasprava%20praksa%20%20jun%202014.doc)

210 [http://javnerasprave.euprava.gov.rs/zavr%C5%A1ene-javne-raspravehttp://www.euprava.gov.rs/eParticipacija/javne\\_rasprave?pagerIndex=1](http://javnerasprave.euprava.gov.rs/zavr%C5%A1ene-javne-raspravehttp://www.euprava.gov.rs/eParticipacija/javne_rasprave?pagerIndex=1)



According to the Anti-Corruption Agency data, there were numerous procedures in 2013 and 2014 against members of the executive for not declaring their assets and income, either after taking office or after termination of office. There were procedures against five ministers, 27 state secretaries and 23 assistant ministers<sup>211</sup>. Part of the data from declarations, in accordance with the Law, is available on the public web-site of the Agency<sup>212</sup>.

The annual report that the Government delivers to the Parliament is not debated. It is available on the website of the Parliament, but not on the website of the Government.

There is some information about the Government's sessions on its websites, but there are no minutes, and only some of the decisions adopted are published on the web site. Information is not published in a searchable form, but in zipped folders. One may access their draft laws, adopted decrees and appointment decisions, but not the Governments' "conclusions". Government sessions are often followed by a press-conference or public statement, announcing adopted decisions, but the exact text of these decisions is published after several days delay.

According to the Open Budget Index survey, in 2012 Serbia had index 39, much lower than 54 in 2010. The main reason for this drop was the fact that Fiscal Strategy (Pre Budget Statement) was not published and there was no citizen's budget<sup>213</sup>. In 2015. (budget for 2014) score was 47. There were some improvements in the meantime, the main one being that the Budget for 2015 is the first "programme budget". The Budget is public, a Fiscal Strategy (former memo on the Budget) is published on the website of the Ministry of Finance, and the Law 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. However, the main problem that remains is the significant delay in drafting and adopting budget documents, the absence of public debate in budget planning and the lack of sufficient information about its execution.

## 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: 75/2015 (75/2011)**

The work of the Government should be supervised by the Parliament, which elects the Government. The Parliament also decides on the termination of the mandate of the Government<sup>214</sup>. The Government is liable to the Parliament for conducting the policy of the country, for the execution of laws and other general acts of the Parliament, for situation in all areas within its competence and for the work of the state administrative authorities<sup>215</sup>.

Jurisdiction, in specific areas, to oversee, monitor or control the work of the Government, is also given to the Constitutional Court, the Administrative Court and the State Audit Institution. In areas such as resolving conflicts of interest, multiple functions, gifts and hospitality, integrity plans, execution of the Anti-Corruption Strategy and the Action Plan, the Government and its members are subject to oversight by the Anti-Corruption Agency<sup>216</sup>.

211 Report by ACAS Sector for Operations, [http://www.acas.rs/images/stories/SOP/WEB\\_ODELJENJE\\_ZA\\_REGISTRE\\_1\\_10\\_2014.pdf](http://www.acas.rs/images/stories/SOP/WEB_ODELJENJE_ZA_REGISTRE_1_10_2014.pdf)

212 [www.acas.rs](http://www.acas.rs)

213 <http://internationalbudget.org/wp-content/uploads/OBI2012-SerbiaCS-English.pdf>

214 Constitution of Serbia, article 99

215 The Law on Government, Article 7

216 The Anti-Corruption Agency Law

The Commissioner for Information of Public Importance and the Ombudsman have no jurisdiction over the Government, but they have jurisdiction over ministries and other bodies and institutions under the Government's competencies<sup>217</sup>.

The Law on Government envisages that the Government should submit to Parliament the report on its work, at the latest 60 days before submitting a draft final account. Also, upon the request of the Parliament, the Government and each of its members are obligated to submit a report on their work<sup>218</sup>. The Rules on Procedure of the Government prescribe that the Government submits a report to the Parliament by May 1<sup>st</sup> in the current year for the previous year<sup>219</sup>.

The Government adopts the Annual Government Work Program by the end of December of the current year for the following year, as well as the Action Plan with the Government's priorities, deadlines and expected results. The Program sets its objectives and tasks, as well as goals, public administration bodies' duties and estimated results<sup>220</sup>.

Members of the Government are not obliged to elaborate their decisions when voting in sessions of the Government, their voting is considered an official secret, and members of the Government are obliged to publicly advocate for the decisions of the Government even if they voted against them or refrained from voting<sup>221</sup>. Nevertheless, acts of the Government must contain explanations, and draft laws must contain, as an annex, analysis of the effects of the law<sup>222</sup>.

Members of the cabinet enjoy the same immunity as MPs, prescribed by the Constitution of Serbia and the Law on Parliament<sup>223</sup>. Calling for immunity results in withholding of deadlines in criminal procedures, but it does not prolong a deadline for absolute obsolescence which means that the statute of limitations for criminal prosecution applies<sup>224</sup>.

## Accountability (Practice)

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

**Score: 50/2015 (50/2011)**

There is insufficient oversight of executive activities in practice, with the weakest link being the Parliament.

The Parliament is practically under the control of party leaders, and since party leaders are members of the Government, there is no effective control of the Parliament over the Government<sup>225</sup>. This was visible in the way that the Prime Minister addressed parliament in his exposé in April 2014, when he told MPs they will „eat, sleep and wash“ in the Parliament building<sup>226</sup>, until they adopt all laws necessary for reforms that the Government is planning, or when he yelled at opposition MPs and called them “cowards”<sup>227</sup>. On the other hand, the prime minister is welcomed to the Parliament with standing ovation from the ruling parties MPs, interrupting the speaker who was speaking at the moment<sup>228</sup>.

217 Constitution of Serbia, Article 138 and the Law on Free Access to Information of Public Importance, Article 22

218 The Law on Government, Article 36

219 The Rules on procedure, Article 79

220 The Rules on procedure, Articles 76, 77 and 79a

221 The Rules on procedure, Article 95

222 The Rules on procedure, Article 39, 39a and 40

223 Constitution of Serbia, Article 134; The Law on National Assembly, Article 38

224 The Criminal Code, Articles 103-107

225 Political analyst Zoran Stojkovic, professor at the Faculty of Political Science Belgrade, interview December 2014

226 <http://arhiva.24sata.rs/vesti/aktuelno/vest/vucic-jescete-spavati-i-umivati-se-u-skupstini-dok-se-ne-usvoje-reformski-zakoni/134089.phtml>

227 <http://www.politika.rs/rubrike/Politika/Vucic-DS-u-Vi-ste-kukavice.sr.html>

228 <http://www.naslovi.net/2014-10-24/kurir/vucic-u-skupstini-vi-iz-ds-branite-fotelju-ko-da-ste-rodjeni-u-njoj/12046150>

In January 2015 the Ombudsman announced that the Military Intelligence Service and Ministry of Defense refused to give him information that he demanded. There was no adequately response from the parliamentary committee in charge of civil control of security services<sup>229</sup>. The minister of defense replied that he is ashamed to say in public what he thinks about the Ombudsman's press issue<sup>230</sup>.

Ministries do not regularly deliver their reports to the Parliament's committees – research by Transparency Serbia shows that in 2014 (January-November), 23 out of 48 reports were submitted and only four were discussed in committees<sup>231</sup>. On the other hand, research done amongst MPs shows that they believe that parliamentary committees are the most efficient way of realizing the control function of parliament<sup>232</sup>. The Government was obliged by the Parliament's conclusion to report by December 6<sup>th</sup> 2014 on compliance with the recommendations from independent bodies, including the Anti-Corruption Agency. In January 2015, the Parliament replied to Transparency Serbia' request for information, informing Transparency Serbia that the Government had not yet delivered the report (the Government did not even answer to request).

The mechanism of interpellation has not been used. The opposition, under the current composition of the Parliament, does not even have enough deputies (50) to initiate that mechanism.

The final budget account has not been discussed in parliament since 2001. The final budget account is subject to audit by the State Audit Institution. Discussion of the audit before parliament (i.e. not just before committees) was held only in 2010.

On the other hand, the Administrative Court, which decides on the legality of individual acts of the Government and Ministries, raised its efficiency in 2014, due to the increased number of judges and the new internal organization in this court. There were 519 appeals against acts adopted by the Government of Serbia in 2013 and 606 in 2014. A total of 261 were resolved by December 30<sup>th</sup> 2014<sup>233</sup>. Meanwhile, the Constitutional Court, which assesses the legality of acts passed by the Government and other organs and organizations, made a total of 64 decisions on unconstitutionality in 2013. Out of these, six were on decisions of the Government<sup>234</sup>.

The new mechanism on accountability of Government members has become a regular practice in recent years – discussing Government's and minister's efficiency at sessions of parties' organs. For political analysts this represents either proof that parties, instead of government, are governing institutions<sup>235</sup> or merely simulation of democratic procedures within parties<sup>236</sup>.

Institutional accountability of cabinet ministers before the Parliament for their poor performance is in practice fully replaced with individual liability to their political party leadership or Prime Minister himself<sup>237</sup>. In one instance, the deputy head of the MP group of the Socialist Party, one of the ruling parties, said that "only the Prime Minister can analyse, assess and evaluate the performance of each ministry and minister individually and decide whether changes are necessary to the government in the future." "We certainly leave that job to the Prime Minister", said Djordje Milicevic<sup>238</sup>. The practice of announcing and conducting Government "reshuffling" occurred several times since 2012, whereas no information was presented about bad performance of ministers or other reasons that would provide arguments on how such moves would improve the implementation of the government's policies<sup>239</sup>.

229 <http://ombudsman.rs/index.php/lang-sr/2011-12-25-10-17-15/2011-12-25-10-13-14/3644-2015-01-14-10-58-56>

230 <http://rs.n1info.com/a27596/Vesti/Gasic-odgovorio-ombudsmanu-Jankovicu.html>

231 Izvestavanje i odgovornost kao mehanizam za suzbijanje korupcije, decembar 2014.doc

232 Research by Open Parliament NGO, April 2014, <http://www.otvoreniparlament.rs/wp-content/uploads/2014/04/ovde1.pdf>

233 Data obtained by Transparency Serbia from The Administrative Court

234 Data obtained by Transparency Serbia from The Administrative Court

235 Political analyst Zoran Stojiljkovic, professor at the Faculty of Political Science Belgrade, interview December 2014

236 Political analyst Djordje Vukadinovic, interview December 2014

237 For example: <http://www.telegraf.rs/vesti/politika/1411981-selakovic-dok-vucic-ima-poverenje-u-mene-ostajem-ministar> <http://www.telegraf.rs/vesti/politika/1395305-mihajlovic-vucic-ima-poverenje-u-mene>

238 [http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=12&dd=26&nav\\_id=940690](http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=12&dd=26&nav_id=940690)

239 <http://www.telegraf.rs/vesti/politika/782639-smena-ministara-u-sns-odlaze-petkovic-i-mariceva-knezevic-i-bacevic-na-ivici>

## Integrity (Law)

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

**Score: 50/2015 (50/2011)**

The Constitution, the Law on Government and the Anti-Corruption Agency Law provide some provisions and mechanisms which are supposed to ensure the integrity of members of the executive. There is, however, no Ethical Code for the members of the Government, which is an important gap.

The Constitution prescribes that members of the government cannot become members of the Parliament, Provincial Assemblies or Municipality Assemblies, or members of provincial or local executive authorities<sup>240</sup>. The Law on the Government envisages that a Member of the Government may not take another public office in the state authority, autonomous region, municipality, city, City of Belgrade, or perform activities which, by law, are incompatible with the duty of the government. Members of the Government also may not create possibilities for conflict between public and private interests and he/she must comply with regulations for conflict of interest, prescribed by the Anti-Corruption Agency Law<sup>241</sup>.

The Anti-Corruption Agency Law prescribes that members of the Government cannot perform other jobs; they are obliged to transfer managing rights in companies they own within a 30 day deadline after taking office, and to disclose ownership of more than 20 per cent in any legal entity. Two years after the termination of the office, 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 they held, unless approved by the Agency<sup>242</sup>. The Law also regulates gifts and hospitality<sup>243</sup>.

There is still no law regulating lobbying, nor are there regulations concerning meetings with representatives of legal entities that could have an interest in engaging a member of the Government after the termination of their function.

## Integrity (Practice)

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

**Score: 25/2015 (25/2011)**

Members of the Government abide by provisions preventing conflict of interest, but the matter of lobbying is not legally resolved. Despite the strong belief held by the public that the Government's decisions are often made under the influence of canters of power outside of the Government, it is difficult to say to what extent this is a consequence of disputable integrity of individual members of the Government. Political analyst claims that the authority, accountability and even integrity of the ministers are practically invested in them by the prime minister<sup>244</sup>.

In practice that means that the integrity of the minister will not be discussed if he is "at the mercy" of the Prime Minister – such cases include accusations of irregularities in public competition within the

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240 Constitution of Serbia, Article 126

241 The Law on the Government, Article 11

242 The Anti-Corruption Agency Law, Articles 28, 33-36, 38

243 The Anti-Corruption Agency Law, Articles 39-42

244 Interview with political analyst Djordje Vukadinovic, December 2014

ministry of social affairs and accusations that the minister of interior's PhD thesis was plagiarized<sup>245</sup>. There were also accusations by the President of the Bar Association of Serbia that the adoption of the Law on Public Notaries, which triggered a 4-month strike by lawyers, was an "experiment 'in vivo' backed by the 'big brother' whose name would be presented during the 'radicalization of the strike'". The Ministry of Justice and the Government accepted demands by the lawyers, and the name of the "big brother" was never presented. The Law gave a monopoly to notaries, enabling them a large income and depriving lawyers, the state, and primarily courts, of their income<sup>246</sup>.

As with accountability, in several instances during previous years, even when the integrity of cabinet members was questioned in public, there was no formal procedure to discuss it before the Parliament, but personal changes were made during the "reshuffling" of the cabinet, without elaboration of reasons.

According to data available at the Anti-Corruption Agency's web site, members of the executive report their assets and income. They do not file reports in cases when they are re-elected, or when their office is terminated. Therefore the Agency initiated the procedure against five ministers (or former ministers), 27 state secretaries and 23 assistant ministers from January 2013 till October 2014. In most cases they submitted reports after the procedure was initiated; they were issued "public warnings" and fined by the Administrative Court. In three cases, however, the Agency filed criminal charges against ministers or former ministers, suspecting that they were deliberately trying to hide information about their property. Those procedures are on-going<sup>247</sup>.

The Agency also issued a recommendation for the dismissal of the minister of justice for conflict of interest when he voted for his advisors at State Prosecution Council and Supreme Judicial Council to be elected deputy prosecutor and misdemeanor judge<sup>248</sup>. The case is in the appeal procedure before the Agency's Board, which has failed to adopt any decision in months<sup>249</sup>.

The pantouflage or revolving door has been regulated since 2010. According to data from the Anti-Corruption Agency, there were no procedures in 2014 against former members of the Government for violations of rules regarding pantouflage. The Agency gave consent to 15 former ministers, state secretaries, and assistant ministers' requests to establish business relations with a legal entity, entrepreneur or international organisation engaged in activity related to the office the official held.

# 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: 50/2015 (50/2011)**

The Government is declared as committed to reforming the public sector, but in practice the public sector has been highly politicized.

<sup>245</sup> [http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=06&dd=03&nav\\_category=12&nav\\_id=856287](http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=06&dd=03&nav_category=12&nav_id=856287)

<sup>246</sup> Report by the Government's Anti-Corruption Council <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2693/supplement-to-the-second-report-on-judicial-reform-or-report-on-adoption-of-judicial-laws-and-their-resulting-consequences>

<sup>247</sup> Data from ACAS Sector for Control, <http://www.acas.rs/organizacija/sektor-za-kontrolu-imovine-i-prihoda/?pismo=lat>

<sup>248</sup> [http://www.acas.rs/images/stories/press/preporuka\\_za\\_razresenje\\_NS.pdf](http://www.acas.rs/images/stories/press/preporuka_za_razresenje_NS.pdf)

<sup>249</sup> [http://www.acas.rs/sr\\_cir/component/content/article/44-sednice-odbora/1147-saopstenje-odbora-agencije-9-2.html](http://www.acas.rs/sr_cir/component/content/article/44-sednice-odbora/1147-saopstenje-odbora-agencije-9-2.html)



The Strategy for Reform of Public Administration was adopted in January 2014. The Strategy envisages professionalization and depoliticization, with „strengthening transparency, ethics and responsibility in performing tasks of the public administration” being set as one of the goals. Those principles were proclaimed by the 2004 Strategy of the Reform of State Administration, but all Governments since have broken those principles, treating public administration as political spoils that provide employment opportunities for party cadres<sup>250</sup>.

The Action Plan for the latest Strategy’s implementation has been adopted in April 2015. The draft from December 2014 envisages organizational and functional restructuring of the public administration, improving the system of public policies of the Government, establishing the legal and institutional framework for integrated strategic management, the establishment of a harmonized system of labor relations and wages in the public administration based on the principles of transparency and fairness. Those measures should be implemented in the period from 2015 to 2016<sup>251</sup>.

Some of these activities were announced by the Prime Minister in his expose in April 2014, with much shorter deadlines, which Transparency Serbia had assessed at the time as unrealistic<sup>252</sup>. The Prime Minister said that, by November 2014, the Government planned to finish its analysis of the number of employees in all institutions, measuring at the same time their performance in order to identify surpluses / deficits, to perform analysis of job descriptions in all institutions in order to amend them, to perform functional analysis of all institutions in order to identify the justification for their existence and overlapping activities. This has not been completed until this report was finalized. The Prime Minister also announced that the obligation for the education and training of civil servants, at all levels, would be established and that the criteria for employment and advancement in the state administration would be redefined. He also stated that the Law on Public Administration would be amended in order to prescribe the manner in which public policies are adopted and to ensure that they are realistic, consistent and enforceable<sup>253</sup>.

The Law on Public Administration has been amended in the meantime, but not in the area of public policies. One of the changes was prescribing that heads of administrative districts not be civil servants any more, but public officials appointed by the Government, practically political figures<sup>254</sup>.

Although the current Law on Public Servants prescribes the system of employment, appointments and promotion of state servants, in practice political parties dominate employment in state administration at all levels of authority and party criteria are more important than professionalism. Research conducted by TS on the implementation of the Law on State Owned Enterprises revealed that there was no political will to implement this law and to elect professional managers in SOEs<sup>255</sup>. Political analysts agree that employment and promotions in public sector depend on political affiliation and coalition agreement<sup>256</sup>.

In August 2014 the Law on Public Administration was amended in order to end the 4-year old illegal practice of appointing civil servants to positions without public competition. By December 31<sup>st</sup> 2010 all public servants in positions (assistant ministers, heads of government’s agencies, directors of administrative bodies) should have been appointed on the basis of public competitions. Governments, however, continued to appoint them on the basis of a transitional provision of the law, thus violating the prescribed obligation. The same was done by the 2012 Government – with more than 200 appointments based on this transitional provision, and less than 50 after public competition. Amendments to the Law, adopted on September 10<sup>th</sup>, 2014 were supposed to end this practice, providing precise procedures and deadlines for appointing acting officials until

250 Interviews with three political analysts, Zoran Stojiljkovic, Djordje Vukadinovic and Slavisa Orlovic, November and December 2014.

251 Transparency Serbia was part of the working group for drafting Action Plan

252 [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=654%3Aekspoze-premiera-sa-stanovita-borbe-protiv-korupcije&catid=40%3Aasoptenje&Itemid=52&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=654%3Aekspoze-premiera-sa-stanovita-borbe-protiv-korupcije&catid=40%3Aasoptenje&Itemid=52&lang=sr)

253 [http://www.srbija.gov.rs/extfile/sr/208700/ekspoze\\_aleksandar\\_vucic\\_cyr270414.doc](http://www.srbija.gov.rs/extfile/sr/208700/ekspoze_aleksandar_vucic_cyr270414.doc)

254 <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2014/2637-14.pdf>[http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=826%3Aizmena-zakona-zaustaviti-nezakonitu-praksu&catid=40%3Aasoptenje&Itemid=52&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=826%3Aizmena-zakona-zaustaviti-nezakonitu-praksu&catid=40%3Aasoptenje&Itemid=52&lang=sr)

255 <http://www.transparentnost.org.rs/images/stories/materijali/Efekt%20novog%20zakona%20o%20JP/Efekt%20novog%20zakona%20o%20javnim%20preduzecima-politizacija%20ili%20profesionalizacija,%20oktobar%202014.pdf>

256 Interviews with three political analysts, Zoran Stojiljkovic, Djordje Vukadinovic and Slavisa Orlovic November and December 2014.

competitions are conducted<sup>257</sup>. In weeks before the amendments were adopted, the Government rushed to appoint even more public servants to positions, violating the law, apparently doing this on the basis of doubtful transitional provision. There were 15 such appointments in the Government's sessions in August and September 2014, the last one three days after amendments were adopted in the Parliament, but before they were published in the Official Gazette. The changes in law also introduced some positive changes regarding required education levels for public servants and procedures of publishing public competitions.

Those amendments were assessed by the EU in its Progress Report for 2014 as an "initial step towards further progress in the establishment of an adequate merit-based civil service system", pointing out, however, that "substantial changes in recruitment practices are needed to establish a merit-based professional public administration both at central and local level. This should include well defined criteria for appraisal and career development for civil servants"<sup>258</sup>

The EU Progress Report for 2014 also praised the Ministry of Public Administration and Local Government for "dedication" to reform public administration, assessing that "increased focus on policy planning and coordination following the establishment of the Secretariat for Public Policies, represent initial positive steps towards more efficient public administration". It concluded, however, that implementation of the reform strategy is needed to move towards a transparent and merit-based public service system because "the lack of transparency in recruitment and politicisation of public administration employees remain an issue of concern"

The EU Progress Report for 2015 also stressed: "Good progress has been achieved with the adoption of a comprehensive public administration reform action plan, a law on inspection oversight, a national training strategy for local government, and the law on maximum number of public sector employees. However, Serbia now needs to ensure that the ambitious reform plans and the legal framework are implemented. Strong political will remain essential to professionalize and depoliticise the administration and make recruitment and dismissal procedures more transparent, especially for senior management positions."

"The legal framework for the central government civil service is in place, but it does not apply to many public employees exercising key state functions. The legal separation of political and public service positions is not clearly enforced. The civil service law provides for merit-based recruitment, promotion and dismissal procedures. Several provisions, however, leave space for wide discretionary powers and are regularly used in practice. Turnover of senior civil servants is an area of particular concern. Nearly 60 % of senior civil servants are still appointed on the basis of exceptions or transitional arrangements. Also reorganization can be used unfairly to dismiss or reassign staff. Disciplinary procedures are in line with civil service principles and an appeals mechanism is in place. A civil service law for local government employees has not yet been adopted."

## 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: 25/2015 (25/2011)**

In its rhetoric, the Government is fully dedicated to the fight against corruption as a top priority<sup>259</sup>. In the practice, however, the results are limited, and there have been instances in which the genuine political will to fight corruption could be questioned<sup>260</sup>.

<sup>257</sup> <http://www.parliament.gov.rs/upload/archive/files/cir/pdf/zakoni/2014/2636-14.pdf>

<sup>258</sup> EU Progress Report for 2014 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20140108-serbia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf)

<sup>259</sup> <http://www.rts.rs/page/stories/sr/story/9/Politika/1255490/Borba+protiv+korupcije+za+bolju+Srbiju.html><http://www.tanjug.rs/novosti/156852/vucic--borba-protiv-korupcije-je-trajna-misija-drustva.htm>

<sup>260</sup> Estimate by political analysts Zoran Stojiljkovic and Djordje Vukadinovic, interviews December 2014, and by member of Anti-Corruption



The ruling party practically won the 2012 elections on promises to fight corruption and it was a top priority in the campaign. After the Government was formed, the fight itself was primarily based on actions by the police and the prosecution, investigating cases involving tycoons and officials from the prior government. Some charges were filed, and trials began in a very small number of cases, but the Prime Minister, in December 2013, declared that all priority cases had been solved<sup>261</sup>. This was disputed by a member of Government's Anti-Corruption Council, Jelisaveta Vasilic, claiming that practically none of the major cases had been solved<sup>262</sup>. After 2014 early elections, the Government turned its focus to economic problems<sup>263</sup>.

Political analysts agree that the fight against corruption was primarily used as a tool in the campaign. Professor at Faculty of Political Science and member of Anti-Corruption Agency's Board Zoran Stojiljkovic also noted that besides being used as a political slogan, the fight against corruption was something that the Government deliberately decided to focus on because it is less demanding than solving economic problems. "One can use this rhetoric with less concrete results, and it is less demanding than some other complex economic issues", said Stojiljkovic<sup>264</sup>. On the other hand, political analyst Djordje Vukadinovic claims, that, although the fight against corruption was an "important pillar of government's policy, practical results were, to say at least, selective"<sup>265</sup>.

In July 2013 a new Anti-Corruption Strategy was adopted<sup>266</sup>. There were several important provisions in this document – introduction of control of corruption risks in the new regulations, the improvement of norms on conflicts of interest and financing of political parties, improved transparency of the decision-making process, the protection of whistle-blowers, better organization of the police, a mechanism for monitoring the recommendations of independent anti-corruption bodies. However, there were many shortcomings and deficiencies, as Transparency Serbia indicated at the time, such as: mentioning neither cross-checking of income and assets nor the law on determining the origin of assets, no mechanisms for increasing the number of reported cases of corruption, no comprehensive consideration of the problem of political influence on the appointment and dismissal of managers in all parts of the public sector, but only a particular (e.g., public companies, educational institutions), and splitting coordination and monitoring of the implementation of the Strategy between Ministry of Justice, Government's Anti-Corruption Council and Anti-Corruption Agency<sup>267</sup>.

At one point the Government decided that the head of the "Coordinating body" for the implementation of the Strategy and the Action Plan would be the prime minister<sup>268</sup>. The Strategy, however, envisaged that the Ministry of Justice would be in charge of coordination. A representative of the Ministry said that the Government had no intention to take monitoring from the hands of Anti-Corruption Agency, or to coordinate anti-corruption efforts of institutions that Government has no jurisdiction on (such as the judiciary or parliament). In an interview for this analysis he claimed that this was done merely to stimulate ministries and other government organs to comply with their obligations<sup>269</sup>.

In September 2013 the Action Plan for the implementation of the Anti-Corruption Strategy was adopted. Monitoring of the implementation of tasks in three (out of ten) areas in the Action Plan, performed by Transparency Serbia in 2014, shows that the Government failed to fulfill some important tasks, such as amending the Law on Financing Political Activities, the Anti-Corruption Law, the State Audit Institution Law, adopting the law regulating lobbying, adopting the Plan for Curbing Corruption in Public Procurements. Overall, only 26% of the measures were completed

Council Jelisaveta Vasilic, <http://www.istinomer.rs/bonus/jelisaveta-vasilic-plasim-se-da-ova-vlast-nema-nameru-da-izgradi-institucije/>

261 <http://www.novimagazin.rs/vesti/reseni-svi-slucajevi-spornih-privatizacija>

262 <http://www.istinomer.rs/bonus/jelisaveta-vasilic-plasim-se-da-ova-vlast-nema-nameru-da-izgradi-institucije/>

263 [http://www.srbija.gov.rs/extfile/sr/208700/ekspoze\\_aleksandar\\_vucic\\_cyr270414.doc](http://www.srbija.gov.rs/extfile/sr/208700/ekspoze_aleksandar_vucic_cyr270414.doc)

264 Interview for NIS, December 2014

265 Interview for NIS, December 2014

266 <http://www.mpravde.gov.rs/tekst/38/protiv-korupcije.php>

267 [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=308%3Aanedostaci-antikorupcijske-strategije&catid=40%3Aasoptenje&Itemid=52&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=308%3Aanedostaci-antikorupcijske-strategije&catid=40%3Aasoptenje&Itemid=52&lang=sr)

268 <http://www.blic.rs/Vesti/Politika/486042/Vucic-na-celu-Koodinacionog-tela-za-borbu-protiv-korupcije>

269 Interview with State Secretary Radomir Ilic, September 2014

in those three areas<sup>270</sup>. In the Judiciary area only four activities (14%) out of a total of twenty-nine were carried out in accordance with the terms. In the area “Police”, only one activity out of a total of twenty-three was carried out in accordance with the terms. A report done by Centre for Security Policy shows implementation is in progress for most of the planned activities of the judicial and police areas<sup>271</sup>.

A report<sup>272</sup> by CSO Belgrade Centre for Human Rights on fulfillment of the Action Plan in areas of “Privatization”, “Planning and Construction”, “Health”, “Education” and “Sport” also concluded that activities were not fulfilled in time, there was no adequate control over the implementation of activities, a significant number of legal provisions in the reporting period have been passed under urgency procedures, and most of them need to be amended, while a significant number of legal provisions are yet to be adopted.

It should be noted that in some of those areas changes were done in the meantime, but not related to tasks from the Action Plan. For instance, the Law on Financing Political Activities was amended in order to cut down the amount of money received by political parties from the budget. At the same time, another change was adopted, which enabled parties to use, in the election campaign, money intended for financing their regular work<sup>273</sup>. Another example of the lack of political will to systematically solve the corruption-prevention issue was the decision by the ruling party that their members cannot hold two paid public offices. At the same time the Ministry of Justice and the Government (controlled by the same party) ignored the Anti-Corruption Agency’s initiative to change the Law on Anti-Corruption Agency, with one of the changes being that public officials cannot take more than one public office<sup>274</sup>.

Some of the Government’s anti-corruption activities are envisaged by the draft Action Plan for Chapter 23 (chapter in EU membership negotiations process). The final version of this document has not yet been adopted. The first version was criticized by the Anti-Corruption Agency<sup>275</sup>, Commissioner for Public Information<sup>276</sup> and Transparency Serbia<sup>277</sup>.

Another important anticorruption legislation was adopted in November 2014 – the Law on Protection of Whistle-blowers. Adoption was preceded by 18-months of work on the draft law and debate. The working group of the Ministry significantly changed the “Model law”, published in April 2013 by the Commissioner for Public Information<sup>278</sup>. The December 2013 draft of the Ministry that contained significant weaknesses was improved in some segments, adopted<sup>279</sup>, and implementation will start in June 2015.

The EU Progress Report 2014 noted that the fight against corruption is one of the priorities of the Government formed after the 2014 elections and that “there was a strong political impetus to fight corruption”. The EU noted, on the other hand, that corruption remained prevalent in many areas. “Significant efforts are needed not only to enhance and fully enforce the legal framework for the fight against corruption but also to back these reforms with appropriate resources”. It further said that “the government still needs to develop its understanding of the role of independent regulatory bodies and to guarantee that these bodies have appropriate resources to perform their role effectively. Finally, systematic follow-up of their findings should be ensured”<sup>280</sup>.

270 Report on the Implementation of the National Strategy for Combating Corruption in the Republic of Serbia for the period from 2013 to 2018 and the Action Plan for its implementation in the following areas: 3.11. Political activities 3.2. Public finances; 3.9. media Transparency Serbia, January 15th 2015

271 [http://www.acas.rs/images/stories/Tabele/Iternativni\\_izvestaj\\_BCBP.pdf](http://www.acas.rs/images/stories/Tabele/Iternativni_izvestaj_BCBP.pdf)

272 <http://www.acas.rs/images/stories/izvetaji/Alternativni%20izvestajBCHR.pdf>

273 <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2014/3923-14.pdf>

274 [http://www.acas.rs/sr\\_lat/component/content/article/881-podneta-inicijativa-za-izmene-i-dopune-zakona.html](http://www.acas.rs/sr_lat/component/content/article/881-podneta-inicijativa-za-izmene-i-dopune-zakona.html)

275 [http://www.acas.rs/sr\\_cir/pocetna.html](http://www.acas.rs/sr_cir/pocetna.html)

276 <http://poverenik.org.rs/yu/saopstenja-i-aktuelnosti/1894-akcioni-plan-za-poglavlje-23-znacajno-ispod-ocekivanog-i-potrebno-nivoa.html>

277 [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=1041%3Aakcioni-plan-za-poglavlje-23-neiskoriene-anse-za-poboljanje&catid=40%3Aasoptenje&Itemid=52&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=1041%3Aakcioni-plan-za-poglavlje-23-neiskoriene-anse-za-poboljanje&catid=40%3Aasoptenje&Itemid=52&lang=sr)

278 In drafting of Model law participated experts from Anti-Corruption Agency, Ombudsman, Anti-Corruption Council, Public prosecutor’s association and Transparency Serbia <http://www.poverenik.rs/sr/saopstenja-i-aktuelnosti/1613-poverenik-dostavio-model-zakona-o-zastiti-uzbunjivaca-vlada-na-potezu.html>

279 <http://www.blic.rs/Projekat-EU/512237/ZASTITA-UZBUNJIVACA-Nenadic-Kljucna-resenja-su-losa>

280 EU Progress Report for 2014 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20140108-serbia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf)

Regarding this observation by the EU, it should be noted that the Parliament obliged the Government to report on fulfilling obligations prescribed by the Parliament's conclusion, regarding recommendations from independent bodies' annual reports. The Report was due by December 6th, but according to the information provided to Transparency Serbia from the Parliament, the Government had not sent it, by May 2015<sup>281</sup>.

When it comes to supporting the implementation of anti-corruption laws, in the previous two years, the Government provided satisfactory premises for the work of the Commissioner for Information of Public Importance<sup>282</sup> and the Ombudsman got additional premises<sup>283</sup>. However, as explained before, comprehensive support for the independent bodies' work is not ensured. Furthermore, the Government did not fully perform their own tasks, set by the law in the implementation of some crucial reform laws, such as the Law on Public Enterprises.

The current Government continued the practice of ignoring its Anti-Corruption Council's reports<sup>284</sup>, such as the report indicating irregularities in laws and practices regarding the judiciary<sup>285</sup>. A Member of Council was cited saying that "love between this government and the council lasted 2.5 hours. The Government doesn't communicate with us although it claims that the fight against corruption is its top priority"<sup>286</sup>.

# EXECUTIVE

## Recommendations

1. The Government should fulfill its obligation from the Anti-Corruption Strategy and Action Plan
2. The Government should fulfill obligations from the Parliament's conclusions regarding independent bodies' annual reports and report on this issue.
3. The Government should draft, after a public hearing and with approval based on wider political consensus, a new Law on Ministries, which would 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 on the need to settle a number of ministerial places during the formation of the government;
4. The Government should align and make fully comparable its four –year program with annual work programs and reports on their execution;
5. The Government should enable the public to influence the budget process and to provide explanations on the influence of the planned budget expenditures in the fulfillment of legal obligations of state bodies and in the implementation of defined priorities;
6. The Government and the Parliament should ensure effective supervision of the constitutionality and legality of Government decisions, by modifying the Law on the Constitutional Court and through the compulsory publication of the Government's conclusions with regulatory effect;

<sup>281</sup> Reply from the Parliament to Transparency Serbia' request for information

<sup>282</sup> <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1372674/%C5%A0abi%C4%87+dobio+nove+prostori.html?email=yes>

<sup>283</sup> [http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=08&dd=06&nav\\_category=12&nav\\_id=739919](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=08&dd=06&nav_category=12&nav_id=739919)

<sup>284</sup> <http://www.istinomer.rs/bonus/jelisaveta-vasilic-plasim-se-da-ova-vlast-nema-nameru-da-izgradi-institucije/http://www.vreme.co.rs/cms/view.php?id=1252177>

<sup>285</sup> <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028/index/>

<sup>286</sup> <http://akter.co.rs/29-bezbednost/110887-milenovi-ignorije-nas-i-ova-vlada.html>

7. The Government should prescribe standards on conflicts of interest that would apply to special advisers in the Government and ministries;
8. The Government and the Parliament should regulate lobbying (an attempt to influence decision making or drafting of regulations) in order to reduce inappropriate non-institutional influences on the work of the Government;
9. The Government should introduce an obligation to publish all of its decisions, except when it is necessary to protect predominant public interest;
10. The Government should allow the media to attend its sessions and publish transcripts of its sessions, except in areas where discussing issues that need to remain confidential; The Government should publish a notice of the agenda of the sessions;
11. The Government should publish data on the candidates it proposes, also data about elected, appointed and dismissed persons, along with the reasons for such decisions;
12. The Government should publish more data on budget execution and financial commitments of the state;
13. The Government should define more precisely public debates –introduce obligations to publish all received recommendations and suggestions and explanations for the possible rejection of proposals as well as public debates on legislative concept papers;
14. The Government should introduce the practice to call for the accountability of government ministers if failure occurs as a delay in fulfilling their 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 requests or 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;
15. When setting up each new government, the Government should establish and publish 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;
16. The Government should regulate more clearly its actions based on the Government's Anti-Corruption Council's reports and recommendations, including publication of findings and conclusions related to the Council's previously published reports;
17. The Government should more clearly regulate its anti-corruption coordination mechanism, in order to make it more efficient and to exclude possible interpretations that the Executive coordinates with the work of other government branches and independent state bodies.



# JUDICIARY

## National Integrity System



**Summary:** The Constitution and laws guarantee the independence of judges and permanency of their function. However, interference of the Government and representatives of political parties in the work of judiciary exist. Officials, including the Minister of Justice, are indicating in the public on judgments they are expecting in some cases. Such was the case when the Minister of Justice was quoted when he said that the strike of the attorneys-at-law was organized with the aim to prevent a businessman, charged for abuse position, from being “convicted”<sup>287</sup>, meaning the judgment will be “guilty”. As for transparency of the judiciary, the public has access to the most of the relevant judicial information. There are operative mechanisms for judges’ accountability determination - participants in court proceedings are entitled to complain against the work of the court when the proceedings are dilatory, irregular or there is any form of influence on the course and outcome. Also disciplinary reports against judge can be submitted to the Disciplinary Prosecutor. However, there is a room for improvement of the accountability mechanisms, primarily by implementing appraisal rules for judges. Most of the mechanisms for ensuring integrity of judicial function holders are functioning in practice. Effectiveness of judicial oversight of the executive power has been improved, but the Administrative court is still lacking capacities, while timing of the Constitutional Court’s decisions in “politically sensitive” cases sometimes raises criticism. The number of convictions for corruption-related criminal acts has risen. However, statistics include also some cases that could be hardly considered “corruption” and the majority of penalties are below the legal minimum. Court proceedings in some of the largest corruption cases are very long.

<sup>287</sup> Press statement by the minister, <http://www.blic.rs/Vesti/Hronika/506558/STRAJK-ADVOKATA-Selakovic-Pravosudje-blokirano-da-Miskovic-ne-bi-bio-osudjen>





| JUDICIARY  |                        |                           |                         |
|--|------------------------|---------------------------|-------------------------|
| Overall Pillar Score (2015): 67 / 100<br>Overall Pillar Score (2011): 60 / 100 |                        |                           |                         |
| Dimension  | Indicator              | Law                       | Practice                |
| <b>Capacity</b><br>56 / 100  | Resources              | 75 (2015),<br>75 (2011)   | 50 (2015),<br>50 (2011) |
|  | Independence           | 75 (2015),<br>75 (2011)   | 25 (2015),<br>25 (2011) |
| <b>Governance</b><br>83 / 100  | Transparency           | 75 (2015),<br>75 (2011)   | 75 (2015),<br>50 (2011) |
|  | Accountability         | 100 (2015),<br>100 (2011) | 75 (2015),<br>50 (2011) |
|  | Integrity              | 100 (2015),<br>100 (2011) | 75 (2015),<br>75 (2011) |
| <b>Role</b><br>38 / 100  | Executive Oversight    | 50 (2015), 25 (2011)      |                         |
|  | Corruption Prosecution | 25 (2015), 25 (2011)      |                         |

**Structure** – Judicial power in the Republic of Serbia is vested in courts of general and special jurisdiction. Courts of general jurisdiction are 66 basic courts, 25 high courts, 4 appellate courts and the Supreme Court of Cassation. Courts of special jurisdiction are 16 commercial courts, the Commercial Appellate Court, 44 misdemeanor courts, the Misdemeanor Appellate Court, and the Administrative Court<sup>288</sup>.

The Supreme Court of Cassation is the court of highest instance in the Republic of Serbia. It is the immediately higher instance court to the Commercial Appellate Court, the Misdemeanor Appellate Court, the Administrative Court, and Appellate Courts. The Commercial Appellate Court, the Misdemeanor Appellate Court and the Administrative Court are established for the territory of the Republic of Serbia. The Appellate Court is the immediately higher instance court to high courts and basic courts (in some cases). The Commercial Appellate Court is the immediately higher instance court to commercial courts, whereas the Misdemeanor Appellate Court is the immediately higher instance court to misdemeanor courts. High courts are immediately higher instance courts to basic courts in instances specified by the Law on Organisation of Courts<sup>289</sup>.

A high court in the first instance adjudicates in some corruption related offences - abuse of position cases, accepting bribe and bribery and abuse in connection with public procurement.

There are approximately 3,200 judges (including misdemeanor judges), with 120 positions still being vacant. Judges are elected permanently by the High Judicial Council (HJC). HJC has 11 members. Six of them are judges, one is a representative of the Law Faculties, one of attorneys-at-law, and there are three members appointed by their functions - Minister of Justice, representative of the Parliamentary Committee and President of the Supreme Court of Cassation. The High Judicial Council proposes candidates to the National Assembly for the first judicial tenure.

<sup>288</sup> Law On Organisation Of Courts, Article 11

<sup>289</sup> Law On Organisation Of Courts, Article 23



# Assessment

## Capacity

### Resources (Law)

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

**Score: 75/2015 (75/2011)**

Legal framework envisages appropriate salaries and working conditions for judiciary.

A judge is entitled to a salary “commensurate with the dignity of judgeship and the burden of responsibility. The salary of a judge shall represent a guarantee of his/her independence and support of his/her family”<sup>290</sup>. Coefficients for calculating the judges’ salaries are envisaged by the Law on Judges<sup>291</sup>, while the Law on the Budget of the Republic of Serbia determines the basis by which the coefficients are multiplied. The current basis for the salary is RSD 33.150 (USD 330). However, this base has diminished by 10% since November 2014, due to government’s austerity measures in the public sector. Coefficients depend on which court a certain judge is appointed to, and they are between 2.5 for judges of basic courts to 6 for the President of Supreme Court of Cassation.

Funds for the work of courts are provided from the budget of the Republic of Serbia. The size and flow of funds must be capable of sustaining the independence of judicial authority and ensure proper operation of courts<sup>292</sup>.

The High Judicial Council proposes the size and structure of budgetary funds necessary for running costs, with prior opinion obtained from the Ministry of Justice, and allocates these funds to courts<sup>293</sup>. Oversight of budgetary funds for court operations is conducted by the High Judicial Council, the Ministry of Justice and the Ministry of Finance<sup>294</sup>. Revenues generated from the work of courts are separately set out in the budget of the Republic of Serbia, and are allocated for the operation of judicial authorities<sup>295</sup>.

The Law on Organization of Courts stipulates that judicial administration tasks are carried out by the High Judicial Council and the Ministry of Justice. 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 spatial requirements, equipment and securing the courts, administrating and developing of a judiciary IT system, development and implementation of capital projects and other programs for judiciary authorities. HJC should have taken over all budget competencies regarding judges and courts from the Ministry of Justice by September 1<sup>st</sup>, 2011. It was postponed several times, and now it is scheduled for June 1<sup>st</sup>, 2016<sup>296</sup>.

Ensuring full independence or autonomy and transparency of the judicial system in terms of budgetary powers is one of the objectives of the National Anti-corruption Strategy. According to Action Plan, HJC should be fully competent and accountable for the judicial budget until the end of 2017<sup>297</sup>.

290 Law on Judges, Article 4

291 Law on Judges, Articles 37-42

292 Law On Organisation Of Courts, Article 82

293 Law On Organisation Of Courts, Article 83

294 Law On Organisation Of Courts, Article 84

295 Law On Organisation Of Courts, Article 85

296 Law On Organisation Of Courts, Article 32 (s3)

297 Action plan For the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia For The Period 2013-2018, Objective 3.4.1.

## Resources (Practice)

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

**Score: 50/2015 (50/2011)**

Financial resources, staffing, and infrastructure are not adequate for judiciary to operate fully effective and efficiently in practice. The judiciary suffers from an acute lack of resources, technical and organisational support, or in the best case unevenly allocated resources, a problem that places obstacles in the way of the proper performance by judges. A key point regarding resources concerns the distribution of workload among courts<sup>298</sup>.

The number of judges increased after the Constitutional Court effectively ordered re-election of judges which were dropped in the first general re-election in 2010. In 2010 the number dropped from 2400 to 1800. Following the Constitutional Court's decision, the High Judicial Council elected 593 judges in 2012 and 2013, and 512 of them took office. Now there are 2.400 judges' positions (and 615 misdemeanor judges), with around 100 of them being vacant<sup>299</sup>. However, the court system has changed twice in the meantime – both the network of basic and high courts and the jurisdiction of courts - resulting in some of the courts and judges being overburdened<sup>300</sup>. There is also a problem with insufficient number of judicial assistants and other judicial staff<sup>301</sup>.

The budget of the judiciary increased in 2013 (RSD 19.2 billion or USD 223 million) and 2014 (RSD 21.9 billion or USD 230 million), but it was still significantly below the level from 2008 (RSD 22.5 billion or USD 281 million)<sup>302</sup>. In 2015, the budget for judiciary decreased by nearly 12%, primarily because courts were deprived of part of its own income when notaries were introduced in the legal system and given monopoly in some areas<sup>303</sup>.

The debt of judiciary to court experts, ex-officio attorneys and lay judges is growing. It was approximately RSD 1 billion (USD 12.5 million) in 2011, and although the Ministry of Justice estimated at the time that debt would be paid by the end of 2011 through increased income from court taxes, it reached RSD 1.66 billion (USD 19.3 million) by the end of 2012 and RSD 3.2 billion (USD 38 million) by the end of 2013<sup>304</sup>. A member of HJC, judge Aleksandar Stoilkovski, says that plan is to pay these debts within three years<sup>305</sup>. Engagement of court experts and ex-officio attorneys in the future should be at the expense of prosecution, because of the procedural changes.

Government's Anti-Corruption Council stated in its 2014 Report on Judicial Reform<sup>306</sup> that in the previous two years "The financial situation of the judiciary has deteriorated because the competences of the judicial administration and especially the financial competences of the judicial administration have not been transferred to the High Judicial Council and State Prosecutorial Council yet". According to this report, after the restoration of judges back to work, the lack of office space has been evident. Low salaries in the judiciary are another problem, especially when it comes to civil

298 „Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution“, Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia", April 2014

299 Data from SJC report <http://www.vss.sud.rs/sites/default/files/attachments/lzvestaj-o-rad-u-VSS-2013.pdf> and interview with SJC member judge Aleksandar Stoilkovski. Report says there are 241 vacant positions as of March 6th 2014.

300 Interview with judge Omer Hadziomerovic, vice-president of Judges' Association, November 2014

301 Interview with SJC member judge Aleksandar Stoilkovski, November 2014

302 Budget for 2013, 2014 and 2015 <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>

303 <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2693/supplement-to-the-second-report-on-judicial-reform-or-report-on-adoption-of-judicial-laws-and-their-resulting-consequences>

304 HJC annual reports, <http://www.politika.rs/rubrika/Hronika/Sudski-vestaci-rade-na-veresiju.lt.html> Member of HJC, judge Aleksandar Stoilkovski, interview, November 2014

305 Member of HJC, judge Aleksandar Stoilkovski, interview, November 2014

306 <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

servants. The Anti-Corruption Council estimated that judges are not adequately paid in accordance with the volume of the work they perform<sup>307</sup>. However, judges interviewed for this report considered salaries to be “decent and regular”<sup>308</sup> or even “stimulative in present situation”<sup>309</sup>. Moreover, there is no massive fleeing of judges to the law profession or other branches which could be considered to be caused by financial reasons<sup>310</sup>.

The Anti-Corruption Council also claims there is a major problem with lack of technical equipment in misdemeanor courts and absence of an electronic database of cases: “The right to a natural judge in misdemeanor courts is endangered simply because of the lack of an electronic system for the allocation of cases to judges, which is currently done by hand”<sup>311</sup>.

While Anti-Corruption Council claims that the accommodation capacities of the judicial institutions is problem because there are not enough buildings to accommodate courts, and those that exist are often inadequate, High Judicial Council member judge Aleksandar Stojiljkovski claims these problems are not so alarming. All courts in new network have their building, most of them are renovated or being renovated, partly from donations.

## Independence (Law)

*To what extent, in accordance to legislation, the judiciary is independent?*

**Score: 75/2015 (75/2011)**

The Constitution and laws guarantee the independence of judges and permanency of their function. The Constitution prohibits influencing judges and prohibits political activity of judges<sup>312</sup>. Provisions about independence of the judiciary, independence of judges, and permanency of judge’s functions, proclaimed in the Constitution, are confirmed with provisions of the Law on Organization of Courts and the Law on Judges.

However, the legal framework also envisages involvement of parliament in election of judges for their first tenure, and election of presidents of courts, the provision which is identified as one of the threats for independence of judges<sup>313</sup>. According to the EU Progress Report, this constitutional and legislative framework still leaves room for undue political influence affecting the independence of the judiciary. Constitutional amendments on the composition and method of election of members of the HJC and allowing for judicial review of dismissal decisions are needed to strengthen the independence, representativeness and hence legitimacy of HJC<sup>314</sup>.

Judicial authority is, according to the Law on Organization of Courts, vested in courts and independent of the legislative and the executive authorities. Judicial decisions are binding on all and may not be subject to extra-judicial control. Judicial decisions may be reviewed only by the court of competent jurisdiction in due proceedings established by law<sup>315</sup>.

307 <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

308 Interview with judge Omer Hadziomerovic, vice-president of Judges’ Association, November 2014

309 Interview with SJC member judge Aleksandar Stojiljkovski, November 2014

310 Interviews with SJC member judge Aleksandar Stojiljkovski, November 2014 and judge Omer Hadziomerovic, vice-president of Judges’ Association, November 2014

311 Anti-Corruption Council, „Report on Judicial Reform”, April 2014, <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

312 Constitution of Serbia, Articles 142-149

313 „Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution”, Joint European Union – Council of Europe Project “Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia”, April 2014

314 EU Progress Report for 2014

315 Law On Organisation Of Courts, Article 3



Use of public office, the media or any public appearance that may unduly influence the course and outcome of court proceedings is prohibited by the law. Any other form of influence on the courts or pressure on the parties in the proceedings is also prohibited<sup>316</sup>.

A judge is independent in his/her actions and decision taking<sup>317</sup>. A judge performs his/her function as permanent, except when elected a judge for the first time<sup>318</sup>. Judges are elected to permanent functions by the High Judicial Council<sup>319</sup>. 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/she is not re-elected to a permanent function<sup>320</sup>, which applies to 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 High Judicial Council. A judge has the right to file an appeal against that decision to the Constitutional Court. The decision of the Constitutional Court is final<sup>321</sup>.

The Law on Judges stipulates in detail the procedure for dismissal<sup>322</sup>. The procedure for dismissal before the HJC can be 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 evaluation of judge's work and the Disciplinary Commission<sup>323</sup>.

Two of 11 members of the High Judicial Council are politicians - representative of the parliament and the minister of justice. The National Judicial Reform Strategy for the period 2013-2018<sup>324</sup> envisages exclusion of the Parliament from process of election of members of the HJC and process of election of presidents of courts. It also envisages change of composition of the HJC – aimed at excluding the representatives of the legislative and executive branch from membership in this body. As a transitional solution, envisaged by the Strategy, the Law on Judges was amended in June 2014, providing that the High Judicial Council will propose only one candidate, rather than three, to the parliament for each judicial post.

Current framework, according to the report of the EU and Council of Europe, is "one in which the appointment and promotion... is politicised"... "resulting in a serious threat to the necessary independence and impartiality of both branches". This creates a risk of undesirable influence on the conduct of judges, whether directly or in the form of pre-emptive caution in dealing with cases that affect the interests of politicians or those whose interests they wish to protect<sup>325</sup>.

In July 2014 the High Judicial Council has adopted appraisal rules for judges and court presidents. In December 2014 HJC, however, decided not to implement these rules and the Rulebook will be amended. The Rulebook was changed in May 2015.

It is noted that another provision in the Law on Judges might influence independence of the judges. It<sup>326</sup> provides that a judge may be assigned to carry out professional activities in the Ministry of Justice, even though the law prevents performing tasks in bodies which adopt or enforce laws. The Ministry of Justice proposes and enforces laws<sup>327</sup>.

316 Law On Organisation Of Courts, Article 6

317 Law on Judges, Article 1

318 Law on Judges, Article 2

319 Law on Judges, Articles 50-52

320 Law on Judges, Article 57

321 Law on Judges, Articles 62-68

322 Law on Judges, Articles 62-68, described in details in NIS 2011

323 Rulebook on disciplinary procedure and disciplinary responsibility of the judge, Article 19

324 <http://www.mpravde.gov.rs/files/Nacionalna-Strategija-reforme-pravosudja-za-period-2013.-2018.-godine.pdf>

325 „Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution”, Joint European Union – Council of Europe Project “Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia”, April 2014

326 The Law on Judges, Article 21

327 Anti-Corruption Council, “Report on Judicial Reform”, April 2014, <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

## Independence (Practice)

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

**Score: 25/2015 (25/2011)**

The interference of the Government and politicians, representatives of political parties in the work of judiciary exist.

The EU Progress Report for 2014 stated that some judges from higher and appellate courts were confronted with direct attempts to exert political influence over their daily activities without the High Judicial Council properly defending their independence. The practice of publicly commenting on trials and announcing arrests and detentions in the media ahead of court decisions was seen as risking being detrimental to the independence of the judiciary and raising serious concern<sup>328</sup>.

According to a 2014 report by the Anti-Corruption Council, the situation, “regarding the independence of the judiciary has not improved during the past two years. On the contrary, the situation has deteriorated, as greater interference by the executive authority with the work of judicial institutions has been observed”<sup>329</sup>. Judges have no guarantee whatsoever that they will perform their function peacefully and without any pressure. On the contrary, politicians threaten judges if they do not like their trials and decisions<sup>330</sup>.

Member of the HJC judge Aleksandar Stoilkovski says<sup>331</sup>, however, the HJC does not have any record of direct pressure on judges from executive branch. Pressure might be indirect, through media, which often adjudicate before judicial proceedings even started but media announce arrests.

The Anti-Corruption Council criticized the lack of will to transfer the tasks of the judicial administration performed by the Ministry of Justice to the jurisdiction of the High Judicial Council, body responsible for the election of judicial office holders. The Anti-Corruption Council pointed out that independence of the judicial budget allows also the independence of the judiciary from the executive branch of power because, without financial independence, the judiciary is a subject of influence-trading and pressures from the executive power. It argues that as long as this relation between the Ministry of Justice and the judiciary remains, the Minister will be able to talk about supervision although no minister has any right in relation to trials in specific cases where supervision can be carried out only by a competent second-instance court.<sup>332</sup>

As an example of threats related to the alleged demands of the Minister of Justice to carry out supervision, the Anti-Corruption Council pointed to the statement of the minister regarding supervision of the work of judges in several on-going cases (Kertes, Kontrast, Cervenko<sup>333</sup>). Minister announced that he would request the supervision of three court decisions which are upsetting the public, presenting as an argument that one case was annulled although the guilt was not questioned at all<sup>334</sup>.

As another example of pressure, assistant minister of justice stated at a meeting of the Working Group for Preparation of the Anti-corruption Strategy, that there was a “pernicious trend of judicial

328 EU Progress Report for 2014

329 Anti-Corruption Council, “Report on Judicial Reform”, April 2014, <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

330 Anti-Corruption Council, “Report on Judicial Reform”, April 2014, <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

331 Interview, November 2014

332 Anti-Corruption Council, “Report on Judicial Reform”, April 2014, <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

333 <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1518274/Selakovi%C4%87+odbacuje+optu%C5%BEbe+DS-a+o+pravosu%C4%91u.html>

334 <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1518274/Selakovi%C4%87+odbacuje+optu%C5%BEbe+DS-a+o+pravosu%C4%91u.html>

independence” and that it is necessary to establish “checks and balances” between the judicial and executive authorities, as otherwise an “irresponsible group of 2,000 people (referring to judges) would become outlaws”. He also stated that such a model of independence cannot be imposed when systems with all the “rights vested in the hands of the Ministry of Justice” work well in the world, as it is in Germany<sup>335</sup>.

In October 2014, Minister of Justice stated that strike of the attorneys-at-law was organized with the aim to prevent a businessman Miroslav Miskovic, charged for the abuse of position, from being convicted<sup>336</sup>. Process against this businessman (usually referred to as a tycoon), although not being charged for corruption, is presented by the Prime Minister and other politicians from the ruling party, as a symbol of their political will to fight corruption. Therefore, when minister is saying that he expects that defendant will be convicted, that verdict will be “guilty”, is a prime example of pressure on judiciary, says former judge of the Supreme Cassation Court, Vida Petrovic Skero<sup>337</sup>.

According to the Anti-Corruption Council, this is a proof that politicians intimidate judges with their statements, which leads to self-censorship in the work of judges.

The pressure to which EU report refers is about the same case (most known to the public<sup>338</sup>). The trial judge Vladimir Vucinic returned the passport to the defendant for four days without informing the acting court president of the High Court in Belgrade about the decision. The acting court president intervened with the judge, and he reported this as pressure. The HJC, however, made a decision that there was no pressure. In the meantime acting president of the High Court initiated procedure against judge before the HJC’s Disciplinary Prosecutor for unauthorized commenting his decision to give passport back to defendant. Eventually the Disciplinary Commission dropped the case. In the following months, the acting president was elected for president of the High Court, and judge was practically taken from this trial when this case was merged with another case with the same defendant<sup>339</sup>.

According to the vice-president of the Judges’ Association, judge Omer Hadziomerovic, the HJC did not consider seriously this case and did not adequately protect judge.<sup>340</sup>

According to the Anti-Corruption Council, one of the reasons for deteriorating of judges’ independence is composition, election and previous work of High Judicial Council. Judges who were elected to a first tenure of three years and judges who were not elected in the 2009 judicial reform did not participate in the election of the current HJC because, at the time of the election, they were still running disputes which ended with the restoration of all judges to work. This means that more than 600 judges had neither active nor passive right to vote in the election of the current HJC. This casts doubt on the legitimacy of the HJC<sup>341</sup>. This is also stated in the EU-CoE report<sup>342</sup>.

It has also been noticed by the Anti-Corruption Council that judicial office holders work at the Ministry of Justice, which is incompatible with the judicial function, because the position of judges and prosecutors and their commitments to justice are in stark contrast with the activities and duties of the Ministry’s staff. For these reasons it is necessary to delete the provisions of the Law that allow the assignment of judges and prosecutors to work at the Ministry of Justice<sup>343</sup>.

335 Anti-Corruption Council, “Report on Judicial Reform”, April 2014, <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

336 Press statement by the minister, <http://www.blic.rs/Vesti/Hronika/506558/STRAJK-ADVOKATA-Selakovic-Pravosudje-blokirano-da-Miskovic-ne-bi-bio-osudjen>

337 Interview, December 2014

338 <http://www.blic.rs/tag/121734/Vladimir-Vucinic>

339 There is article about this case and similar cases, by attorney Slobodan Beljanski: <http://www.vreme.com/cms/view.php?id=1302826>

340 Interview with judge Omer Hadziomerovic, vice-president of Judges’ Association, November 2014

341 Anti-Corruption Council, “Report on Judicial Reform”, April 2014, <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

342 “Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution”, Joint European Union – Council of Europe Project “Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia”, April 2014

343 Anti-Corruption Council, “Report on Judicial Reform”, April 2014, <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

# Governance

## Transparency (Law)

*To what extent the existing legislation ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?*

**Score: 75/2015 (75/2011)**

The legal framework enables the public to obtain most of the relevant information on the activities and decision-making processes of the judiciary.

The Constitution<sup>344</sup> and laws envisage transparency of the judiciary. Judgments and court documents are available to the public, judges are obliged to submit property disclosure reports and one part of that report is public. The High Judicial Council is obliged to regularly notify the public on its work and to submit an annual work report<sup>345</sup>.

The Law<sup>346</sup> stipulates that sessions of the HJC can be open for the public. Rules on Procedure of the HJC from 2011 used to contradict the law, stipulating that sessions are closed for the public and that minutes from sessions of the Council are generally not available to the public, unless the HJC decide differently. New Rules on Procedure of the HJC were adopted in 2013 and envisage that sessions might be public, but it also leaves the HJC discretion to close its sessions for public.<sup>347</sup> In late 2015, draft amendments to the Law envisaged to set transparency of sessions by rule, but also possibility to close sessions through HJC's decision.

According to the Rules on Procedure, transparency of the Council's work is achieved "by publishing Information Directory, holding public sessions, publishing of general acts in the Official Gazette and web site, holding press conferences, publishing press issues and publishing sessions' agendas and conclusions on the web-site of the Council"<sup>348</sup>.

The HJC is required to announce election of judges and presidents of courts in the Official Gazette and one daily newspaper. The law stipulates 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 the first time election of judges that must be elaborated<sup>349</sup>.

The HJC is obliged to submit annual report to the Parliament of Serbia, by March 15<sup>th</sup> for the previous year. The report is published on the HJC's web-site and presented to the public at an annual press conference<sup>350</sup>.

Laws envisage publicity of court proceedings and trials<sup>351</sup>. Only in special cases that are strictly enumerated<sup>352</sup>, the public can be excluded from the procedure, with the goal of protection of some important state or special private interests (children's interest). According to the Criminal Procedure Code, everyone who has a justified interest may examine copy or record certain [case file] documents, except those bearing an indication of secrecy level<sup>353</sup>. A judgment which has been proclaimed should be rendered in writing and delivered within 15 days of the date of its proclamation, and in cases before Special court within 30 days, and in complex issues trial judge may ask president of the court to set a deadline for writing and delivering the judgment.<sup>354</sup>

344 Constitution of Serbia, Article 142

345 The Law on Judges, The Law On Organisation Of Courts, the Law on HJC, the Law on the Anti-Corruption Agency

346 The Law on HJC, Article 14

347 <http://www.vss.sud.rs/sites/default/files/attachments/PoslovnikVSS.pdf> Rules on Procedure of HJC, article 10

348 Rules on Procedure of HJC, article 38

349 Law on Judges, Articles 47 and 52

350 Law on HJC; article 19 Rules on Procedure of HJC, article 37

351 Criminal Procedure Code, Civil Procedure Law

352 Law on Criminal Procedure, Articles 363-366

353 Law on Criminal Procedure, Article 250

354 Law on Criminal Procedure, Article 427

Law on the Anti-Corruption Agency stipulates that all public officials, including judges, must report assets and income within 30 days after they are elected. Also, they are obliged to report annually on changes regarding the previous period, and to report two years after the termination of the function<sup>355</sup>.

## Transparency (Practice)

*To what extent in practice the public have access to information on judiciary and activities of judiciary?*

**Score: 75/2015 (50/2011)**

The public has access to most of the relevant judicial information. However, one of the major problems is that at least 15 basic courts (out of 66) and two (out of 25) high court still do not have web-sites. Nevertheless, the Courts Portal<sup>356</sup> is functioning and it provides information about all courts. The Portal has active application for monitoring all cases in all courts with several options for search - from individual case to search on judges and their resolved or unsolved cases.

The HJC notifies the public on its activities through the web-site and press releases and annual report on its work. Sessions' agendas are published regularly<sup>357</sup>, but minutes from the sessions are not available. Instead, the HJC publishes some of the decisions from the sessions, but not all of them<sup>358</sup>. The decision on the election of permanent judges as well as proposals for elections of the judges for the first 3-year term are available on the web-site, but without justification<sup>359</sup>. The High Judicial Council has an Information Directory on their web-site that contains a financial report<sup>360</sup>. The annual report of the HJC is also available on its web-site<sup>361</sup>. Information on election, transfer and dismissal of judges can be found in the Official Gazette, on the web-site of HJC or can be directly obtained from the HJC based on the FOI Law. The Anti-Corruption Council claims that work of the HJC is still not transparent enough, because minutes and conclusions from each individual session of the HJC is not fully accessible at all times on the website of the HJC<sup>362</sup>.

In 2013, the HJC has received 73 requests for access to public information based on the FOI Law. According to the HJC annual report, 11 requests were denied<sup>363</sup>. HJC has a "communication strategy" regarding citizens and parties in the proceedings. One of the activities within the HJC project financed by the EU from IPA funds will be drafting communication strategies for all courts in Serbia<sup>364</sup>.

While there are no major problems related to the possibility for stakeholders to attend trials, access to documents about trials is still limited. Judgments are delivering only to parties in the proceedings and their defenders, but with their content parties can be introduced through the insight into the documents. Since 2013 courts are included in "Open Doors Day" manifestation, initiated by the CoE – on October 25<sup>th</sup> citizens are inviting to visit courts, to get acquainted with courts' organization and functioning.

355 Anti-Corruption Agency Law, Article 44

356 <http://www.portal.sud.rs/code/navigate.aspx?Id=1>

357 <http://www.vss.sud.rs/sr-lat/sednice/arhiva/2014>.

358 <http://www.vss.sud.rs/sr-lat/saop%C5%A1tenja/arhiva/2014>.

359 <http://www.vss.sud.rs/sr-lat/saop%C5%A1tenja/izbor-sudija-u-vi%C5%A1i-sud-u-smederevuhttp://www.vss.sud.rs/sr-lat/saop%C5%A1tenja/predlog-kandidata-za-sudije-za-prvi-osnovni-sud-u-beogradu>

360 [http://www.vss.sud.rs/sites/default/files/attachments/INFORMATOR%20O%20RADU%2014%20jul%2014%20OBJAVLJENO\\_3.pdf](http://www.vss.sud.rs/sites/default/files/attachments/INFORMATOR%20O%20RADU%2014%20jul%2014%20OBJAVLJENO_3.pdf)

361 <http://www.vss.sud.rs/sr-lat/izve%C5%A1taj-o-radu>

362 Anti-Corruption Council, "Report on Judicial Reform", April 2014, <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

363 <http://www.vss.sud.rs/sr-lat/izve%C5%A1taj-o-radu>

364 Interview with judge Aleksandar Stojiljkovski, member of the High Judicial Council, November 2014



## Accountability (Law)

*To what extent exist the legislation that should ensure accountability of the judiciary for their work?*

**Score: 100/2015 (100/2011)**

Judges are obliged to justify their decisions in the rationale of a judgment, whether acquitting the defendant or pronouncing him/her guilty. Judge has to take into consideration the facts determined in the criminal proceedings and for which reasons it finds them proven or unproven. If the defendant has been pronounced guilty, the rationale must specify the facts the court took into consideration in determination of the penalty.<sup>365</sup>

Participants in court proceedings are entitled to complain against the work of the court when finding that the proceedings are dilatory, irregular or that there is any form of influence on the course and outcome. The court president is obliged by the law to take complaints under consideration and notify the complainant and the president of an immediately higher instance court on its admissibility and any measures undertaken, within fifteen days from the receipt of the complaint<sup>366</sup>.

Disciplinary reports against judge can be submitted to the Disciplinary Prosecutor. The Disciplinary Prosecutor may reject disciplinary charges or uphold the charges and file the motion for disciplinary proceedings to Disciplinary Commission. Both Prosecutor and Commission are established by the High Judicial Council<sup>367</sup>. Disciplinary sanctions are public reprimand, salary reduction of up to 50 % for a period not exceeding one year, prohibition of advancement for a period of up to three years. A disciplinary sanction is imposed in proportion to the gravity of the offence. If the Disciplinary Commission establishes the responsibility of a judge for a serious disciplinary offence, it shall institute dismissal proceedings<sup>368</sup>. During the procedure, the judge can be suspended. There is a formal complaints procedure – a judge can appeal to the Constitutional Court<sup>369</sup>.

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/she commits any other criminal act, including corruption<sup>370</sup>.

In July 2014, the High Judicial Council has adopted appraisal rules for judges. After testing phase in 15 courts, in December 2014 the HJC decided to postpone implementation of the rules until July 2015 in order to revise them, in accordance with recommendations of the Consultative Council of European Judges, opinions of foreign experts on the Rules, “as well as issues identified during the pilot phase of application”<sup>371</sup>.

365 The Criminal Procedure Code, Article 428

366 The Law on Organisation of Courts, Articles 8 and 55

367 The Law on Judges, Articles 93-95

368 The Law on Judges, Articles 91-92

369 The Law on Judges, Articles 64-67

370 The Law on Judges, Article 5

371 <http://www.vss.sud.rs/sr-lat/saop%C5%A1tenja/odlo%C5%BEena-primena-pravilnika-o-kriterijumima-merilima-postupku-i-organima-za-vrednovanje>



## Accountability (Practice)

*To what extent in practice members of the judiciary should report on their activities and to be accountable for them?*

**Score: 75/2015 (50/2011)**

Since the NIS 2011 disciplinary charges and sanctions, as the most important accountability mechanisms, have become operative. On the other hand, complaints are still not treated as mechanisms for establishing responsibility or accountability of judges, but instead just as a mechanism to solve individual problems in procedures. Appraisal rules for judges are not implemented, hence criteria for establishing incompetence of the judge is still missing.

European Commission noted in its 2014 report that Serbia “still needs to implement a comprehensive system of regular individual and periodical evaluation of judges and prosecutors”. Effective implementation of codes of ethics, disciplinary rules and legislation on conflicts of interest and the lifting of immunity for certain posts are needed to ensure full accountability of judges and prosecutors<sup>372</sup>.

The HJC’s Disciplinary Prosecutor received 521 reports against judges in 2012, 540 in 2013 and 913 in 2014<sup>373</sup>. Most of the reports were filed by citizens involved in cases or by their attorneys-at-law, unsatisfied by the outcome of the trial<sup>374</sup>. In 2013 presidents of courts filed 11 disciplinary reports against judges, and eight of them were considered grounded for initiation of procedures before the Disciplinary Commission. Another six procedures were initiated, based on reports by other institutions or individuals<sup>375</sup>. In 2014 the Disciplinary Prosecutor upheld 42 reports and initiated disciplinary proceedings before the Disciplinary Commission. In eight cases Prosecutor initiated dismissal proceeding against judges. Three of them were dismissed by the end of 2014<sup>376</sup>. Most of the disciplinary proceedings were initiated for long delays in issuing written judgments. Two judges were dismissed for that reason. Deadline is eight days for civil matter and 15 for criminal matter, and Disciplinary Prosecutor had one case where judge was delaying for 600 days<sup>377</sup>.

In 2013 the HJC made 125 decisions on termination of judicial function. Most of them (90) for retirement, 29 on demand by the judge himself/herself, four due to permanent loss of working ability, and one decision on dismissal due to a serious disciplinary offence. In 2014 there was one decision on dismissal because judge was convicted for an offence carrying imprisonment of 12 months.

HJC noticed in its annual report for 2013 that judges are still “not aware that disciplinary procedure is a form of protection against unwarranted complaints and ungrounded criticism of their work”. HJC claims that “filing disciplinary charges reflects on judges’ attitude and behavior in the court proceedings in relation to the applicant of the disciplinary reports, and they still do not accept in adequate manner disciplinary responsibility and proceedings of disciplinary bodies of the High Judicial Council”. In contrast, disciplinary procedures, with wider possibility of sanctions, are evaluated by the Judges Association as useful tool for establishing accountability<sup>378</sup>.

In 2014 there were around 5.000 complaints against judges filed to the HJC. Since complaints can be filed at the same time to different bodies (president of the court, president of the higher court,

372 EU Progress Report 2014

373 Data from the HJC annual report for 2013 and statement by Disciplinary Prosecutor, Mirjana Ilic for Beta News Agency, January 2nd 2015. [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=01&dd=02&nav\\_category=12&nav\\_id=942906](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=01&dd=02&nav_category=12&nav_id=942906)

374 Statement by Disciplinary Prosecutor Mirjana Ilic for Beta News Agency, January 2nd 2015. [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=01&dd=02&nav\\_category=12&nav\\_id=942906](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=01&dd=02&nav_category=12&nav_id=942906)

375 Data from HJC, November 2014

376 Statement by Disciplinary Prosecutor Mirjana Ilic for Beta News Agency, January 2nd 2015. [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=01&dd=02&nav\\_category=12&nav\\_id=942906](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=01&dd=02&nav_category=12&nav_id=942906)

377 Statement by Disciplinary Prosecutor Mirjana Ilic for Beta News Agency, January 2nd 2015. [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=01&dd=02&nav\\_category=12&nav\\_id=942906](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=01&dd=02&nav_category=12&nav_id=942906)

378 Interview with judge Omer Hadziomerovic, vice-president of the Judges’ Association

Ministry of Justice and the HJC) and parties in the court proceedings usually fill complaints to more than one body, it is impossible to determine the number of unique complaints<sup>379</sup>.

Justifications of court's decisions are most often such that can be simply comprehended<sup>380</sup>.

## Integrity mechanisms (Law)

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

**Score: 100/2015 (100/2011)**

There is an extensive legal framework regarding the integrity of members of the judiciary. The Law on the Anti-Corruption Agency defines conflict of interest for public officials (judges are considered public officials) as a "situation where an official has a private interest which affects, may affect or may be perceived to affect actions of an official in discharge of office or official duty in a manner which compromises the public interest"<sup>381</sup> It prohibits the holding of various external positions, and obligates officials to declare to the Agency any doubts concerning a possible conflict of interest. Judges are also required to disclose their assets and make them available to the Anti-Corruption Agency. Part of their assets report is public. The Law also regulates matters of gifts and hospitality<sup>382</sup>.

The Constitution of Serbia stipulates that political activity of judges is prohibited. The Law on Judges prohibits activities which might compromise impartiality of the judge, it envisages the obligation to notify superiors on activities that may do so and obligation of judges to adhere the code of ethics<sup>383</sup>. A judge may not hold office in bodies enacting or enforcing legislation, public offices, and autonomous province and local self-government. A judge may not be a member of a political party or act politically in some other manner, engage in any paid public or private work, nor extend legal services or advice for compensation. Exceptionally, a judge can be a member of a management body of an institution in charge of training in the judiciary, on the basis of a decision of the High Judicial Council<sup>384</sup>.

The Code of Ethics of Judges was adopted by the High Judicial Council in December 2010. The Code contains comprehensive rules on independence, impartiality, competence, responsibility, dignity, dedication, freedom of association and dedication to the principles of the Code of Ethics. Violation of provisions of the Code of Ethics is a disciplinary offense<sup>385</sup>.

However, according to the EU-CoE report, the content of the Code of Ethics is oriented heavily towards 'exhortation' to good conduct, and there is no guidance within the codes on how judges should behave in situations where they are subject to improper approaches, pressures or threats, or what procedure should be followed in reporting such approaches. Nor are there clear mechanisms within the judiciary under which judges may seek advice/counseling on appropriate conduct in particular cases<sup>386</sup>.

Some mechanisms for providing integrity of members of the judiciary also exist in procedural laws – Criminal Procedure Code and Civil Procedure Law. The Law on the Organization of Courts envisages that court personnel are obligated to conscientiously and impartially perform their functions and to maintain the court's reputation<sup>387</sup>.

379 Interview with judge Aleksandar Stojiljkovski, member of High Judicial Council, November 2014

380 <http://www.sudskapraksa.com/odluke/>

381 The Law on the Anti-Corruption Agency, Article 2

382 The Law on the Anti-Corruption Agency, Articles 27, 28, 32, 39-46

383 The Law on Judges, Article 30

384 The Law on Judges, Article 30

385 <http://www.seio.gov.rs/upload/documents/ekspertske%20misije/judicial%20system/Code%20of%20Ethics.pdf>

386 "Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution", Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia", April 2014

387 82 Law on the Organization of Courts, article 69

There is a possibility for parties in judicial proceedings to ask for an exemption of a judge. Judge may also ask for his/her exemption. Reasons are stipulated in procedural laws.

## Integrity mechanisms (Practice)

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

**Score: 75/2015 (75/2011)**

Most of the mechanisms for ensuring integrity of members of the judiciary are functioning in practice. However, according to the EU-CoE report, while there is more than enough regulation for ensuring good conduct, there are problems in the practice, because some of judges interviewed for the research were not sure if the Code of Ethics had even been approved<sup>388</sup>.

Judges disclose their assets to the Anti-Corruption Agency<sup>389</sup>. From January 2013 to October 2014, the Agency started proceedings against 47 judges for not reporting or delaying with reporting assets and income. In 43 cases a warning was issued, and in seven of those 43 cases misdemeanor charges followed. There was one criminal charge against judge for failure to report property with an intention of concealing facts about property<sup>390</sup>.

Several disciplinary proceedings for violating the rules of the Code of Ethics were initiated against judges by the Disciplinary Commission. In its 2013 and 2014 annual reports, the HJC described some of the disciplinary proceedings which the HJC had led as an appeal body. Judges were sanctioned by salary reduction for violation of the Code's section on dignity<sup>391</sup>.

According to information from the Prosecutor's Office for Organized Crime, from its establishment in 2002 till November 2013, this office led process against seven judges. For three of them final verdict has been reached - imprisonment from three to six years and confiscation of proceeds from crime<sup>392</sup>.

In terms of training regarding ethics, the only mandatory training on ethics and good conduct currently provided to judges in Serbia is delivered by the Judicial Academy under the curriculum section "Professional Knowledge and Skills, the EU Law and International Standards". One of the seven modules under this section is a one-day session "The Organisation of Justice and Ethics of Judges and Prosecutors"<sup>393</sup>. The Judicial Academy provides five days of training on ethics as part of the introductory training at the Academy for future prosecutors and judges<sup>394</sup>.

However, there is no provision for continuous training of judges or prosecutors on ethics/conduct. Rather, judges and prosecutors are engaged in *ad-hoc* trainings on the subject, mostly organized by international organisations in cooperation with the Judicial Academy<sup>395</sup>. The HJC has undertaken the preparation of a permanent curriculum component on this subject with participation of the HJC disciplinary prosecutors<sup>396</sup>.

388 "Assessment of Risks of Poor Conduct And Corruption in the Serbian Judiciary And Prosecution", Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia", April 2014

389 [http://www.acas.rs/sr\\_cir/registri.html](http://www.acas.rs/sr_cir/registri.html)

390 Data from ACAS web site – results of Sector for Operations [http://www.acas.rs/sr\\_lat/organizacija/sektor-za-operativne-poslove.html](http://www.acas.rs/sr_lat/organizacija/sektor-za-operativne-poslove.html)

391 HJC annual reports <http://www.vss.sud.rs/sr-lat/izve%C5%A1taj-o-radu>

392 Data from "Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution"

393 "Training For Serbian Judges And Prosecutors On Ethics And The Prevention And Detecting Corruption: Assessment And Recommendations", Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia" (PACS), September 2014

394 "Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution", Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia", April 2014  
HJC Annual Report for 2013

395 "Training For Serbian Judges And Prosecutors On Ethics And The Prevention And Detecting Corruption: Assessment And Recommendations", Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia" (PACS), September 2014

396 "Assessment of Risks of Poor Conduct And Corruption in the Serbian Judiciary And Prosecution", Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia", April 2014

The HJC is seriously delaying with preparation of its integrity plan – it was supposed to be done by March 2013. According to the HJC member Aleksandar Stoilkovski, delay exist due to an “administrative mistake” and the work will be finalized shortly<sup>397</sup>.

# Role

## Executive oversight (law and practice)

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

**Score: 50/2015 (25/2011)**

Effectiveness of judicial oversight of the executive power has improved recently, primarily due to an increased number of judges in the Administrative Court and new internal organization in this court. Nevertheless, it should be noted that judges<sup>398</sup> and public prosecutors themselves claim that the judiciary is not strong enough to control and oversight the executive power and to hold it accountable. More than 53% of judges and prosecutors included in survey carried in 2014 gave this answer.

The Judiciary’s oversight of the executive power is performed through two mechanisms – the Administrative court decides on the legality of individual acts of bodies, including the Government and Ministries and the Constitutional Court assesses legality of laws, by-laws or other acts passes by the Parliament, Government and other organs and organizations. The Administrative Court, in accordance with the decision of the High Judiciary Council from May 2010, should have had 37 judges, but in September 2013 it had merely 27<sup>399</sup>. In 2013 nine new judges were elected, and the High Judicial Council’s decision was changed, envisaging 41 judges for the Administrative Court. According to the annual report of the Administrative Court for 2014, “it should have at least 50 judges for efficient and quality work of this Court”<sup>400</sup>.

As a result the Administrative court was highly inefficient in the past, with large backlog. The situation improved recently, and 2014 was the first year, since it was established in 2010, in which the Administrative court resolved more cases then it received<sup>401</sup>. In 2013, the Administrative Court had 41.538 cases, 20,910 old ones and 20.628 new ones, received in 2013. It solved 18,295, meaning that the backlog enlarged<sup>402</sup>. In 2014, the Administrative Court changed its internal organization of work which affected its efficiency – it received 19,237 new cases and resolved 20.013<sup>403</sup>. In 2014 there was, in average, 670 cases per judge and there were 35 judges<sup>404</sup>.

There were 519 appeals against acts adopted by the Government of Serbia in 2013 and 606 in 2014. Total of 261 were resolved until December 30th 2014. There were also 4,352 appeals to acts of the Ministry of Finance in 2013 and 3,590 in 2014. A total of 1,590 were resolved. There were 1,305 appeals to acts of the Ministry of Construction and Urbanism in 2013 and 999 in 2014. Total off 307 was resolved. There were 669 appeals to acts of the Ministry of Labour and Social Protection in 2013 and 496 in 2014. Total of 475 was resolved<sup>405</sup>.

397 Interview with judge Aleksandar Stoilkovski, member of High Judicial Council, November 2014

398 Survey “Professional Integrity of Public Prosecutors and Judges, BIRODI 2014” included 115 prosecutors and judged, from different courts’ levels

399 Annual Report for 2013 <http://www.up.sud.rs/latinica/arhiva-izvestaja>

400 <http://www.up.sud.rs/latinica/arhiva-izvestaja>

401 Data obtained by TS from the Administrative Court

402 Data obtained by TS from the Administrative Court, also Annual Report for 2013 <http://www.up.sud.rs/latinica/arhiva-izvestaja>

403 6-month report for 2014 <http://www.up.sud.rs/cirilica/izvestaji-o-radu> also data obtained by TS

404 6-month report for 2014 <http://www.up.sud.rs/cirilica/izvestaji-o-radu>

405 Data obtained by TS from the Administrative Court

The judicial authority also conducts supervision and reassesses the work of the executive power through actions of the Constitutional Court that reassesses the constitutionality and legality of laws and regulations<sup>406</sup>. In 2013 the Constitutional Court of Serbia had a total of 837 cases for assessing legality (517 old ones and 322 new ones, received in 2013). In 2013 total of 383 cases were solved, most of them by rejection due to procedural reasons (234) or by denial (51). Court made a total of 64 decisions on the unconstitutionality. Out of these 64, 18 were on laws and other acts adopted by the Parliament and six on decisions by the Government<sup>407</sup>.

These statistics, especially for the Administrative Court, indicate increased efficiency. For the full assessment of effectiveness, however, other elements should be taken into consideration, such as duration of proceedings in individual acts which are highly politically sensitive or outcome of such proceedings. There were several cases in front of the Constitutional Court which raised controversy, such as 4-year long case of constitutionality of the Statute of Vojvodina province. The dispute was resolved after change of the Government in Serbia, and the party which launched it expressed its satisfaction, but depicted the Constitutional Court as “sluggish, slow and vulnerable to the political impacts”<sup>408</sup>. Similarly, already mentioned decisions of the Constitutional court, that resolved some malpractices in “judiciary reform”, were issued only after the change of the Government. The other case was a decision of the Constitutional court to reject an initiative to assess the constitutionality of an agreement between Belgrade and Pristina on “normalization of mutual relations”. Explanation of the Court for its decision (deciding that agreement was political, not legal act) was practically the same as stand of the minister of justice expressed in public hearing organized by Court<sup>409</sup>.

## Corruption Prosecution (practice)

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

**Score: 25/2015 (25/2011)**

The number of convictions for corruption-related criminal acts has risen since the NIS 2011. However, since corruption is not defined in the Criminal Code, statistics on prosecution of corruption include several acts: abuse of office (public office), abuse of position (which includes private office), trading in influence, accepting bribes, bribery, giving and accepting bribes in connection with voting and abuse in connection with public procurement. Most of the statistically corruption-related judgments are for the abuse of office and abuse of position and those cases are not always in practice related to corruption.

Court procedures in some of the largest corruption cases are very or extremely long. There are no comprehensive data on the duration of corruption-related trials, but as an example, one of the largest corruption cases, noted also in NIS 2011, is still not finalized –86 persons were indicted for corruption in one faculty. The case began in 2007, the indictment was complemented in March 2008 and it consisted of 159 criminal acts. Professors charged for corruption are teaching at the Faculty of Law in Kragujevac, five of them are members of Faculty’s Council and they elected another charged professor for faculty’s dean earlier in 2014. On the other hand, it should be noted that several small-scale corruption cases (giving and accepting bribes), observed in media monitoring by TS, recently were processed efficiently, lasting between 15 and 18 months from the moment suspect was reported until final judgment was brought<sup>410</sup>.

<sup>406</sup> Constitution of Serbia, article 167

<sup>407</sup> Data obtained by TS from The Constitutional Court and annual report for 2013, <http://goo.gl/yv7cR1>

<sup>408</sup> <http://www.rts.rs/page/stories/sr/story/9/Politika/1463670/DSS%3A+Dobra+odluka+Ustavnog+suda+o+Statutu.html>

<sup>409</sup> <http://www.politika.rs/rubrike/Politika/Selakovic-Ustavni-sud-da-se-proglasi-nenadleznim-za-Briselski-sporazum.lt.html><http://www.blic.rs/Vesti/Politika/519483/Borko-Stefanovic-Cudna-odluka-Ustavnog-suda-o-Briselskom-sporazumu>

<sup>410</sup> <http://www.blic.rs/Vesti/Hronika/448894/Ginekolog-osudjen-zbog-primanja-mita><http://www.blic.rs/Vesti/Hronika/504680/Apelacioni-sud-Ginekologu-iz-Nisa-15-godina-zatvora-i-300000-dinara-za-primanje-mita><http://www.blic.rs/Vesti/Hronika/401570/Doktoru-dve-godine-zatvora-zbog-trazenja-i-primanja-mita>



The judiciary claims that problem is often on the prosecution side<sup>411</sup>. In one case in which a former minister was suspected for corruption, the court refused to declare an indictment and returned it to the prosecution 3 times to be amended<sup>412</sup>.

The prosecution, on the other hand, is complaining on the judiciary's sentences, because a large number of judgments are below the legal minimum. Recent research<sup>413</sup> indicates that the penal policy has been tightened since 2010. In period 2006-2012, nearly 75% of the judgments for abuse of office, trading in influence and bribery were suspended prison sentences. For accepting a bribe, 75% of the judgments were imprisonment. In 2013, as shown in table below, it was 80%.

TS obtained data from the Republic Public Prosecution on number of reported and processed persons in 2012 and 2013<sup>414</sup>:

|  | 2012      |          |                             |          | 2013      |          |                             |          |
|--|-----------|----------|-----------------------------|----------|-----------|----------|-----------------------------|----------|
|  | Reported  | Charged  | Convicted (Prison sentence) |          | Reported  | Charged  | Convicted (Prison sentence) |          |
| Abuse of office  | 4,222     | 1,060    | 830                         | 271      | 2277      | 591      | 494                         | 178      |
| Abuse of position  |           |          |                             |          | 1,869     | 412      | 34                          | 12       |
| <b>Trading in influence</b>                                  | <b>37</b> | <b>2</b> | <b>12</b>                   | <b>5</b> | <b>27</b> | <b>5</b> | <b>11</b>                   | <b>1</b> |
| Accepting bribes   | 128       | 63       | 51                          | 42       | 90        | 41       | 44                          | 35       |
| Bribery  | 106       | 37       | 36                          | 10       | 81        | 12       | 16                          | 5        |
| <b>Giving and receiving bribes in connection with voting</b> |           |          |                             |          | 0         | 0        | 0                           | 0        |
| <b>Abuse in connection with public procurement</b>           |           |          |                             |          | 10        | 0        | 0                           | 0        |

Court proceedings for temporary seizure of property of persons indicted for acts of organized crime and corruption are implemented on the basis of the Law on Seizure and Confiscation of the Proceeds from Crime<sup>415</sup>. The new Law was adopted in 2013, but it did not bring any major changes to the system established by the 2008 Law. Property can be seized, by court's decision, temporarily or permanently (after the final judgment). However, due to the fact that trials for corruption cases last long, the decisions on property seizure are mostly of a temporary nature, i.e. the outcome will depend on the sentence. In 2013, prosecutors filed 55 requests for temporary seizure of the properties. The Court fully accepted 18 requests, partially seven, and rejected 27. As for permanent seizure, 23 requests were filed, six were accepted fully, partially three, eight were rejected and others are still pending<sup>416</sup>.

The judiciary is involved in proposing anti-corruption measures through working groups for preparation of anti-corruption laws and strategies. However, there is no formal mechanism, through courts, High Judicial Council or Judges Association, on selection judges for members of those working groups. These judges are individually invited to join working groups<sup>417</sup>.

411 Interview with judge Aleksandar Stojiljkovski, member of High Judicial Council

412 <http://mondo.rs/a684918/Info/Drustvo/optuznica-protiv-Olivera-Dulica-opet-vracena-na-dopunu.html>

413 "Risk Analysis for Assessing the Regulatory and Organizational Obstacles to Effective Investigations and Proceedings In Corruption-Related Cases", ECCO-PACS, March 2014

414 It should be noted that new criminal acts were introduced in 2013, through changes of the Criminal Code. Also, in some instances number of judgments is higher than number of indictments because judgments include cases in which indictments was brought in previous years.

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

416 Annual report by Republic Public Prosecutor

417 Interview with Appellate Court judge Omer Hadziomerovic, vice-president of Judges' Association



# Judiciary

## Recommendations

1. Parliament should improve independence and accountability of the High Judicial Council, through constitutional changes
2. Parliament should amend legislation in order to remove influence of political institutions in the process of judges' and court presidents' election and dismissal
3. High Judicial Council should apply the rules on the independence of the judicial budget
4. HJC should 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
5. Courts should reduce the risks of corruption and to pay compensations for failing to take a decision within a reasonable time
6. HJC should implement procedures for appraisal of judges and conduct procedures for establishing the accountability of judges' for omissions in the work, indicating ignorance of the law or unprofessional conduct
7. Courts should ensure that special rights that parties have in a proceeding do not constitute an obstacle for other persons to exercise their right of access to information, to the extent those information can be given to the third party;
8. Minister should amend the Court Rules of Procedure in order to emphasize the responsibility of the court's president for planning, integrity and enforcement of anti-corruption regulations; to introduce an obligation of periodical consideration of complaints; to determine more clearly criteria for the urging;
9. HJC and courts should conduct an analysis of proceedings in cases where it comes to allegations of corruption crimes, which are lasting a long time and to present to the public reasons for this
10. Courts should publish statistics on the number of adjudicated cases related to the corruption, and excerpts from judgments
11. Police, prosecution and courts should jointly prepare and regularly publish statistical overviews containing the number of police charges filed to prosecutors (number of persons charged and number of criminal acts), prosecutorial report (number of initiated and finished criminal proceedings, number of defendants and number of criminal acts) and court reports (review of the number and types of judgments) for acts of corruption.
12. Ministry and the Government should ensure a right to compensation for victims of corruption, in accordance with the Council of Europe Civil Law Convention, ratified by Serbia
13. HJC and courts should conduct a specialization in the courts for cases of violation of anti-corruption legislation
14. Judicial Academy should improve the quality of continuous training of judges.



# PROSECUTION

## National Integrity System

**Summary:** Capacity of prosecution cannot be considered sufficient. Laws and regulations guarantee some level of independence in the work of prosecution, but improvements are still needed, especially regarding election of prosecutors, which is currently within the competence of the Parliament. Prosecution is actually not “independent”, but autonomous or “self-contained” and only “independent in the performance of its competences”. In practice, there is self-censorship and political influence. Prosecution is limited regarding publishing information about its work, especially on a proactive base. There are rules on conflict of interest and gifts and mechanisms for determination of accountability for prosecutors’ work but they are insufficiently used. Legal powers for efficient prosecution of corruption exist and number of corruption related investigations has increased. However, this is still not in line with the actual level of corruption, due to limited use of pro-active measures and lack of incentives for reporting corruption. Moreover, investigation of high level corruption cases partly depends on political considerations.



| PROSECUTION*                          |                        |            |           |
|---------------------------------------|------------------------|------------|-----------|
| Overall Pillar Score (2015): 52 / 100 |                        |            |           |
| Dimension                             | Indicator              | Law        | Practice  |
| <b>Capacity</b><br>44 / 100           | Resources              | 75 (2015)  | 25 (2015) |
|                                       | Independence           | 75 (2015)  | 0 (2015)  |
| <b>Governance</b><br>58 / 100         | Transparency           | 75 (2015)  | 25 (2015) |
|                                       | Accountability         | 75 (2015)  | 25 (2015) |
|                                       | Integrity              | 100 (2015) | 50 (2015) |
| <b>Role</b><br>50 / 100               | Corruption prosecution | 50 (2015)  |           |

\* In 2011 pillar Prosecution was part of the pillar "Law Enforcement ", joint with Police

**Structure** - The Public Prosecution system consists of the Republic Public Prosecution, the appellate public prosecutions, the high public prosecutions, the basic public prosecutions and the public prosecutions with special jurisdiction - Public Prosecution for Organised Crime and the Public Prosecution for War Crimes.

The prosecution in Serbia is organized in such a way that a lower ranked public prosecutor is subordinated to the immediately higher ranked public prosecutor, and a lower ranked public prosecution to the immediately higher ranked public prosecution.

Every public prosecutor is subordinated to the Republic Public Prosecutor. A higher ranked prosecutor may issue to an immediately lower ranked one a mandatory instruction for proceeding in particular cases when there is doubt in respect of the efficiency and legality of his actions and the Republic Public Prosecutor may issue such instruction to any 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 prosecution within the prosecutorial system - Prosecution for Organized Crime. Acts of "high level corruption" also fall under its jurisdiction. This prosecution has public prosecutor and 25 deputies.

Anti-Corruption Departments have been established in the Republic Public Prosecution, all appellate public prosecutions and four high public prosecutions (Belgrade, Novi Sad, Nis, Kragujevac). All other high public prosecutions have one deputy public prosecutor who is in charge to monitor corruption-related cases.

Prosecutors are elected by the Parliament, upon the Government's proposal, for a six-year term. The State Prosecutorial Council (SPC) proposes candidates to the Government. The SPC members have five years mandate with a ban on consecutive re-election. Composition of the SPC is: three ex officio members - the Republic Public Prosecutor, Minister of Justice and chair of the parliamentary committee responsible for the judiciary; six public prosecutors or deputy public prosecutors and two credible and prominent lawyers.



# Assessment

## Capacity

### Resources (Law)

**Score: 75/2015**

*To what extent are there laws seeking to ensure appropriate resources for prosecution?*

Legal framework envisages appropriate salaries and working conditions for prosecution. A public prosecutor and deputy public prosecutor are entitled to a salary “sufficient to ensure their independence in work and the security of their families”<sup>418</sup>.

Salary of a public prosecutor or deputy public prosecutor “must be in conformity with the dignity of the public prosecutorial office and the burden of responsibility”<sup>419</sup>.

Salaries in the prosecution are determined by the Law on Public Prosecution (the coefficients for calculation) and the Law on Budget System (bases for calculations). The coefficients are between 3 (deputy basic public prosecutors) and 6 (Republic Public Prosecutor)<sup>420</sup>. Base for determination of salaries was raised from RSD 28.000 in 2011 to RSD 33.150 in 2014, but following Government’s austerity measures, it was cut down by 10% to RSD 29,835. That means that salaries are between RSD 89,505 (USD 895) and RSD 179,000 (USD 1,790).

Funds for the work of prosecution are provided from the budget of the Republic of Serbia. The funds, according to the Law, “shall at all times reflect the autonomy and proper work of public prosecutions”<sup>421</sup>.

The State Prosecutorial Council proposes the size and structure of the budget funds necessary for the work of the public prosecutions, having obtained the opinion of the minister of justice, and distributes funds among the public prosecutions.

According to the Law, supervision of expenditure of budget funds allocated for the prosecutions should be conducted by the State Prosecutorial Council, the Ministry of Justice and the Ministry of Finance<sup>422</sup>.

### Resources (Practice)

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

**Score: 25/2015**

The prosecution suffers from lack of resources and it is an obstacle for proper performance of prosecutors’ functions.

<sup>418</sup> The Law on Public Prosecution, Article 50

<sup>419</sup> The Law on Public Prosecution, Article 50

<sup>420</sup> The Law on Public Prosecution, Article 71

<sup>421</sup> The Law on Public Prosecution, Article 127

<sup>422</sup> The Law on Public Prosecution, Article 127



The total budget for the prosecution increased steadily from 2009 to 2014, with cuts in 2015, following Government's austerity measures. In 2013, the year when the new tasks were transferred to the prosecution, the budget for basic prosecutions (around half the total prosecution budget) rose by 20% and for higher prosecutions (around a quarter of the total) by 26%, with total budget for prosecution being raised by 13% (from RSD 3.098 billion to RSD 3.478 billion or from USD 37.8 million to USD 40.4 million). In 2014 budget was raised to RSD 4.309 billion (USD 50.5 million) and in 2015 it was cut to RSD 3.759 (USD 37.6 million)<sup>423</sup>. These resources are considered to be insufficient<sup>424</sup>. Indeed, joint EU and CoE report states that judiciary and prosecutions "lack resources, technical and organisational support, or in the best case (has) unevenly allocated resources" and this "problem places obstacles in the way of the proper performance by judges and prosecutors of their functions"<sup>425</sup>.

The lack of resources is felt primarily in human resources capacity. This is related to the implementation of the new Criminal Procedure Code, whereby prosecution has taken on new investigative powers. The analysis performed within the prosecution suggests that more deputy prosecutors are needed, not merely because of the new investigative powers, but also because additional tasks have been taken over during whole proceeding<sup>426</sup>. Furthermore, the Prosecution is supposed to have total of 836 prosecutors and deputies (around 100 prosecutors and 740 deputies), but there are more than 100 vacant positions<sup>427</sup>.

Prosecutors also face problems with lack of office space<sup>428</sup>. Some investigation offices were ceded by the courts<sup>429</sup>, but in a typical example from one high prosecution, four prosecutors share one room, in which all are supposed to conduct desk work and interview witnesses. This is combined with a lack of recording equipment, which slows down the process of collecting evidence and conducting court proceedings<sup>430</sup>. However, in a response to the draft report in which these remarks were expressed, the SPC claimed that there was no problem with recording equipment since audio-visual equipment for recording investigative proceedings had been obtained for all 90 prosecutions in Serbia<sup>431</sup>. According to earlier data, other technological infrastructure in the prosecution is adequate. Prosecutors have personal computers and use an automated case tracking system<sup>432</sup>.

In November 2013, the Association of Prosecutors and Deputy Prosecutors of Serbia adopted a declaration, protesting the introduction of new tasks for prosecution, without securing adequate resources - financial resources in the budget for 2014, increased number of prosecutors and deputy prosecutors, assistants and administration, as well as additional space for implementation of the new Criminal Procedure Code<sup>433</sup>. The SPC claimed, however, that in drafting of the proposed financial plan for 2014, it had projected the total funds required for the normal operation of public prosecutions, to increase the workload for the application of the new Criminal Procedure Code and resources for expansion of the network of basic public prosecutions<sup>434</sup>.

Nevertheless, salaries in the prosecution are considered to be "decent"<sup>435</sup> - they are between RSD 89,505 (USD 895) and RSD 179,000 (USD 1,790). Average salary in Serbia is around RSD 44,000 (USD 440).

<sup>423</sup> It should be noted that USD exchanged rate was RSD 86 in January 2013, RSD 85 in January 2014 and RSD 100 RSD at the beginning of 2015.

<sup>424</sup> Interview with deputy Republic Public Prosecutor and head of Anti-Corruption Department in RPP Office Olgica Miloradovic, November 2014 and interviews with 30 prosecutors and deputy prosecutors for research "Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution", published in April 2014.

<sup>425</sup> "Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution", Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia", April 2014

<sup>426</sup> Interview with deputy Republic Public Prosecutor and head of Anti-Corruption Department in RPP Office Olgica Miloradovic, November 2014.

<sup>427</sup> Supreme Prosecutors Council's Decision on Number of Public Prosecutors' Deputies <http://www.dvt.jt.rs/doc/akti/Odluka%20o%20broju%20zamenika.pdf> and data obtained from deputy Republic Public Prosecutor Olgica Miloradovic

<sup>428</sup> Assessment in EU-CoE report, also assessment by Slobodan Beljanski, attorney at law.

<sup>429</sup> Interview with deputy Republic Public Prosecutor and head of Anti-Corruption Department in RPP Office Olgica Miloradovic, November 2014.

<sup>430</sup> "Assessment of Risks of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution", Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia", April 2014

<sup>431</sup> Comment by SPC on PACS Draft Report, July 2014

<sup>432</sup> The survey was conducted among prosecutors for purposes of the report "Reform Index of the Prosecution in Serbia", ABA ROLI December 2011.

<sup>433</sup> [http://www.uts.org.rs/index.php?option=com\\_content&view=article&id=786:784&catid=97:kratke&Itemid=804](http://www.uts.org.rs/index.php?option=com_content&view=article&id=786:784&catid=97:kratke&Itemid=804)

<sup>434</sup> The SPC response to EU-CoE draft report "Assessment of Risks of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution".

<sup>435</sup> Interview with deputy Republic Public Prosecutor and head of Anti-Corruption Department in RPP Office Olgica Miloradovic, November 2014.

The SPC still has not taken over full responsibility for prosecution's budget. According to the Anti-Corruption Strategy, one of the goals is "Forming HJC and SPC capacities for independent budget planning and execution". The Action Plan for Strategy's implementation has indicator "The HJC and SPC are fully competent and accountable for the judicial budget until the end of 2017" for several measures which should lead to this goal<sup>436</sup>. National Judicial Reform Strategy envisages overtaking of all financial responsibilities by SPC in 2016<sup>437</sup>.

## Independence (Law)

*To what extent is prosecution independent by law?*

**Score: 75/2015**

Since 2011, there has not been a major change of legislation. The Constitution<sup>438</sup> and laws guarantee independence in the work of prosecutors. Unlike the judiciary which is, by the Constitution and the law "independent", prosecution is autonomous or "self-contained"<sup>439</sup> but "independent in the performance of its competences"<sup>440</sup>.

All forms of influence by the executive power and the legislative authorities on the work of the public prosecution and its acts in cases by using public office, media and any other means, which may threaten the independence in the work of a public prosecution, are prohibited.

The Public Prosecutor is elected by the Parliament, upon proposal by the Government, following the opinion of the parliamentary committee for judiciary<sup>441</sup>. The Public Prosecutor is elected for a term of six years and may be reappointed. The mandate of deputy public prosecutors elected for the first time lasts for three years. They are elected by the Parliament upon proposal by SPC. According to 2013 changes to the Law on Public Prosecution, SPC proposes one candidate for each vacant post for public prosecutor's deputy<sup>442</sup>.

According to the EU-CoE report, the legal framework for appointment represents a serious threat to the independence and impartiality of prosecution<sup>443</sup>. "For example, it is difficult to imagine that a prosecutor would deal with a case involving MPs or their political allies (including members of the Government, political donors etc.) without having in mind the fact that the same body will decide on his/her re-election"<sup>444</sup>.

A report by NGO Lawyer's Committee for Human Rights also indicated that political influence to prosecution should be diminished, primarily by changes of constitutional and legal position of prosecution<sup>445</sup>.

The SPC elects deputy public prosecutors to permanent function. The SPC decides on the promotion of deputy prosecutors, or their possibility to be elected for the higher public prosecution<sup>446</sup>. The prosecutor's and deputy prosecutors' functions can be terminated on personal request, upon completion of pensionable years of service, in the case of permanent loss of work capacity, or if

436 The Anti-Corruption Strategy and Action Plan, <http://mpravde.gov.rs/tekst/38/protiv-korupcije.php>

437 The National Judicial Reform Strategy, <http://mpravde.gov.rs/en/tekst/1700/judicial-package.php>

438 The Constitution of Serbia, Article 156

439 The Law on Public Prosecution, Article 5

440 The Law on Public Prosecution, Article 5

441 The Law on Public Prosecution, Article 74

442 The Law on Public Prosecution, Article 75

443 "Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution", Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia", April 2014

444 "Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution"

445 <http://www.yucom.org.rs/rest.php?tip=vestgalerija&idSek=14&idSubSek=50&id=31&status=drugi>

446 The Law on Public Prosecution, Article 74, 75

dismissed for reasons determined by the law<sup>447</sup>. The function of a public prosecutor is terminated if not re-elected, and that of a deputy public prosecutor if not elected to permanent function.

Decisions on the termination of the function are reached by the Parliament and in accordance with the law, while the decision on dismissal is reached upon the Government's proposal. The Government's proposal must be based on reason determined by decision of the SPC<sup>448</sup>. The public prosecutor and deputy public prosecutor may appeal to the Constitutional Court against the decisions on termination<sup>449</sup>.

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 prosecutor<sup>450</sup>.

Superior public prosecutors may issue to subordinate public prosecutors instructions to be followed in individual cases where there is doubt about the efficiency and legality of their 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 or groundless may file a complaint with an explanation to the Republic Public Prosecutor within eight days of receipt of the instructions<sup>451</sup>.

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 prosecutor<sup>452</sup>. Furthermore, decisions to dismiss criminal charge or cease prosecution after the completion of an investigation must be made in panels. Where a prosecution is ceased by a decision of a single prosecutor, the decision must always be reviewed/ controlled by a panel. High and basic public prosecution must keep special records and inform the RPO immediately on criminal complaints of corruption crimes.

According to present legislation, the Parliament has a major role in appointment of the SPC, including election of six members who are prosecutors as well as other two members, prominent lawyers<sup>453</sup>.

The National Judicial Reform Strategy and the Action Plans for its implementation envisage independent functioning of the SPC, and, as an indicator "Legally strengthened independence and competences of the High Judicial Council and State Prosecutorial Council". It should be reached by constitutional changes – amending the constitutional framework "in the direction of exclusion of the National Assembly from the process of appointment of court presidents, judges, public prosecutors/deputy public prosecutors and members of the High Judicial Council and State Prosecutorial Council; changes in the composition of the High Judicial Council and State Prosecutorial Council aimed at excluding the representatives of the legislative and executive branch from membership in these bodies"<sup>454</sup>.

The Association of Prosecutors and Deputy Prosecutors also calls for change of constitutional framework and positioning prosecution independent from executive and legislative power. According to the Association's document "Bases for New Constitutional Position of the Public Prosecution", the position of prosecutors and deputy should also be altered. Deputies should become prosecutors with full authorities and current prosecutors should become chief prosecutors<sup>455</sup>.

447 The Constitution of Serbia, Article 161, The Law on Public Prosecution, Article 87

448 The Law on Public Prosecution, Article 97

449 The Law on Public Prosecution, Article 98

450 The Law on Public Prosecution, Article 99-102

451 The Law on Public Prosecution, Article 18

452 The Binding Instruction of the Public Prosecutor, 2007, updated in March 2010

453 The Law on SPC, Article 20

454 [http://mpravde.gov.rs/files/NSRJ\\_2013%20to%202018\\_Action%20Plan\\_Eng%202.0.pdf](http://mpravde.gov.rs/files/NSRJ_2013%20to%202018_Action%20Plan_Eng%202.0.pdf) Measure 1.1.1.3

455 [http://uts.org.rs/index.php?option=com\\_content&view=article&id=959:goran-ilic-na-sednici-komisije-za-sprovođenje-nacionalne-strategije-reforme-pravosuda-podsetio-na-stavove-uts-u-pogledu-ustavnog-položaja-javnog-tuzilastva&catid=56:vesti&Itemid=483](http://uts.org.rs/index.php?option=com_content&view=article&id=959:goran-ilic-na-sednici-komisije-za-sprovođenje-nacionalne-strategije-reforme-pravosuda-podsetio-na-stavove-uts-u-pogledu-ustavnog-položaja-javnog-tuzilastva&catid=56:vesti&Itemid=483)

## Independence (Practice)

*To what extent is prosecution independent in practice?*

**Score: 0/2015**

Vulnerability of the prosecution, caused by the influence of executive and legislative branches via election of public prosecutors, and hierarchical organisation with impose mandatory instructions by superiors, causes concern for influence from political authorities in cases. Apart from possible direct political pressure, it is also believed that a strong sense of self-censorship has been developed amongst prosecutors and deputies<sup>456</sup>.

According to the EU-CoE report, there is a “risk of undesirable influence on conduct of prosecutors and judges, whether directly or in the form of pre-emptive caution in dealing with cases that affect the interests of politicians or those whose interests they wish to protect”<sup>457</sup>.

Attorney at law Slobodan Beljanski says that the connection of prosecution with the executive power, established by the legal framework, presents permanent potential risk for political influence into prosecution’s acting. “Therefore there is a conspicuous relationship between certain activities by the prosecution and public statements of high representatives of the executive power or media campaigns, which can be attributed to political influence. In addition to illicit political influence, undoubtedly there is intimidation of prosecutors. We have just recently witnessed statements<sup>458</sup> by War Crimes Prosecutor, Mr. Vukcevic about how he and his colleagues have been threatened”<sup>459</sup>.

Political influence in the work of prosecutors is best illustrated by the fact that in previous years the Anti-Corruption Council, officially a Government body although operating independently, indicated many suspicious cases involving politicians<sup>460</sup>. The prosecution claimed that “a number of pre-trial and criminal proceedings had started”, but it was not until the change of the Government in 2012 that charges in several of those cases were brought against former officials<sup>461</sup>. Investigation of those cases was demanded by the EC, in June 2011<sup>462</sup>. Public was informed on these investigations merely by politicians, primarily by the Vice-Prime Minister (in that period Vice-Prime Minister) who claimed in his election campaign that the fight against corruption was his top priority. Thus, in July 2013 he said that within the previous year there had been 115 criminal charges in those cases, and it was discovered that damage for the public funds was around RSD 80 billion (USD 1 billion)<sup>463</sup>. He announced that all cases would be solved by the end of 2013. Four months later, on December 28<sup>th</sup> 2013, the Prime Minister gave, what he called, a final report on “24 cases”, indicating that all cases except one were solved, and that there were charges against 63 persons, and damage for public funds was RSD 7.7 billion (USD 96 million)<sup>464</sup>. Most of the indictments were raised days or weeks before the Prime Minister’s press conference. The Prime Minister also announced that 56 persons would be arrested in the following days. The Republic Public Prosecutor (as well as the Minister of Justice) was present at the Prime Minister’s press conference, held in the government, but did not say anything. The Prosecutor for organised crime gave details about on-going investigations<sup>465</sup>.

456 Interview with high positioned deputy prosecutor, who insisted to remain anonymous

457 “Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution”, Joint European Union – Council of Europe Project “Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia”, April 2014

458 [http://www.tuzilastvorz.org.rs/html\\_trz/VESTI\\_SAOPSTENJA\\_2014/VS\\_2014\\_11\\_27\\_CIR.pdf](http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2014/VS_2014_11_27_CIR.pdf)[http://www.tuzilastvorz.org.rs/html\\_trz/VES-TI\\_SAOPSTENJA\\_2014/SaopstenjeUTSa.pdf](http://www.tuzilastvorz.org.rs/html_trz/VES-TI_SAOPSTENJA_2014/SaopstenjeUTSa.pdf)

459 Interview with attorney at law Slobodan Beljanski, December 2014

460 So called “24 privatisations”

461 <http://www.blic.rs/Vesti/Tema-Dana/388104/Bubalo-bio-u-soku-Mrdja-uhapsen-na-kafi-s-Bekom><http://www.vesti-online.com/Vesti/Hronika/259406/Dulic-uhapsen-spasio-ga-imunitet>

462 <http://www.antikorupcija-savet.gov.rs/en-GB/press-clipping/cid1037-1980/serbia-ducks-probes-into-tycoons-dodgy-takeovers><http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B7-2012-0188+0+DOC+XML+V0//EN>

463 <http://91.222.6.88/vesti/naslovna/hronika/aktuelno.291.html>:444115-Vucic-Zasad-60-milijardi-protivpravno-od-privatizacija

464 <http://www.vreme.co.rs/cms/view.php?id=1162898>

465 <http://www.sns.org.rs/novosti/vesti/vucic-stavili-smo-tacku-na-pljackaske-privatizacije>

One year later, there were no new details regarding investigations that were unfinished or indictments raised a year earlier. The court returned the indictment in one case to be supplemented two times - in June 2013 and April 2014<sup>466</sup>. A Member of Anti-Corruption Council Jelisaveta Vasilic concluded in December 2014 that none of the 24 cases had actually been processed. She said that data from prosecution, received by the Council, indicated that not a single case reached the court<sup>467</sup>.

Deputy republic public prosecutor Olgica Miloradovic, head of the Anti-Corruption Department at RPP Office claims that prosecution had been working on those cases even before political changes in 2012, but "prosecution does not present on-going investigations. Sometimes prosecution depends on other institutions and organs, it needs to wait for requested information... there was no moment that prosecution was not working (on those cases)". According to data from 2013 prosecution report, Prosecution for Organised Crime started procedures against three former ministers, one former assistant minister, one current director of state owned enterprise<sup>468</sup>, 11 former directors of SOEs, and several other former officials.

However, "premature" indictments are believed to be done under political influence. "The problem is in the Prosecutor's office. There is always influence of politics on the launch of a criminal proceeding in cases when they are trying, by all means, to attribute guilt to someone. However, when people are attributed to be members of criminal associations, and when the procedure after several years finishes with acquittal, the consequences are incalculable. The task of the prosecution is to be professional and to act upon the evidence", said a judge of the Supreme Court who insisted on remaining anonymous<sup>469</sup>.

The Prosecution did not react, or at least it did not publish if it did react, when the media in November 2014 revealed possible abuse of office within one ministry. There was evidence of what was believed to be rigging of the competition for use of public funds intended for NGOs<sup>470</sup>. Senior deputy prosecutor, insisting to remain anonymous, said there were enough elements for prosecution to investigate<sup>471</sup>.

In every election campaign there are numerous accusations between political parties' representatives of buying votes. As far as the public was informed, only one case was investigated. Criminal charges against one small party president were filed by Serbian Progressive Party representatives immediately after 2012 local elections in Novi Sad. After this party switched political sides, accusations of vote buying came from former coalition partners. Investigation was started in February 2013, the suspect remained in power with Serbian Progressive Party, and there was no further information about investigation<sup>472</sup>.

A further issue is the fact that, although the procedures established by the mandatory instruction for control of appeals in corruption-related cases appear to provide significant guarantees in the sense of hierarchical review of sensitive decisions, there are issues of concern and possible political influence with these instructions. The prosecutors are vulnerable to political pressure due to influence of the Parliament and the Government on election of Public Prosecutors. Thus, hierarchical control mechanisms within the prosecution may work as a 'double-edged sword', i.e. they could be used to ensure that cases affecting the interests of politicians or those they have a motive to protect are not processed as they should be<sup>473</sup>.

Finally, an additional and particular form of pressure on the independence of prosecutors is the "acting state" of prosecutors. Prosecutors, waiting to be elected, are more prone to pressure from those who will decide on their election. Fortunately, this form of pressure should be eliminated after the election of prosecutors which started in November 2014 with the election of appellate prosecutors<sup>474</sup>.

466 <http://balkans.aljazeera.net/vijesti/treca-optuznica-protiv-olivera-dulica>

467 <http://www.istinomer.rs/bonus/jelisaveta-vasilic-plasim-se-da-ova-vlast-nema-nameru-da-izgradi-institucije/>

468 This investigation was not an obstacle for director to apply to be re-elected as director

469 <http://www.politika.rs/rubrike/Hronika/Koliko-Srbiju-kostaju-oslobadjajuces-presude.lt.html>

470 <http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:522562-NVO-Smeniti-Vulina>

471 Interview with high positioned deputy prosecutor, who insisted to remain anonymous

472 <http://www.021.rs/Novi-Sad/Vesti/Slucaj-Bokan-jos-uvek-u-fioci-Tuzilastva.html>[http://www.danas.rs/danasrs/srbija/novi\\_sad/pocela\\_istraga\\_o\\_kupovini\\_glasova.40.html?news\\_id=255719](http://www.danas.rs/danasrs/srbija/novi_sad/pocela_istraga_o_kupovini_glasova.40.html?news_id=255719)

473 "Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution"

474 [http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala\\_akta/2014/RS85-14.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2014/RS85-14.pdf)



# Governance

## Transparency (Law)

*To what extent are there provisions in place to ensure that the public can access the relevant information on prosecution's activities?*

**Score: 75/2015**

The prosecution is subject to the Law on Free Access to Information. Prosecutions are obliged to publish Information Directories which include, amongst other, information on duties and internal organization, budget, procedure for submitting a request or a complaint against authorities' decisions, regulations and decisions on exemptions or limitations of the transparency of work, with relevant rationale<sup>475</sup>.

The Law on Public Prosecution states that the work of the public prosecutor and deputy public prosecutor is public, unless otherwise provided by the law<sup>476</sup>. Procedural laws stipulate those cases when public is excluded<sup>477</sup>. According to the law, the public prosecution may inform the public on the state of criminality and other occurrences that come to its notice in its work, in accordance with the Regulation on the Administration of Public Prosecutions<sup>478</sup>. The Regulation envisages that Public Prosecution informs the public on matters within its jurisdiction, but exceptionally, higher public prosecution can inform the public on matters within the competence of the lower public prosecution<sup>479</sup>.

A public prosecutor may also, "within the constraints of its competences and in accordance with the interest of proceedings, taking into account the protection of the privacy of participants in proceedings, notify the public on individual cases in which it is proceeding"<sup>480</sup>. "Informing" is done by the public prosecutor or deputy public prosecutor designated by him, or the public prosecution's spokesman, through oral or written statements, through public media or in any other suitable manner<sup>481</sup>.

A person "who has a legitimate interest" may require to be given for consideration and photocopying certain documents from the case or cases in which the public prosecutor acts. Permission is given by the public prosecutor or deputy public prosecutor designated by him. When granting the authorization, the prosecutor must take in consideration of "the stage of the proceedings and the interest of the smooth conduct of the proceedings"<sup>482</sup>.

According to the Law on State Prosecutorial Council, sessions of the SPC "might be public" if the SPC decides so<sup>483</sup>. The SPC's Rules of Procedure state, however, that sessions are "in general closed for public" but the SPC might decide to consider some issues in session open for public<sup>484</sup>. Minutes from the session "can be made available to the public"<sup>485</sup> and information about work of the Council is available to public unless it is marked as "official secret"<sup>486</sup>. In late 2015, draft amendments to the Law envisaged to set transparency of sessions by rule, but also possibility to close sessions through HJC's decision.

475 The Law on Free Access to Information, Article 39 <http://www.poverenik.rs/en/pravni-okvir-pi/laws-pi/881-zakon-o-slobodnom-pristupu-informacijama-od-javnog-znacaja-preciscen-tekst-sl-glasnik-rs-12004-5407-10409-i-3610.html>

476 The Law on Public Prosecution, Article 48

477 Law on Criminal Procedure, Law on Civil Procedure and Law on Administrative Procedure

478 The Law on Public Prosecution, Article 10

479 Regulation on the Administration of Public Prosecutions, Article 66

480 The Law on Public Prosecution, Article 10

481 Regulation on the Administration of Public Prosecutions, Article 68

482 Regulation on the Administration of Public Prosecutions, Article 65 The Law on Criminal Procedure, Article 50

483 The Law on SPC, Article 14

484 The SPC's Rules of Procedure, Article 16

485 The SPC's Rules of Procedure, Article 20

486 The SPC's Rules of Procedure, Article 22



The Law on the Anti-Corruption Agency stipulates that all public officials, including prosecutors and deputy prosecutors, must report assets and income within 30 days after they are elected. Also, they are obliged to report annually on changes regarding the previous period, and to report two years after the termination of the function<sup>487</sup>.

## Transparency (Practice)

*To what extent is there transparency in the activities and decision-making processes of prosecution in practice?*

**Score: 25/2015**

There is not enough transparency in the activities and decision-making processes of prosecution.

Most prosecutors do not have web sites and therefore their Information Directories are not available online. Out of 67 prosecutors, only 18 have published their Directory, and another 22 have Directories but they are not published<sup>488</sup>. Although Information Directories should be updated regularly, at least monthly, in some prosecutors' directories it is stated that "the directory is annual publication" which is updated regularly, at least once a year. Some of information is therefore obviously obsolete<sup>489</sup>.

On only very few existing web sites have any items about current activities and indictments. The website of the Prosecution for Organised Crime is not functioning<sup>490</sup>. The only exception is the Republic Public Prosecutor's web site with information about activities of the RPP and her deputies. However, some statistical data, as well as Information Directory are not updated, and some information dating as back as 2008<sup>491</sup>.

According to data from the Commissioner for Public Information, out of 3.300 complaints for not providing free access to information in 2013, 292 referred to courts and prosecutors. This is 8.8% of total, (compared to 10.7 in 2012).<sup>492</sup> However, according to the explanation in one prosecutor's Directory, requests for free access to information are always adopted when the procedure is completed in a particular case, and if this is not the case, then depending on which stage of the process is. "When the process is in the stage of pre-trial proceedings, or in the investigation phase, the requirements cannot be met because it would interfere with conduct of proceedings. When the process is in the stage of indictment, request will, as a rule, be met... In prior years when complaints were filed against prosecution's decisions, and the Commissioner ordered the access to information, prosecution complied with Commissioners decision"<sup>493</sup>.

The State Prosecutorial Council publishes on its website its decisions it makes and reports. However, there are no minutes from its sessions. Information about election of candidates for prosecutors and deputy prosecutors are published, but without statements of reasons<sup>494</sup>.

487 Anti-Corruption Agency Law, Article 44

488 Data from Commissioner for Public Information, <http://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2013/gizvestaj2013.pdf>

489 [http://www.ns.os.jt.rs/PDF/informator\\_ojtns\\_2014\\_cir.pdf](http://www.ns.os.jt.rs/PDF/informator_ojtns_2014_cir.pdf)

490 [www.tok.jt.rs](http://www.tok.jt.rs)

491 Responsible person for information in Directory is acting RPP who was in the office until 2009.

492 There is no separate data for prosecutions. <http://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2013/gizvestaj2013.pdf>

493 [http://www.ns.os.jt.rs/PDF/informator\\_ojtns\\_2014\\_cir.pdf](http://www.ns.os.jt.rs/PDF/informator_ojtns_2014_cir.pdf)

494 <http://www.dvt.jt.rs/doc/Utvrdjivanje%20liste%20kandidata%20za%20apelacione%20javne%20tuzioco.pdf>

<http://www.dvt.jt.rs/doc/Utvrdjivanje%20liste%20kandidata%20za%20apelacione%20javne%20tuzioco.pdf>

<http://www.dvt.jt.rs/doc/Odluka%20o%20izboru%20zamenika%20javnog%20tuzioca-07-05-2014.pdf>

<http://www.dvt.jt.rs/doc/Odluka%20o%20izboru%20zamenika%20javnog%20tuzioca.pdf>

<http://www.dvt.jt.rs/doc/PREDLOG%20ODLUKE%20O%20IZBORU%20ZAMENIKA%20JAVNOG%20TUZIIOCA.pdf>

Establishing transparency in the process of election of a candidate for deputy public prosecutors' function is one of the goals of the National Judiciary Reform Strategy and should be reached by publishing a ranking of candidates who applied, in accordance with legal protection of personal data and publishing a decision on the election of a candidate with a statement of reasons made in accordance with criteria. Publishing minutes from the meeting is also one of the goals<sup>495</sup>.

Public prosecutors lack proactive approach to expedite the delivery of information to the media, even in cases when there is a great public interest. The prosecution is quite closed and hierarchical, and media have had a lot of problems in the past getting information from prosecution. In the past there was only one spokesperson for the entire public prosecution, located at the RPP in Belgrade. This person is now spokesperson for the RPP exclusively and all other prosecutions should have their own spokesperson. In some cases it is difficult to get in touch with those persons, and information is given in written form only. It is, however, believed to be matter of manner of work rather than attempt to hide information from the public. Unlike courts, prosecutions would never issue press statement on their activity or post item on their web site, but they will, in most cases, provide information when demanded<sup>496</sup>.

According to data from the Anti-Corruption Agency, most of prosecutors and deputies fulfilled their duty to report assets and income. In the period from January 2013 to April 2015, there were four "warning measures" against deputy prosecutors for not reporting assets within timeframe after being elected<sup>497</sup>.

## Accountability (Law)

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

**Score: 75/2015**

The evaluation of the performance of a public prosecutor or deputy public prosecutor is a ground for election and dismissal. The performance of a public prosecutor and deputy public prosecutor with tenure of office is evaluated once in three years, while the performance of the first-time elected deputy public prosecutor is evaluated once a year. Criteria and merits for evaluation were adopted by the State Prosecutorial Council in May 2014. It went on testing in 18 public prosecutors till December 15<sup>th</sup>, and should be applied in all PP from January 15<sup>th</sup> 2015, unless decided otherwise by the SPC.<sup>498</sup>

Mechanism for accountability of prosecutors and deputy prosecutors is set through disciplinary bodies of the SPC – the Disciplinary Prosecutor and Disciplinary Commission<sup>499</sup>. Disciplinary sanctions are: a public reprimand, a salary reduction of up to 50% for a period not exceeding one year, and prohibition of promotion in service for a period of three years<sup>500</sup>. Disciplinary proceedings are conducted by the Disciplinary Commission on a proposal of the Disciplinary Prosecutor. A public prosecutor and deputy public prosecutor may be dismissed when sentenced by a final judgment for a criminal offence to a term of imprisonment of at least six months, or for a punishable offence making them unworthy of office, or when incompetently discharging their function, or for a committed serious disciplinary offence<sup>501</sup>.

495 Action Plan For The Implementation Of The National Judicial Reform Strategy For The Period 2013-2018 Introduction, Measure 1.1.3.2

496 Interview with journalist, judiciary reporter, Marija Bogunovic, December 2014

497 <http://www.acas.rs/wp-content/uploads/2014/09/30042015-ODELJENJE-ZA-VO%E2%94%80%D0%A0ENJE-REGISTARA-I-POSEBNIH-EVIDENCIJA.pdf>

498 <http://www.dvt.jt.rs/doc/Pravilnik%20o%20kriterijumima%20i%20merilima%20vrednovanja%20rada%20javnih%20tuzilaca%20i%20zameni-ka%20javnih%20tuzilaca.pdf>

499 The Law on Public Prosecution, Article 106

500 The Law on Public Prosecution, Article 105

501 The Law on Public Prosecution, Article 92

Prosecutors are authorized to decide on not undertaking or deferring criminal prosecution or to abandon charges but they have the obligation to justify their decisions on whether they will initiate prosecution<sup>502</sup>. As the public prosecutor and deputy public prosecutor are independent of the executive and legislative branches in exercising their functions they are required to explain their decisions only to the public prosecutor in charge<sup>503</sup>. Any individual act of the judicial administration infringing the independence of the work of public prosecution is null and void<sup>504</sup>. Those cases in which suspects are themselves prosecutors or deputy prosecutions are conducted by the Prosecution for Organized Crime and the Police Service for the fight against organized crime<sup>505</sup>.

If in connection with a criminal offence prosecutable ex officio, the public prosecutor dismisses a criminal complaint, discontinues the investigation or abandons criminal prosecution until the indictment is confirmed, he is required to notify the injured party thereof within eight days and to advise him/she that he/she is entitled to submit an objection to the immediately higher public prosecutor. If after the indictment is confirmed the public prosecutor declares that he is dismissing charges, the court will ask the injured party whether he wishes to assume criminal prosecution and represent the prosecution<sup>506</sup>.

Prosecutors and deputy prosecutors have functional immunity. They may not be held accountable for opinions expressed in the performance of prosecutorial office, except in case of the commission of a criminal act by a public prosecutor or deputy public prosecutor. A public prosecutor or deputy public prosecutor may not be arrested in connection with a criminal offence committed in the performance of prosecutorial office or service without the permission of the relevant committee of the National Assembly<sup>507</sup>.

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 prosecution is to be notified about the decision in his case within 30 days. Petitions or complaints may be submitted directly to the superior prosecutor, or by the SPC, the Ministry of Justice, the RPP, or other superior public prosecution<sup>508</sup>.

## Accountability (Practice)

*To what extent does prosecution have to report and be accountable for its actions in practice?*

**Score: 25/2015**

The Public Prosecutions are supposed to publish annual reports. However, very few reports can be found on individual web sites of prosecutions. An annual report on work of all prosecutions can be obtained from the RPP Office on demand, but it is not available on its web site.

There is no practice of publishing the written statements with reasons for prosecution's decisions. Deputy Republic Prosecutor Olgica Miloradovic claims that reason for this is the fact that suspension of proceeding after investigation or rejection of the charges is not terminal decision, because whenever new evidence occurs, the proceeding can start all over again<sup>509</sup>.

502 The Criminal Procedure Code Articles 43, 49-50, 308, 310, 497

503 The Law on Public Prosecution, Article 45

504 The Law on Public Prosecution, Article 44

505 The Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other severe criminal offences.

506 The Criminal Procedure Code, Article 51-52

507 The Law on Public Prosecution, Article 51

508 Regulations on Administration of the Public Prosecutor's Office, Article 72-73

509 Interview with deputy RPP Olgica Miloradovic, November 2014

Establishment of disciplinary bodies is seen as very important in system of strengthening integrity and accountability of prosecutors<sup>510</sup>. So far there have only been a few proceedings before the Disciplinary Commission. Disciplinary bodies were elected in May 2013. Until the end of 2013 there were 44 reports. Disciplinary Prosecutor rejected 26, in 15 cases there was checking still going on at the time when the report was written and in 3 cases the Disciplinary Prosecutor filed a recommendation to the Disciplinary Commission to initiate disciplinary procedures. In one of those cases, the Disciplinary Commission pronounced a sanction – public warning. After the Disciplinary Prosecutor filed an appeal, the SPC changed the sanction to 25% salary reduction for a period of six months<sup>511</sup>. In 2013 the SPC also made a decision on dismissal of one deputy prosecutor, after he was sentenced to prison for accepting bribe<sup>512</sup>. In 2014, until October 6<sup>th</sup> 2014, there were 87 reports and 43 of them were rejected. In 3 cases the Disciplinary Prosecutor filed recommendation to the Disciplinary Commission to initiate disciplinary proceedings<sup>513</sup>.

According to the Republic Public Prosecution, during the previous five years to 2013 “less than 2-3 prosecutors” were dismissed per year on average as a result of incompetence or poor conduct in decision-making, with none being dismissed in some years<sup>514</sup>.

According to one deputy prosecutor, prosecutors fulfill their obligation to inform the injured party and police, if police filed the charges, when charges are rejected or abandoned and to inform injured party and suspect when investigation is suspended<sup>515</sup>.

## Integrity mechanisms (Law)

*To what extent is the integrity of prosecution ensured by law?*

**Score: 100/2015**

Mechanisms, which are supposed to provide integrity of prosecutors, are stipulated by the Constitution, the Law on Public Prosecution, the Law on Anti-Corruption Agency and in procedural law – the Criminal Procedure Code<sup>516</sup>. 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 function.

Public prosecutor or deputy public prosecutor may not hold function in authorities which enact regulations, in executive public authorities, public services, and bodies of autonomous provinces and local self-government units; may not be a member of political parties, engage in public or private paid work, provide legal services or provide legal advice for compensation. A deputy public prosecutor is required to notify the public prosecutor in writing about another office, engagement or private interest, where there exists a possibility of their incompatibility with his/her office, as well as of the engagement or private interest of members of his/her immediate family, if there exists a possibility of their incompatibility with his/her office. A public prosecutor shall notify the immediately higher ranked prosecutor of such a function, engagement, or private interest, and the Republic Public Prosecutor shall notify the State Prosecutorial Council<sup>517</sup>.

510 Interview with deputy RPP Olgica Miloradovic, November 2014

511 <http://www.dvt.jt.rs/izvestaji.html>

512 <http://www.dvt.jt.rs/izvestaji.html><http://www.blic.rs/Vesti/Hronika/383760/Vracan-medju-tuzioce-a-osudjen-na-tri-godine-zbog-mita>

513 <http://www.dvt.jt.rs/izvestaji.html>

514 “Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution”

515 Interview with deputy republican prosecutor Olgica Miloradovic, November 2014

516 Constitution of Serbia, Article 163, The Law on ACA, Articles 28-47, Law on Public Prosecution, Articles 65-68, Code on Criminal Procedure, Article 37.

517 Law on Public Prosecution, Articles 65-66

The Anti-Corruption Agency Law envisages that public officials, including prosecutors and deputy prosecutors, can perform only one public function, and exceptionally other public functions, with consent of the Agency. 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 determined. All officials are obligated to report assets and income, and part of this data is published on the Agency's web-site. The Agency has mandate to check the accuracy of assets declarations.

The Law on Anti-Corruption Agency also regulates matter of gifts and hospitality. The record of gifts for the previous year is delivered to the Agency by March 1<sup>st</sup> and the Agency publishes it on its web-site by June 1<sup>st</sup>. 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 consent. Violating these provisions carries administrative measures or misdemeanor charges and concealing information about the property is treated as a criminal offense that carries a prison sentence of six months to five years<sup>518</sup>.

The Code of Ethics for Prosecutors was adopted by the SPC in October 2013. Serious violation of the Code of Ethics can be considered as disciplinary misdemeanor. The principles of the Code of Ethics are autonomy, impartiality, respect of the law, accountability, professionalism and dignity<sup>519</sup>.

## Integrity mechanisms (Practice)

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

**Score: 50/2015 (50/2011)**

Existing legislation are partly effective in ensuring ethical behavior by prosecutors. According to previous research amongst prosecutors, they take care to avoid conflicts of interest, since it can be the basis for rejecting a case<sup>520</sup>

Nevertheless, there have been several proceedings against deputy prosecutors before the Anti-Corruption Agency, and only one completed procedure before the Disciplinary Commission. From January 2013 to April 2015, the Anti-Corruption Agency launched procedures against four deputy prosecutors for not submitting assets declarations within stipulated deadline, after taking office. Three cases were finished by the time the report was published and in all a "warning" has been pronounced<sup>521</sup>. Disciplinary Commission, since it was established in May 2013, pronounced one measure – "public warning", and it was altered by the SPC into salary reduction<sup>522</sup>.

Deputy RPP Olgica Miloradovic notes that a program of education on ethical issues has been introduced and education in the Judicial Academy has started<sup>523</sup>. Nevertheless, the EU and CoE report from April 2014 indicated that "curricula of the Judicial Academy should be revised to include ethics and standards of conduct as a permanent component of ongoing training of judges and prosecutors". According to the report, the only training on this topic was under the curriculum section "Professional Knowledge and Skills, EU Law and International Standards". One of the seven modules under this section was "The Organisation of Justice and Ethics of Judges and Prosecutors". The report notes: "It is clear from this that training on conduct and ethics isn't extensive enough (approximately one day). To the experts' knowledge there is no provision for on-going training of judges or prosecutors on ethics/conduct. Rather, judges and prosecutors are engaged

518 The Law on ACA, Articles 28-49, 72

519 <http://www.dvt.jt.rs/doc/Eticki%20kodeks%20javnih%20tuzilaca%20i%20zamenika%20javnih%20tuzilaca%20Republike%20Srbije.pdf>

520 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](http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia.html) December 2011

521 Report by ACAS Sector for Operations, [http://www.acas.rs/images/stories/SOP/WEB\\_ODELJENJE\\_ZA\\_REGISTRE\\_1\\_10\\_2014.pdf](http://www.acas.rs/images/stories/SOP/WEB_ODELJENJE_ZA_REGISTRE_1_10_2014.pdf)

522 <http://www.dvt.jt.rs/izvestaji.html>

523 Interview with deputy RPP Olgica Miloradovic, November 2014



in ad-hoc trainings on the subject, mostly organized by international organisations in cooperation with the Judicial Academy<sup>524</sup>. The SPC published in its response to this report that it demanded all prosecutions in Serbia to organise collegium sessions and inform prosecutors and deputies with the Rules on disciplinary responsibility, the Code of Ethics and Rulebook on evaluation of performance of prosecutors and deputies<sup>525</sup>.

# Role

## Corruption prosecution (law and practice)

*To what extent does prosecution detect and investigate corruption cases?*

**Score: 50/2015 (50/2011)**

There have not been major changes in number of corruption-related charges in the past years. Most of the charges are for abuse of office and abuse of position, while the number of charges for accepting bribes and bribery are very low, especially when compared with research on direct experience of citizens with corruption<sup>526</sup>.

Besides the unjustifiably large discrepancy between the prevalence of corruption and the number of detected cases, it is not rare that police and judiciary make procedural errors in detected cases for which the key evidence cannot be used. In addition, there is a vicious circle because political parties are at the same time one of the most remarkable source of corruption and one of the most effective instruments to obstruct its detection<sup>527</sup>.

There are legal possibilities for efficient prosecution of corruption, including the possibility of using special investigative techniques, but such possibilities are insufficiently used. Deputy RPP Olgica Miloradovic says that those techniques are more used in the fight against organised crime. "Corruption cannot be recorded retroactively, it demands proactive treatment", she insists that more education is needed, in order to stimulate people to react when corruption is still being prepared, before the actual corruption occurs<sup>528</sup>.

More proactive actions by the prosecutors are demanded by the EU Progress Report for 2014<sup>529</sup> but also by the National Anti-Corruption Strategy<sup>530</sup>. Deputy RPP Olgica Miloradovic says much more deputies are needed for proactive investigations<sup>531</sup>. According to her, apart from more prosecutors, another precondition for successful suppression of corruption is a stricter penal policy which she considers mild for economic crimes and corruption. Introduction of criminal act illicit enrichment in the legal system, for example, could be useful<sup>532</sup>. This measure is envisaged by the National Anti-Corruption Strategy, and changes of the Criminal Code should have been adopted

524 "Assessment Of Risks Of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution", Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia", April 2014

525 The SPC respond to draft report "Assessment of Risks of Poor Conduct And Corruption In The Serbian Judiciary And Prosecution"

526 UNDP Cesid Research, February 2014, <http://www.mc.rs/upload/documents/istrazivanje/2014/02-12-14-Korupcija-u-Srbiji.pdf>

527 Assessment by attorney at law Slobodan Beljanski, interview, December 2014

528 Interview with deputy RPP Olgica Miloradovic, November 2014.

529 "Law enforcement bodies and prosecution need to become more proactive". [http://ec.europa.eu/enlargement/pdf/key\\_documents/2014/20140108-serbia-progress-report\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf)

530 Objective 3.4.3 "Establish efficient and proactive actions in detecting and prosecuting criminal offenses related to corruption".

531 Interview with deputy RPP Olgica Miloradovic, November 2014.

532 Interview with deputy RPP Olgica Miloradovic, November 2014.



by December 2014<sup>533</sup>.

Changes of the Criminal Procedure Code introduced from 2012 new measures, such as plea bargaining which could increase the efficiency of the prosecutor's work, and therefore prosecution of corruption. At the time there were warnings<sup>534</sup> that these measures increased the risk of corruption between prosecution and defendant, but there is no evidence that those fears were justified. There were more than 1.300 plea agreements in 2013 (40% more than 2012). Prosecution in charge for Organised Crime and Corruption made 60 plea agreements and the court upheld all of them. Four were made on the prosecution's initiative. 58 defendants were sentenced to prison, and in 20 cases property of defendants was confiscated<sup>535</sup>.

The Prosecution for Organized Crime is competent 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 Prosecutorial Council. This includes, among other, ministers and their deputies, directors of public companies and institutions in public health, education and culture sector, judges and prosecutors (but not directly elected members of the Parliament and President of the Republic).

The Prosecution in charge for Organised Crime and Corruption has raised indictments against 168 persons in 2013, which is an increase from the 81 indictments raised in 2012. The number of investigations launched in 2013 by the Special Prosecutor for Organised Crime in high-level corruption cases remained about the same as last year (at 147 new investigations, compared with 140 in 2012)<sup>536</sup>.

In 2013, prosecutors filed 55 requests for temporary seizure of the assets. Court fully accepted 18 requests, partially seven, and rejected 27. As for permanent seizure, 23 requests were filed, six were accepted fully, partially three, eight were rejected and others are still pending.

In nine months of 2013, there were 4.350 criminal acts with elements of corruption reported to prosecution. There were total of 1061 charges. It is relative rise in both reports and charges, compared to 2012 (12 months), when there were 4.500 reports and 1160 charges.

| 2013 (January-September)                              | Reported | Reported by police | Reported by other state organs | Reported by Damaged party | PP initiative | Charged |
|---|----------|--------------------|--------------------------------|---------------------------|---------------|---------|
| Abuse of office                                       | 2277     | 1333               | 262                            | 463                       | 85            | 591     |
| Abuse of position                                     | 1,869    | 1152               | 451                            | 107                       | 93            | 412     |
| Trading in influence                                  | 27       | 18                 |                                | 3                         |               | 5       |
| Accepting bribes                                      | 90       | 62                 | 3                              | 14                        |               | 41      |
| Bribery   | 81       | 59                 | 2                              | 5                         | 3             | 12      |
| Giving and receiving bribes in connection with voting | 0        |                    |                                |                           |               | 0       |
| Abuse in connection with public procurement           | 10       | 3                  |                                | 2                         | 3             | 0       |

533 Action Plan for implementation of National Anti-Corruption Strategy, Measure 3.4.4.1

534 <http://www.juznevesti.com/Istrazujemo/Ponovo-nagodba-za-korupciju-u-Nisu.sr.html?c=Komentarihttp://www.pressonline.rs/info/politika/158003/ko-krade-ne-ide-u-zatvor-nagodba-za-odabrane.html><http://blog.kakavjedoktor.org/2013/06/12/korumpirani-lekari-kaznjeni-ispod-minimuma/>

535 Annual report on work of all prosecutions for 2013

536 EU Progress Report for 2014

# PROSECUTION

## Recommendations

1. Parliament and the SPC should improve conditions for independent and efficient work of prosecutors, through envisaged constitutional changes and providing of necessary human and other resources, including the necessary work space and adequate working conditions;
2. State Prosecutorial Council should improve accountability of prosecutors through effective system of complaint resolution and evaluation of work;
3. State Prosecutorial Council and all prosecutors should increase the number of prosecutors 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;
4. Judicial Academy should provide intensive training in order to improve knowledge and skills of prosecutors;
5. All prosecutions should provide access to information about work of public prosecutors in accordance with the Law on Free Access to Information, and to provide for certain information without request on the prosecution's web-sites;
6. All prosecutions should post on their web-sites and in their premises 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;
7. Police, prosecution and courts should jointly prepare and regularly publish statistical overviews containing the number of police charges (number of persons charged and number of criminal acts), prosecutorial reports (number of initiated and finished criminal proceedings, number of defendants and number of criminal acts) and court reports (review of the number and types of verdicts) for acts of corruption.
8. Prosecutions should organize a targeted examination of possible corruption by the internal controls in connection with transactions that are most at risk of corruption;
9. Anti-Corruption Department within the Republic Public Prosecution should ensure the publication of decisions of public prosecutors on withdrawal of prosecution;
10. The Ministry of Justice, the Government and the Parliament should fulfil the obligation envisaged by the Anti-Corruption Strategy - introduction of the "illicit enrichment" criminal offence into the legal system;
11. The Ministry of Justice, the Government and the Parliament should consider legal changes, regarding measures that could best serve the increasing number of reported cases of corruption (e.g., release of liability of participants in the illicit transaction, awards for whistleblowers etc.).





# PUBLIC SECTOR

## National Integrity System

**Summary:** The structure of the public sector institutions and allocation of budget funds still depends on the availability of resources and to a certain extent political power of the minister, rather than on objectively determined needs, criteria and priorities. The 2014 public administration reform, driven by budget concerns and announcements of new policies (“hard reforms”) did not result in major changes yet. Austerity measures have slightly limited new recruitments in the core public administration. Salaries in the public sector are above the national average, even after cuts within the context of austerity measures. Even so, they are not stimulative 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. However, regulations on professionalization of the public administration have been directly violated since 2011, and a significant number of top civil servants is still in “acting” position. There is significant informal influence of political factors in employment throughout the public sector. Legal provisions related to the disclosure of personal assets, income and financial interests in the public sector agencies exist only for the top management. Transparency of public sector activities is not fully ensured due to the lack of other legislation or its poor implementation. New regulations on the protection of “whistleblowers” did not bring significant changes yet in civil servants readiness to report corruption or other misbehavior. Regulations on “conflict of interest” refer to all civil servants, but compliance is not systemically monitored. Institutional oversight of state owned companies is ineffective and non-transparent, resulting in serious losses of such enterprises, party-based control and lack of information about important aspects of their work. The legal framework for public procurement, significantly improved since April 2013, is mostly in line with European standards and recognizes protection from corruption as a priority. However, the rules are not always enforced and competition levels are still low.





| PUBLIC SECTOR                         |  |                                       |                                       |
|---------------------------------------|--|---------------------------------------|---------------------------------------|
| Overall Pillar Score (2015): 49 / 100 |  |                                       |                                       |
| Overall Pillar Score (2011): 42 / 100 |  |                                       |                                       |
| Dimension                             | Indicator  | Law                                   | Practice                              |
| <b>Capacity</b><br>50 / 100           | Resources  | /                                     | <b>75</b> (2015),<br><b>75</b> (2011) |
|                                       | Independence   | <b>75</b> (2015),<br><b>75</b> (2011) | <b>0</b> (2015),<br><b>0</b> (2011)   |
| <b>Governance</b><br>54 / 100         | Transparency   | <b>75</b> (2015),<br><b>50</b> (2011) | <b>50</b> (2015),<br><b>50</b> (2011) |
|                                       | Accountability   | <b>50</b> (2015),<br><b>25</b> (2011) | <b>25</b> (2015),<br><b>25</b> (2011) |
|                                       | Integrity  | <b>75</b> (2015),<br><b>75</b> (2011) | <b>50</b> (2015),<br><b>50</b> (2011) |
| <b>Role</b><br>44 / 100               | Public Education   | <b>25</b> (2015), <b>25</b> (2011)    |                                       |
|                                       | Cooperation with public institutions, CSOs and private agencies in preventing/ addressing corruption | <b>50</b> (2015), <b>25</b> (2011)    |                                       |
|                                       | Reduce Corruption Risks by Safeguarding Integrity in Public Procurement                              | <b>75</b> (2015), <b>25</b> (2011)    |                                       |
|                                       | Oversight of SOEs*   | <b>25</b> (2015) NA                   |                                       |

\* New indicator, added in NIS 2015

**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, and the government services and agencies. Public administration<sup>537</sup> comprises the state government - ministries, autonomous agencies within ministries (e.g. Tax Administration, Administrative Inspectorate, Directorate for e-Government) and “specialized organizations” (such are Public Procurement Office and State Statistical Department).

Aside from public administration, there are “public services” in place as well<sup>538</sup>. 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 law. Furthermore, there are independent bodies (e.g. Ombudsman), regulatory bodies (e.g. for postal services, electronic media, telecommunication), “public agencies” (e.g. Agency for restitution, Business Registers Agency), social care organisations and various bodies with undefined status (such as Commission for the control of state aid).

While employment in the whole “sector of the state”, i.e. direct and indirect budget beneficiaries is estimated to 500 thousand people, the administration on the central level included in March 2015 33.359 employees, The sum of employees that includes only government services, ministries with

<sup>537</sup> Law on Public Administration

<sup>538</sup> The Law on Public Services, adopted in 1991, last updated in 2014.



their autonomous units and “specialized organizations” would be around 22.5 thousand<sup>539</sup>, out of them, app. 10% on temporary basis<sup>540</sup>. The structure of the public administration is seriously disturbed by the establishment of new and sometimes unclearly defined organizational forms<sup>541</sup> of the public sector whose duties partially overlap with those carried out by ministries and specialized organizations. This also applies to the “classic” government bodies of the state administration, and even more often to the government agencies. For years, there was not even a full list of various “agencies” available, except an unofficial catalogue of public bodies maintained by the Commissioner for Information<sup>542</sup>. Such a situation created strong demand for regulating this issue but also an environment for ungrounded announcements, such as the one that the number of agencies (that is not clearly established) will be “reduced from 136 to about 50”<sup>543</sup>.

In the last couple of years, just few brand new agencies/government bodies have been established, but the problem is that the existing ones have not been restructured/merged/absorbed, although it could help raising the effectiveness and efficiency of the public administration in general. Once established, agencies/government bodies usually stay embedded into the public administration system, with the exempt of those established by the Law on Ministries because with each new elections – Law on Ministries prescribes different division of power between the ministries established by the Law, changing at the same time the administrative structure of some of the public administration bodies that were also established by this Law<sup>544</sup>.

The structure of various government bodies, according to the Ministry of Public Administration and Local Self-Government 2015 analyses included 15 ministries, 29 organs within the ministries, 17 specialized organizations, 14 public agencies, 16 independent and regulatory bodies, 4 social care organizations and 18 “others”.

In terms of working status, the Law on Civil Servants applies to most of listed bodies. Exceptions are some regulatory bodies and public agencies<sup>545</sup>. 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 specialized organizations, their deputies and assistants and directors of administrative units within the ministries while heads of administrative districts lost that status in 2014. 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 experience<sup>546</sup>. 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 filled 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.

539 Police officers not included.

540 Position paper, Modern State – rational state, How many, how and why?, MDULS, June 2015.

541 See more in “Agencies in Serbia Analyses and Recommendations for Reform, USAID and The Balkan Center for Regulatory Reform, Belgrade, March 2013.

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

543 E.g. statements of SNS officials, after entering the government in 2012. [https://www.youtube.com/watch?v=TIJ\\_KamH9\\_k](https://www.youtube.com/watch?v=TIJ_KamH9_k)

544 Interview with Dragana Aleksic, Republican Secretariat for Public Policies,.

545 Jelena Jerinic, Faculty of Law, UNION University, <http://transparentno.rs/repo/dokumenta/files/Desk%20analiza,%20final%20-%20za%20stampu.pdf>

546 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: 75/2015 (75/2011)**

As identified in NIS 2011, allocations in the public sector are high and public sector reform, which should determine the actual number of required employees and the rationalization of the public sector, has been delayed for years. Consequently, there are more employees than needed in some sectors and not enough in others. On the other hand, the Ministry's position paper<sup>547</sup>, based on comparative analyses claims that neither public sector as a whole, nor state administration in particular is oversized. "The space for savings is limited ... reinvestment is needed in order to increase efficiency and manageability of public administration as well as the quality of their services". The problem is also the structure of employees: less than 5% of them are engaged in jobs such as strategic planning, development of public policies, design of norms and standard and quality management".<sup>548</sup> The Ombudsman finds that public administration reform has not improved the situation: "Instead of a systematic improvement ... there have been urgent interventionist measures aimed at reducing public expenditure through lay-offs and salary cuts in the civil service. The effects of these measures on the quality of work of the administration have been dubious, to say the least."<sup>549</sup>

While salaries of public sector employees are not high in absolute terms, they are a burden for the budget. That was the reason for more than 10% net decrease since November 2014<sup>550</sup>. Furthermore, the performance appraisal system has had severely dysfunctional consequences for the salary policy. As a result of "good" performance, most public servants are entitled to "horizontal" advancement (salary steps), which puts unsustainable pressure on the payroll in previous years<sup>551</sup>. SIGMA also noted that envisaged introduction of a centralised payroll system should enhance the transparency and fairness of the whole system. "The average monthly salary of all public servants<sup>552</sup> was RSD 47.287 (EUR 391.5), somewhat lower than the average salary in the economy as a whole (RSD 49.970, or EUR 414)". The compression rate is 7:1. In recent years, senior public service positions have lost purchasing power".

Adraft Law on System of Remuneration in the Public Sector was prepared that would deal with some related problems (about 900 different coefficients, 12 bases for the calculation and payment of wages, over 200 different bases to increase wages in public sector etc.). Envisaged reform is expected to bring atotal of 60 payment classes and 1:7.5 compression rate, with 22.000 as a minimum wage<sup>553</sup>. This is expected to reduce current inconsistencies of salaries within the public sector<sup>554</sup>.

547 <http://www.mduls.gov.rs/analiza-javne-uprave.php>

548 Position paper.

549 Annual report of Ombudsman for 2015.

550 Controversial Law on Temporary Regulation of Basis for Calculation of Salaries etc., <http://www.pravniportal.com/smanjenje-penzija-i-plata/>

551 Baseline Measurement Report, the Principles of Public Administration, Serbia, April 2015, SIGMA.

552 Not to be confused with the average salary in the public sector as a whole, where the sum is app. a salary is app 10% higher than in the private sector. <http://www.politika.rs/scc/clanak/334167/Tope-se-drzavne-plata>

553 <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:572108-Najmanja-plata-22000-najveca-155000-dinara>

554 Explained in more details in NIS 2011.

The Law on Determining the Maximum Number of Employees in Public Sector was enacted in August 2015 and Government in December 2015 passed the Decision on the Maximum Number of Employees in State Bodies, Public Services, Autonomous Province of Vojvodina and Local Government System for 2015. The next step announced is binding of ministries to develop guidelines and draft programs for reorganization and modernization of organisational forms under their purview<sup>555</sup>. These changes are expected also to influence a decrease in the number of employees. The announced scope of that measure (5% or 25 thousand per year in the Fiscal Council assessment)<sup>556</sup> came to less than one third in later statements of ministry in charge<sup>557</sup>.

As before, allocation for certain government bodies depends on available resources and political power of the minister, rather than on objectively determined needs, criteria and priorities.

Public services are not being delivered effectively enough. However, “citizen – oriented administration is one of PAR Strategy objectives and some progress can be noticed, such as introduction of some electronic services (e.g. payment of VAT)<sup>558</sup>, New General Administrative Procedure Act and Law on Inspections, adopted in 2015 will help this process. A policy on improving public services is included in strategic documents. Activities aimed at reducing administrative burdens are oriented mainly towards businesses, with some success<sup>559</sup>.

In the context of optimisation of public administration, that is one of PAR Strategy goals, the progress in 2015 is limited. There were changes based on functional analyses and 6 separate administrative units were extinguished, and their tasks are now performed by ministries (e.g. Privatization Agency within the Ministry for Economy). There are on-going diagnostics within the World Bank/ European Commission project, through the horizontal functional analysis<sup>560</sup>.

Serbia has bodies in charge of trainings of civil servants. However, the number of trainees by the Government’s Human Resource Management Service and Serbian EU Integration Office decreased in 2014 in comparison to previous years (3.798 in 2013, 5.541 in 2012). This is explained by the duty to conduct public procurement procedures for lecturers and reduction of donor support<sup>561</sup>. This is not a satisfactory level of training, since fewer than 10% of public servants a year are able to take the courses the HRMS offers.

## Independence (Law)

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

**Score: 75/2015 (75/2011)**

There have been no relevant changes to the Civil Service Act. It provides for the political neutrality of civil servants and also prescribes the procedures that are supposed to prevent political interference in the recruitment and promotion in the public sector. The Code of Conduct for civil servants obliges civil servants to be politically neutral.

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<sup>562</sup>. According to the Civil Service Act, senior positions are filled by appointment, but the law

555 From the draft annual report of PAR implementation, MPALSG.

556 [http://www.fiskalniisavet.rs/doc/eng/opinion\\_on\\_fiscal\\_strategy\\_2015\\_2017\\_summary.pdf](http://www.fiskalniisavet.rs/doc/eng/opinion_on_fiscal_strategy_2015_2017_summary.pdf)

557 <http://www.blic.rs/vesti/politika/udovicki-nece-9000-ljudi-bit-i-otpusteno/dyvrgce>

558 SIGMA report.

559 SIGMA report.

560 Vidosava Dzagic, advisor to the Minister of State Administration.

561 SIGMA report

562 Law on Civil Servants, Articles 9 and 10.

requires prior competition - internal or public. 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). 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 development<sup>563</sup>. Civil servants in appointed positions can be dismissed from their 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 protection<sup>564</sup> 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 or any other violation of the regulation are protected by the rules set in the Whistle Blower Protection Act, adopted in 2015.

Employees of public enterprises, public services 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<sup>565</sup>.

## Independence (Practice)

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

**Score: 0/2015 (0/2011)**

As in NIS 2011, existing regulations on professionalization of public administration are not fully implemented. “Provisions, that leaves space for wide discretionary powers and are regularly used in practice. Nearly 60 % of senior civil servants are still appointed on the basis of exceptions or transitional arrangements. Also reorganization can be used unfairly to dismiss or reassign staff.”<sup>566</sup> There is a large informal influence of political affiliations and personal connections in new employments and promotions on junior positions as well. This influence is even higher in public enterprises, government agencies and other services.

After the change of government, in most of organizational units and government bodies, personnel changes in the public sector have happened, depending on political affiliation (ministers, state secretaries and part of assistant ministers, secretaries of the ministry and members of minister’s cabinet). The legal protection against dismissal is not an obstacle for the removal of officials appointed during the “previous regime”. As said, many of them were also before appointed purely on political basis and without competition. Furthermore, after the important political change in 2012 many assistant ministers chose to leave their post before the end of their mandate even if being appointed “as professionals”, while others continued to work, in cases where the new ruling party didn’t have its own candidate<sup>567</sup>.

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 for each individual government body that would be used to explain precisely the basis of which grades are

<sup>563</sup> Law on Civil Servants, Article 82

<sup>564</sup> Law on Prevention of Harassment at Work [http://paragraf.rs/propisi/zakon\\_o\\_sprecavanju\\_zlostavljanja\\_na\\_radu.html](http://paragraf.rs/propisi/zakon_o_sprecavanju_zlostavljanja_na_radu.html)

<sup>565</sup> NIS 2011

<sup>566</sup> EC Serbia 2015 Report.

<sup>567</sup> Interview with former assistant minister, February 2015.

assigned. In practice and by default, most of the employees got the highest grades<sup>568</sup>. However, in 2015 and 2014, based on internal recommendations administrative units assigned highest score in up to 5% cases<sup>569</sup>. “The design of the performance appraisal system is appropriate but appraisal grades are inflated in practice, entitling staff to advance through salary steps in ways that the current budget cannot support. There is also no link between the performance appraisal system and training”<sup>570</sup>.

One of examples of public sector politicization is the work of the administration during election campaigns and before establishing a new Government. Even if there are national strategies and annual work plans, the work on policy documents (such as strategies, action plans and draft legislation) is “hibernated”. In cases where the head of the ministry is a politician, the absolute priority is given to the promotional activities that may benefit the pre-election campaign<sup>571</sup>.

# 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: 75/2015 (50/2011)**

There were improvements in comparison to the NIS 2011 in areas such as public procurements and preparation of draft laws.

Legal provisions related to the disclosure of personal assets, income and financial interests in the public sector agencies apply only to top management (e.g. assistant ministers, directors, deputy and assistant directors of government bodies functioning out of ministries). The rest of the civil servants have conflict of interest rules to comply with, but not the duty to report their income and property<sup>572</sup>.

The Law on Free Access to Information of Public Importance stipulates<sup>573</sup> 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 authorities<sup>574</sup>. There are a growing number of laws requesting public authorities to publish various types of information (e.g. registries, decisions) on their web-pages. There are also “soft” rules in place, such as Government’s Guidelines for building of web-presentations of state and local government bodies.<sup>575</sup>

568 Interview with former assistant minister.

569 Interview with former assistant minister.

570 EC Report, 2015.

571 <http://www.transparentnost.org.rs/images/stories/materijali/13062014/Aktivnosti%20javnih%20funkcionera%20tokom%20kampanje%20za%20izbore%202014,%2013.06.2014.pdf>

572 Law on Civil Servants, articles 25-31

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

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

575 [http://deu.gov.rs/media/docs/Smernice\\_5\\_0.pdf](http://deu.gov.rs/media/docs/Smernice_5_0.pdf)



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 are regulated by the Guidebook on the assessment of professional qualifications, knowledge and skills in the human resources selection in state administration<sup>576</sup>.

The 2012 Public Procurement Law regulates the transparency of information in the implementation of various phases of public procurement, including duty to keep all communication in writing and the obligation to publish most of the relevant information on the Public Procurement Portal<sup>577</sup> and web-page of the purchasing entity. Reports of State Audit Institutions also have to be published.

Public information management is regulated in The Law on State Administration<sup>578</sup> and their further elaboration in the regulation related to specific procedures, as well as in two Decrees<sup>579</sup>. 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.

There were improvements in regards to the information that has to be prepared to support policy decisions (e.g. duty to prepare regulatory impact analyses in preparation of laws)<sup>580</sup>, proposals and work results<sup>581</sup>. However, legislation still could be improved, in particular when it comes to the planning and reporting process of ministries and other public administration bodies.

## Transparency (Practice)

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

**Score: 50/2015 (50/2011)**

Vacancies in the public administration are advertised publicly. This, however, does not ensure fair and open competition. The reasons are discretion in deciding when to apply secondment, transferal, internal competition or public competition, composition of evaluation committees and the possibility to select any one of the shortlisted candidates. The appointing authority thus has an additional chance to exert influence in a non-transparent way<sup>582</sup>. The average number of candidates per vacancy from external competition was 10, while in an internal competition is far lower (3 in 2014).<sup>583</sup> In addition, temporary employees are recruited without public advertisement. There were 1 277 such contracts in the core state administration in 2014<sup>584</sup>.

According to the Commissioner’s annual report in 2014, out of 5077 information requests, ministries rejected 412, i.e. 8%, and failed to respond to a further 418 requests. In the overall work of the Commissioner, the share of “non-responding” authorities is even higher - 93.5% of appeals were based on “administrative silence” in 2014. Ministries did not fully comply with their duty to publish information pro-actively. The Commissioner found in late 2014 only one complete Informa-

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

577 <http://portal.ujn.gov.rs/default.aspx>

578 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

579 Regulation on office of state administration, the Regulation of electronic office operation of state administration

580 Rules of procedure of Government, Article 40, Para 1.

581 Interview with Dragana Aleksic, Republican Secretariat for Public Policies.

582 SIGMA report.

583 Based on SIGMA report.

584 SIGMA report.



tion booklet, out of 16 checked<sup>585</sup>. The biggest problem, however, are instances where ministries failed to provide access to information, even after the Commissioner's final order. In 2015, there was total of 135 unexecuted Commissioner's decisions, out of which 26 by ministries, 21 of other central government bodies, 35 public enterprises, 9 judiciary, 17 cities and 27 local utilities<sup>586</sup>. Most prominent is the case where the Ministry of Economy refused to provide access to the publically promoted management contract (for state owned and funded steel mill), and even banned the Commissioner (who is authorized to access even top secret documents) to see the contract<sup>587</sup>.

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-site, but some data is not available to public (e.g. value of savings, property owned by family members). According to available data, the Agency issued in 2015 7 procedures against civil servants on post – assistant ministers, after checking proactively 82 of their financial statements.

Public procurement announcements are regularly and timely posted on the Public Procurement Portal, although Transparency Serbia's 2013 research found that for 10% procurements at least one of the mandatory documents is not published as it should be<sup>588</sup>.

## 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: 50/2015 (25/2011)**

The Law on Whistleblower Protection is in force since June 2015. A whistleblower, that can be both civil servant and citizen using public authorities' services, shall have the right to protection after reporting violation of the rules, if they comply with the procedure set in the Law. The Law envisages anonymous reporting, reversing the burden of proof in the case of harmful action, duty of public authorities to internally regulate whistle-blowing procedures and to act upon received information and court protection. However, the whistleblower could not legally protect him/her self if disclosing confidential information to the public. The Law is unclear when it comes to the protection of civil servants reporting irregularities they observed within the scope of their work.

Civil servants may incur criminal liability, as well as disciplinary responsibility for violations of their duties<sup>589</sup>. For example, they may be liable for several criminal offences including abuse of office<sup>590</sup>, extortion, bribery.

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 authority<sup>591</sup>.

The regulations clearly define the responsibility of all state organisations. Ministries are legally responsible for steering and controlling subordinate bodies, concerning both legal compliance and

585 Commissioner's annual report, 2014, SIGMA report.

586 Commissioner's annual report, 2015, list of decisions.

587 <http://www.poverenik.rs/en/press-releases-and-publications/2205-izjave-ministra-privrede-proizvoljne-netacne-i-uvredljive.html>

588 <http://www.transparentnost.org.rs/images/stories/inicijative/analize/Sprovođenje%20Zakona%20o%20javnim%20nabavkama%20pri%20nalazi%20oktobar%202013.doc>

589 Civil Servants Law, articles 107-120

590 Criminal Code, article 359

591 [http://www.arhivrs.org/zakoni/Uredba\\_o\\_kancelarijskom\\_poslovanju.pdf](http://www.arhivrs.org/zakoni/Uredba_o_kancelarijskom_poslovanju.pdf)

efficiency. The large number of bodies reporting directly to the Government (25) and to Parliament (21) however, hampers efficient steering and oversight<sup>592</sup>. In its 2015 Report European Commission states that the way the state administration is organised does not ensure effective lines of accountability. Within institutions managerial accountability is not systematic and responsibilities are not delegated to middle management.

Public Administration Law stipulates that the work of government agencies and ministries is subject to the supervision by the Government. Administrative supervision of the state authorities is under the jurisdiction of administrative inspection within the Ministry of Public Administration and Local Government. 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. These recommendations are not binding but have to be answered. 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: 25/2015 (25/2011)**

EU Report for 2015 states that the general administrative procedures law governs the right to administrative justice, but a large number of special administrative procedures hinder overall transparency. The continuing backlog in administrative courts has also damaged public confidence. As regards the right to seek compensation, there are neither clear rules for compensation in cases of wrongdoing, nor available data on implementation of court cases.

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<sup>593</sup>

There is no evidence that the Law on Whistleblowers, in force since June 2015, has led to an increase in the number of reported cases of wrongdoing, while several cases of people asking for the protection on the basis of this law are publically known.<sup>594</sup>

According to the SIGMA report the public administration implements the majority of the recommendations of the Ombudsman, whose remit of competences is wide, according to legal provisions. In practice, however, the Ombudsman faces some problems in co-operation with the Government. The Administrative Court is overloaded. The backlog is considerable and is being reduced very slowly. The Court rarely uses the inquiry obligation to the full extent, but rather annuls decisions and returns cases to the administration. This results in repetitive procedures over the same case.

In 2015 the Ombudsman received 6.231 complaints from citizens that is a one third increase in comparison to the previous year. The institution issued 1.447 recommendations and about 86% of recommendations were accepted.

<sup>592</sup> SIGMA report.

<sup>593</sup> Research done for purposes of NIS 2015.

<sup>594</sup> <https://pistalijka.rs/home/read/534>

During 2015 the Administrative Court of 38 judges received 20.315 files, and succeeded to resolve 18.681 in the same period. The backlog is bigger than annual inflow – it was 24.262 at the beginning of the year<sup>595</sup>. 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.

Therefore, the protection of citizens from irresponsible work of administration bodies is still insufficient in practice – the Administrative Court's decision making is hampered due to overload, and the number of administrative inspectors is a lot smaller than necessary, as well as the number of the Ombudsman's staff.

The State Audit Institution is constantly increasing the number of bodies covered by their reports<sup>596</sup>. The SAI still lacks capacity to audit the purposefulness of the funds in a greater number of cases. 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 still seriously understaffed.

The Administrative Court has been strengthened by appointing four more judges, which was necessary to tackle the significant backlog of cases. The Inspection Oversight Law, which should improve the business environment, was adopted by the Parliament on 15/04/2015.

## Integrity mechanisms (Law)

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

**Score: 75/2015 (75/2011)**

There were no major changes since NIS 2011. Senior civil servants ("civil servants on position, e.g. assistant ministers) have the same duties in terms of assets declarations and conflict of interest as the politically appointed public officials.

Aside from restrictions set for public officials, "civil servants on position" have to comply with the provisions of the Law on Civil Servants as well. There are rules on additional work and the prohibition of establishing a company, public service or entrepreneurship, while working as civil servant. 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. Besides ownership, there are also limits of additional work and 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<sup>597</sup>. Defying the provisions that prevent a conflict of interest is considered "a serious breach of working duty"<sup>598</sup>. 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"<sup>599</sup>. Anti-corruption provisions are defined by the Code of Conduct for civil servants as

<sup>595</sup> Annual report of Administrative Court.

<sup>596</sup> <http://www.dri.rs/%D1%80%D0%B5%D0%B2%D0%B8%D0%B7%D0%B8%D1%98%D0%B5/%D0%BF%D0%BE%D1%81%D0%BB%D0%B5%D0%B4%D1%9A%D0%B8-%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98.135.html>

<sup>597</sup> Law on Civil Servants, Articles 25-31

<sup>598</sup> Law on Civil Servants, Article 109

<sup>599</sup> Law on Civil Servants, Article 23a

well<sup>600</sup>. 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 functions<sup>601</sup>. 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 superior<sup>602</sup>. 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 jobs<sup>603</sup>.

The 2012 Public Procurement Law contains a set of anti-corruption and conflict of interest clauses<sup>604</sup>. The Law envisages keeping the integrity of the procedure by forbidding the person, who participated in planning of public procurement and in preparing its tender documents, and person related to him or her, to be a bidder or bidder's subcontractor, or to cooperate with bidders or subcontractors in preparation of their offers. The bid should be refused if the bidder directly or indirectly gave, offered or promised some benefit, or tried to find out any confidential information or to exert in any way influence against actions of contracting authority during public procurement procedure.

There is also "duty to report corruption". Persons engaged in public procurement or any other person employed by contracting authority, as well as any interested person who possesses information on occurrence of corruption in public procurement, shall immediately notify thereon the Public Procurement Office, Anti-Corruption Agency and public prosecutor. The person "cannot get employment or other type of contract rescinded, nor be transferred to another position just because he or she, acting conscientiously and in good faith, has reported corruption in public procurement, whereas contracting authority is obliged to grant full protection to him or her." Such a whistleblower is also allowed to address the public directly if no follow-up activity further to the report has been done within an appropriate period of time; if Anti-Corruption Agency or public prosecutor failed to respond whatsoever within a month from the day of the report; if civil supervisor failed to provide feedback to him or her about the measures taken; if the value of procurement was high or procurement particularly important.

600 Code of Conduct of Civil Servants, Articles 7-11

601 This matter is regulated by the Law on Anti-Corruption Agency that is subsidiary implemented here.

602 Code of Conduct for civil servants, Article 9, Law on Civil Servants, Article 25, Law on ACA, Articles 40-41

603 Code of Conduct for civil servants, Article 10

604 Articles 21-30

## Integrity mechanisms (Practice)

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

**Score: 50/2015 (50/2011)**

The Specialist Prosecution Office for Organised Crime and Corruption initiated investigations against 86 persons for high level and severe corruption cases in 2014. The office raised indictments or indicting proposals against 54 persons. Indictments were confirmed against 32 persons, and additionally the indicting proposals entered into force against 5 persons. So far, there have been no final convictions for high-level corruption. The Prosecution Offices of general jurisdiction raised indictments against 990 persons for corruption related cases in 2014, and against 204 persons indictments were confirmed. Against 147 persons proceedings were discontinued and against 10 persons charges were rejected<sup>605</sup>. A number of high profile cases, including some in which evidence of alleged wrongdoing has been presented by the media, have never been seriously investigated.

The Anti-Corruption Agency received 1481 requests to investigate conflicts of interest in 2014 (compared to 1402 in 2013) and processed 1286 cases (compared to 958 in 2013). This resulted in 68 requests for misdemeanor proceedings (compared to 58 in 2013) and 43 first instance judgments most of which were reprimands and fines. The Agency submitted 168 requests for misdemeanor proceedings relating to asset declarations, of which 153 cases are for failing to submit reports on time. A total of 85 cases resulted in convictions by misdemeanor courts in 2014. The Agency also filed 14 criminal charges in 2014 due to reasonable suspicion that a public official had not reported assets or had given false information about assets with the intention of concealing the facts. Proceedings are under way in 11 cases, a plea bargain is being negotiated in another, and in two cases the criminal charge was dismissed<sup>606</sup>.

There is no systematic verification of following regulations on conflict of interest, accepting gifts, using entrusted assets and confidential information and additional work which refer to civil servants. Rules regarding future employment of civil servants (revolving doors) are not developed.

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

There is no summary of information about implementation of the anticorruption provision from the Public Procurement Law. In the only publically prominent case where these provisions were relevant, the outcome was disappointing. Both purchasing entity and Commission for Protection of Rights in Public Procurements ignored the violation of the anti-corruption clause, when being warned by a civil supervisor, and even after the Administrative Court ordered initial decision to be reconsidered<sup>607</sup>.

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 every year.

Within this domain, trainings were organized for drafting of integrity plans; conflict of interest prevention and control of assets declarations; protection of whistle blowers; free access to information; corruption risk assessment in legislation; ethics and integrity. These seminars were organized in cooperation with the Anti-Corruption Agency and attended by 238 public officials and civil servants out of which total of 78 on “ethics and integrity” training. Besides that, the Agency designed a Portal for e-learning, serial of educative films about the Agency’s duties and powers, training of trainers (for 32 participants).

<sup>605</sup> EC report 2015.

<sup>606</sup> EC Report 2015.

<sup>607</sup> [http://www.nadzor.org.rs/gangsteraj\\_umesto\\_pravde.htm](http://www.nadzor.org.rs/gangsteraj_umesto_pravde.htm)



# Role

## Public Education (practice)

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

**Score: 25/2015 (25/2011)**

Similarly as in 2011, notifications on corruption and the fight against corruption are 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.

Not only is the public administration insufficiently involved in promoting anti-corruption – it does not cooperate sufficiently with the Anti-Corruption Agency. One of indications in that regards is the failure to regularly report about implementation of the Anti-Corruption Strategy and Action Plan, which is a legal duty of ministries. Most ministries (e.g. finance, justice, trade, public administration...) did not perform their tasks from the action plan (analyses, draft laws)<sup>608</sup>.

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. Some of the actions, launched within the public sector in previous years, which were addressed to the public, continued (e.g. hotline to report corruption at border crossings)<sup>609</sup>.

Since the fight against corruption was among leading political priorities proclaimed by Serbian Progressive Party in 2012 (in power since then), some ministries championed by opening of “anti-corruption departments”, “anti-corruption teams” and “anti-corruption lines”. Such initiatives were usually not followed by clear institutional arrangements, powers, information about functioning of the reporting/ investigation and legal grounds.

In the Ministry of Construction, Traffic and Infrastructure, there is a group for control and cooperation in fight against corruption. Its contact details, basic duties and one report (not clear for which period) is published.<sup>610</sup> Ministry of Health announced in September 2015 establishment of a task force for fight against corruption in the health sector<sup>611</sup>. However, only a few months later, there was no information on the web-page for interested citizens on how to establish cooperation with that body. Ministry of Justice during 2014 promoted a “report corruption without fear” message, although it was not Ministry’s service, but an external link, of an NGO that publishes media articles based on whistleblowers’ stories (Pistaljka). Ministry of Interior used to have on its web-site until recently to enable citizens to report corruption on-line, but without any further information about what will be done thereafter. Surprisingly, there is no improvement in communication with interested citizens, not even after the Law on Whistleblower protection became effective. Namely, every “employer”, including ministries, has to publish a “general act” about the internal procedure of whistle-blowing. Even if adopted, such acts are not promoted (e.g. through banners or positions on their web-pages).

608 <http://www.acas.rs/wp-content/uploads/2011/03/Izvestaj-o-rad-u-sprovedenju-Strategije-2015.pdf>

609 Research done for purposes of NIS

610 <http://www.mgsi.gov.rs/cir/grupa-za-kontrolu-i-saradnju-u-oblasti-borbe-protiv-korupcije>

611 <http://www.zdravlje.gov.rs/showelement.php?id=9662>



## 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: 25/2015 (25/2011)**

The willingness of administration to cooperate with civil society organizations is unbalanced and mostly depends on priorities of the 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 corruption prevention. Moreover, there is no obligation for government authorities to explain their decision on cooperation or non-cooperation with business and civil society, but it is subject to their discretion. The exception, to certain extent, is a legal duty to organize public debates and to report whether “interested parties were consulted” during the law drafting process<sup>612</sup>.

Examples of cooperation exist and include involvement of NGOs and business associations in public debates or consultations in the implementation of policies and regulations, support of 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 procedures<sup>613</sup>. There are also legal opportunities for cooperation that are not sufficiently used or promoted<sup>614</sup>. However, there are far more cases in which public sector bodies do not consider the initiatives and recommendations of business and civil society<sup>615</sup>.

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 those areas to be treated as a domain<sup>616</sup> 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 sometimes not just a matter of good will, but also a legal obligation (when CSO submit free access to information request).

Probably the most important fields of cooperation are policy and legislative reforms. In that context, Government of Serbia in August 2014, on proposal of its Office for Cooperation with Civil Society, adopted Guidelines for inclusion of CSO in legislative drafting process<sup>617</sup>. This document, promoting high standards of cooperation remained largely not implemented. Furthermore, ministries are violating their legal duties when drafting legislation by not organizing public debates at all. “Many laws have been drafted in a rather formal public debate, which failed to respond to the objections, questions and comments raised by stakeholders. Such an approach often made it difficult to understand the intentions of policy-makers and resulted in solutions that were unclear, with terminology and content unharmonised with other instruments, with the public administration system and with the overall legal system. This resulted in inapplicable regulations and frequent need for interpretations, which ultimately undermined legal certainty”<sup>618</sup>.

612 Rules of Procedure of Government, Article 40.

613 <http://www.naled-serbia.org/sr/home/index/Pocetna>

614 For example, Republican Secretariat for Public Policies is in charge to collect initiatives of citizens and business sector for changes of regulation and public of policies.

615 <http://www.blic.rs/vesti/politika/nvo-traze-smenu-gasica-stefanovica-selakovica-i-vulina/8s00b62>

616 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

617 <http://www.civilnodrustvo.gov.rs/podsticajno-okruzenje/pravni-okvir/smernice.370.html>

618 Ombudsman, annual report 2015.

## 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: 50/2015 (25/2011)**

Sigma assesses in its 2015 report that the regulatory framework for public procurements (2012 Law with later amendments) is largely aligned with the *acquis* on public procurement. “The system suffers from very detailed and prescriptive regulations. For example, the obligation to prepare extensive explanations of the procurement plans as well as a lack of flexibility of the plans places an excessive administrative burden on the contracting authorities”. The institutional framework is established, and functions are clearly allocated. “Nevertheless, an excessive number of obligations prescribed mainly to the Public Procurement Office (PPO) results in a lower-quality performance. Most contracts are awarded in an open procedure. However, the introduction of the PPL in 2013 did not improve the level of competition. The average number of bids submitted in public tenders has not increased since 2012”<sup>619</sup>.

The risk of corruption is high in public procurements due to large value of assets engaged for these purposes, complex terms of reference and inability to organize effective ex ante control. There is a plethora of irregularities identified, from omission to implement some element of mandatory public procurement procedures to the instances where works, services and goods are paid without even being delivered. There are loopholes in all phases of public procurements that may expose public monies to corruption, from planning till the execution of contract. There are still exceptions from the Law that cannot be justified. More recently, not just for public procurements, but for public private partnerships as well, an increasing concern are arrangements with pre-selected partners (i.e. without competition), where the Public Procurement Law is bypassed through interstate agreement.

Improving the Public Procurement Law was expected to be a milestone in preventing corruption in this field. In July 2015, the Government suddenly submitted its proposal of the Law, which was soon after adopted. The procedure of preparing amendments was completely non-transparent, and many changes were not explained. The new solutions also include some useful ones – in the field of enhancing transparency (obligatory publishing of public procurement plans and data relevant for contract awarding) and reducing bureaucratic requests towards bidders. On the other hand, the complaint procedure is made more complicated by setting of higher complaint-tax for and by asking of the complainant to prove that its capacities are proper for satisfying procurement descriptions.

The results of implementation of the existing anti-corruption provisions of this Law are very limited, due to the weakness of certain provisions, and even more due to limited oversight capacities, primarily of the Public Procurement Office. In addition, the new Strategy for the Promotion of the Public Procurement System does not identify all important problems in this area. Similar weaknesses are identified in the draft Action Plan for Chapter 23 of EU negotiations<sup>620</sup>.

There are no clear criteria for justification of needs of purchasing entities and development of such a methodology is envisaged by the Strategy of Public Administration Reform<sup>621</sup>. Although significantly lesser than before, it still could happen that a contract is signed without implementation of public procurements although it would be obligatory by the Law<sup>622</sup>. In some cases criteria for evaluation of

619 SIGMA report, 2015.

620 [http://www.transparentnost.org.rs/images/stories/fwpozivzakonferencijuiizvetaji/Preugovor%202015%20\[eng\].pdf](http://www.transparentnost.org.rs/images/stories/fwpozivzakonferencijuiizvetaji/Preugovor%202015%20[eng].pdf)

621 <http://www.mduls.gov.rs/doc/Strategija%20reforme%20javne%20uprave%20u%20Republici%20Srbiji.pdf>

622 <http://www.blic.rs/Vesti/Ekonomija/522466/DRI-Najvise-nepravilnosti-u-javnim-nabavkama>

bids are set in a manner that is inadequate to procurement object as well as additional conditions for participation in tender that favors certain bidder<sup>623</sup>.

The current Law<sup>624</sup> envisages increased transparency through publishing documents in the Public Procurement Portal (PPP), which was one of its biggest improvements, in particular when it comes to the “small value procurements”. However, approximately 7%<sup>625</sup> of procurements do not have obligatory documents published on the PPP. Most contracts are not subjected to external supervision, just internal audits are being arranged. According to Supreme Audit Institution there is no organized internal audit in numerous budget beneficiaries<sup>626</sup>.

The current Law introduced numerous mechanisms that should prevent corruption, such as: new legal institute of “civil supervisor” (observer of most valuable public procurements), provisions on conflict of interest, provisions on reporting corruption, significant increase of powers of Public Procurement Office and Commission for Protection of Bidders Right and Public procurement office etc.<sup>627</sup> While the Commission has increased its capacities recently, the number of requests is still rising. Therefore, the Commission remains unable to respond timely and misses out to implement all of its prescribed activities, which results in delay with complaint procedures. On the other hand, Public Procurement Office hasn’t increased its capacities and also doesn’t perform all of its oversight duties.

## Oversight of SOEs (law and practice)

*To what extent does the State have a clear and consistent ownership policy of SOEs and the necessary governance structures to implement this policy?*

**Score: 25/2015 (NA 2011)**

According to the current Government’s Fiscal Strategy, there is a relatively clear ownership policy for SOEs: “Completion of the privatization process and enterprise restructuring process from the portfolio of the Privatization Agency is planned for the next period, as well as the continuation of the process of reorganization and restructuring of large public enterprises. The introduction of professionalization into the business activities of public enterprises, as well as responsible corporate management in the enterprises which will remain under Government control, together with the displacement of the social policy from public enterprises into the social security system, as well as gradual and responsible reduction of the Government share in the economy<sup>628</sup>.

However, practice shows that the policy of the Government could hardly be considered clear or consistent. There are enterprises that were privatized (because the state didn’t want to manage them), but then renationalized to prevent bankruptcy;<sup>629</sup> enterprises for whom the state covered losses and sought “strategic partners” for decades and others, left to the open market; cases where state didn’t want to sell enterprises because of the “low price” that was offered and for whom the state continued to cover its losses. A typical example might be the fact that it was totally unknown at the beginning of the mandate of the Government in 2012 and 2014 whether the state intended to sell most valuable SOE in the country (such are Telekom, EPS, Airport) or not.

While the Government controls directly or indirectly most of SOE, there is no clear centralised structure that could develop consistent and aggregate reporting on the SOEs. This might change

<sup>623</sup> Monitoring Report on Public Procurements for Q1 2015, Transparency Serbia

<sup>624</sup> <http://www.ujn.gov.rs/en/propisi/zakon>

<sup>625</sup> Ibid. 3

<sup>626</sup> <http://www.tanjug.rs/full-view.aspx?izb=189346>

<sup>627</sup> <http://www.kjn.gov.rs/ci/statistika.html>

<sup>628</sup> <http://www.mfin.gov.rs/UserFiles/File/dokumenti/2016/FS%20za%202016%20EN.pdf>

<sup>629</sup> Several enterprises managed by Srbija gas.

to a certain extent with the new Law on Public Enterprises, announced for 2016.

There is a lack of transparency in SOEs' work. It is not just a problem for the public, but also for members of the Government. As the Fiscal Council warned in its Report on the SOEs reporting on business plans is limited to the annual plans, and it usually lacks clear objectives and operational performance indicators<sup>630</sup>.

Further evidence of poor oversight is the fact that business plans of SOE are adopted with a delay, sometimes even at the end of the year<sup>631</sup>. Little or no attention is paid to the evaluation of the achieved results.

There is no strict legal framework regarding external supervision of the SOEs' performance. SOEs submit their quarterly reports on implementation of business program to the Ministry. On the basis of those reports, the Ministry drafts and submits to the Government information on the degree of compliance of planned and implemented activities. No further procedure is defined<sup>632</sup>.

The Fiscal Council pointed out in its Report<sup>633</sup> on several other SOEs in which huge debts were made over consecutive years, without any action being taken by the Supervisory Board (SB) or founder (the Government).

One of the main reasons for the Supervisory Boards not being able to perform their duty is the fact that in numerous of the public enterprise's, skills of SB members are questionable. As research performed by Transparency Serbia showed<sup>634</sup>, some SB members do not fulfill conditions prescribed by the Law – to have knowledge and expertise within the scope of operation of the public enterprise. According to Ministry representatives, the SBs' perform their duties by adopting annual business plans, approving Director's acts, and discussing operational issues. Ministry representatives pointed out that the SB's do not need to know every detail, giving as an example that the business plan of Electrical Company (EPS) has more than 4.000 pages, and the SB members "need to know only the most important parts". They claim that the SBs have 8-10 sessions per year, on average<sup>635</sup>. This indicates that the SBs can hardly perform their supervisory function, having less than one session per month, and being considered that they only need to study summary of complex documents regarding operation of the SOE.

630 Analysis of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalnisavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnisavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

631 Effects of the new Law on Public Enterprises – politicization or professionalization, publication by Transparency Serbia, 2014, <http://www.transparentnost.org.rs/index.php/en/activities/tekui-projekti/effects-of-the-new-law-on-public-enterprises-politicization-or-professionalization>

632 Law on Public Enterprises, Article 52

633 Analysis of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalnisavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnisavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

634 Effects of the new Law on Public Enterprises – politicization or professionalization, publication by Transparency Serbia, 2014, <http://www.transparentnost.org.rs/index.php/en/activities/tekui-projekti/effects-of-the-new-law-on-public-enterprises-politicization-or-professionalization>

635 Interview with Special Advisor at the Ministry Milan Todorovic and Assistant Minister Dubravka Drakulic, February 2015

# PUBLIC SECTOR

## Recommendations

1. To define in the Constitution that no public body could be established before knowing clearly what type of institution it belongs to.
2. Ministry of State Administration should 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
3. Ministry of State Administration should 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
4. Anti-Corruption Agency should conduct a survey on corruption and privilege in employment in the public administration and public services (e.g. testing 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 propose further measures
5. The government should expand, through legislative changes, the range of norms on conflict of interest for civil servants in areas currently not covered by the law (assets declarations, future employment, rotation of civil servants) and to organize periodic review of the application of these standards in every body of the state administration (institution in charge to be determined by the same legislative changes)
6. The Parliament should regulate the duty of each state administration body to set up a web site, to publish a certain amount of 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
7. Ministry of Justice and Anti-Corruption Agency should monitor implementation and evaluate real effects (conduct impact assessment) of the Law on Whistleblowers Protection, and its effects on corruption reporting; based on that it should propose legislative changes and consider introducing of stimulative measures for the reporting of such irregularities by vigilant citizens and organizations that monitor the work of state bodies
8. The Government should finalize the process of appointment of "civil servants on positions" through a public recruitment process
9. The Government should introduce a public recruitment procedure for the appointment of all civil servants that are currently not covered (temporary employment)

## Public procurement

1. The Government should not to enter into loan or cooperation agreements where the Public Procurement Law is "by-passed"
2. The Government should increase capacities of the Public Procurement Office and Commission for Protection of Rights in Public Procurement Procedures to fulfill their legal obligations
3. The Government should introducing supervision of contractual obligations
4. The Government should create a methodology for determining justification and appropriateness in public procurements, as mentioned in Strategy for Public Administration Reform
5. The Government should introduce e-procurements as an effective mechanism for curbing corruption through legislative changes and development of technical capacities
6. The Government should limit additional conditions in relation to scope or procurement object, through amendments of regulation, through recommendations of PPO or through models of tender documentation





## POLICE<sup>636</sup>

### National Integrity System

**Summary:** Police has an internal structure for the fight against corruption that includes unit within the Service for Combating Organised Crime, local departments and internal control service. However, police resources cannot be considered sufficient. Legislation guarantee operational independence of police but in practice, independence is endangered by politicization of investigations, *ad hoc* investigative teams for investigation of cases prioritized by politicians, and political parties interfering in recruitment and promotions. Some important documents, including those regarding recruitment and promotion are not transparent. On the other hand, since the adoption of the Development Strategy of MoI 2011-2016, the transparency of police work in general has improved - laws, bylaws and policy documents are posted on the website, the Information Booklet is always available to citizens and for the first time, a report on dealing with citizens' complaints was published on the web site. Also, a certain level of accountability of police and Ministry is achieved in practice, through the mechanism of citizens' complaints, work of Sector of Internal Control and Ministry's reports to parliamentary board.

Rules on conflict of interest, gifts and asset declarations apply only to high officials. Integrity of the police is severely compromised by scandals leaked to the media, without any official reaction or information on outcomes. The number of uncovered, reported and investigated cases has constantly increased during the last decade, but the real number of undiscovered corruption cases remains extremely high. The police are facing new challenges in suppression of corruption after the public prosecutor took the dominant role in criminal investigations, through the new Criminal Procedure Code provisions. Therefore, procedure for obtaining permit to use special techniques will be more complicated and this could slow down the investigation.

<sup>636</sup> In 2011 pillar Police was part of the pillar "Law Enforcement", joint with Prosecution. Therefore, there is no comparison with 2011 scores.





| <b>POLICE*</b>                        |                          |           |            |
|---------------------------------------|--------------------------|-----------|------------|
| Overall Pillar Score (2015): 52 / 100 |                          |           |            |
| Dimension                             | Indicator                | Law       | Practice   |
| <b>Capacity</b><br>50 / 100           | Resources                | /         | 50 (2015), |
|                                       | Independence             | 75 (2015) | 25 (2015), |
| <b>Governance</b><br>54 / 100         | Transparency             | 50 (2015) | 50 (2015)  |
|                                       | Accountability           | 75 (2015) | 50 (2015)  |
|                                       | Integrity                | 75 (2015) | 25 (2015)  |
| <b>Role</b><br>50 / 100               | Corruption investigation | 50 (2015) |            |

\* In 2011 pillar Police was part of the pillar “Law Enforcement “, joint with Prosecution

**Structure** – The official structure of the law enforcement is same as in 2011. In the Ministry of Interior, within the Criminal Police Directorate, there is Service for Combating Organised Crime (SBPOK). One of the organisational units of the SBPOK is the Financial Organised Crime Unit and within this unit the Division for Suppression of Corruption. This division still employs only 12 law enforcement officers. All police departments in the Republic of Serbia have a Department for fighting corruption. In 2013 and 2014 there was an *ad hoc* task force (“working group”) with around 120 police officers which investigated some corruption related cases and reported to the Bureau for coordination of intelligence services.

The fight against corruption within the police authority is under the jurisdiction of the Internal Control Sector of the Ministry of Interior. It performs the internal oversight and control of legality of work performed by police. The Sector is directly subordinate to the Minister (i.e. not to the Director of the Police). Also there is a bureau for internal audit (at the Directorate of Police).

There are also separate departments for the control of the legality of the Police Departments 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 work.



# Assessment

## Capacity

### Resources (Practice)

*To what extent do police have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?*

**Score: 50/2015**

Police do not have sufficient resources to operate effectively in practice, or at least the existing resources are not adequately allocated.

This was recognized in the 2013 Anti-Corruption Strategy and Action Plan for its implementation, which set „Improving material and technical conditions of work, and organizational and personnel structure of anti-corruption actors within the police” as one of the measures. It meant that by November 2014 an anti-corruption organizational unit in the Criminal Police Directorate had to be established. It has not been done yet, the reason being that the new Law on Police still had not been adopted.

The current specialised unit for fight against corruption has only 12 employees. Such a profile of the organizational unit definitely does not fit the existing risks of corruption in Serbia<sup>637</sup>. There is also an organisational problem – cases or information under the jurisdiction of this unit are not delivered to them, either from regional police departments or from the Criminal Police Directorate<sup>638</sup>, although this is stipulated by the law<sup>639</sup>.

As for the Ministry of Interior, in total there are around 45.000 employees<sup>640</sup>, which is 2.000 more than in 2011. This number, however, includes a large administrative sector in charge of driving and registration licenses, personal documents etc. According to 2011 estimates police lacked 14.000 officers, there is still large deficit of “uniformed officers”, since their number has been raised only by 2.300 in the meantime – 27.300 in 2015 compared to 25.000 in 2011<sup>641</sup>.

Police equipment is „at an unsatisfactory level“, says advisor to the minister and former state secretary at the Ministry of Interior, Vladimir Bozovic<sup>642</sup>. „Well-equipped police“ was set as one of the priorities prior to 2014 elections<sup>643</sup>. On the other hand, the budget for police for 2015 was reduced – from RSD 68.6 billion (USD 816 million) to RSD 63.2 billion (USD 626 million)<sup>644</sup>. The largest cut was for the salaries (austerity measures were applied to all public sector employees).

Thus, chief inspector at the Service for Combating Organised Crime has a monthly salary of RSD 80.000 (USD 800)<sup>645</sup>. According to the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other severe criminal offences, everyone

637 Alternative Report on the implementation of Anti-Corruption Strategy, Belgrade Centre for Security Policy, 2015

638 Interview with chief inspector Nenad Popovic (retired since January 2015), March 2015

639 Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other severe criminal offences, Article 11

640 Information Directory of the Ministry of Interior, <http://www.mup.gov.rs/cms/resursi.nsf/informator-feb2015-cir.pdf>

641 Statement by then state secretary at the Mol Vanja Vukic, March 2014 <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1545552/Vuki%C4%87%3A+Oprema+polica+jaca+prioritet.html>

642 Interview, January 2015

643 Statement by then state secretary at the Mol Vanja Vukic, March 2014 <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1545552/Vuki%C4%87%3A+Oprema+polica+jaca+prioritet.html>

644 It should be noted that USD exchanged rate was 84 RSD in 2014 and RSD 101 in 2015

645 Interview with chief inspector Nenad Popovic (retired since January 2015), March 2015

engaged in combating organized crime employed in the prosecution, courts and prisons, is entitled to salaries increased by 100 percent. This stipulation is ignored by the Ministry of Interior.

Internal Control Sector (ICS) has 94 (out of envisaged 114) employees. Head of the Sector, Milos Oparnica, claims that the estimate from the Anti-Corruption Strategy and Action Plan for its implementation, predicting 400 employees (1% of total number of Ministry's employees) for ICS is exaggerated. With new jurisdiction envisaged by draft of the new Law on Police, according to Milos Oparnica, the number of ICS members should be raised to 0.3-0.4% of total number of the Mol employees. ICS also needs its own technical resources and logistics, which are currently borrowed when needed from Criminal Police Directorate.

## Independence (Law)

*To what extent are police independent by legislation?*

**Score: 75/2015**

Since 2011 there has not been any change in legislation regarding independence of police. Legislation guarantees „operational independence of police from other state bodies in carrying out police duties and other tasks for which the police were responsible“<sup>646</sup>.

Minister may require reports, data and other documents related to the work of the police. The representative of police submits to the Minister, regularly and at his special request, reports on the work of the police and all the individual issues from the purview of the police<sup>647</sup>.

According to the Law, minister may give to police „guidelines and mandatory instructions for work, with full respect for the operational independence of the police“. The Minister may order the police to perform certain tasks and take certain measures and to submit a report about them<sup>648</sup>. Those responsibilities of the minister can be applied until the moment when the public prosecutor is notified of a criminal offense and until the prosecutor takes control of the police conduct in the pre-trial proceedings<sup>649</sup>.

The level of independence of police within the Ministry is proclaimed by the Law according to which, „police form a self-contained administrative unit of the Ministry of the Interior, for which a Directorate is established“<sup>650</sup>. 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, after public competition<sup>651</sup>. Organizational units at Headquarters and regional police departments are led by regional chiefs, and police stations are headed by commanders<sup>652</sup>.

The Law on Police stipulates the appointment of directors by the Government after the competition. The competition process is based upon the Directive on the method of determining the eligibility and selection of candidates for police director. Internal appointments and promotions are made in accordance with the Law on Police<sup>653</sup> and the Law on State Administration, which stipulate regular assessment of work.

<sup>646</sup> The Law on Police Article 7

<sup>647</sup> The Law on Police, Article 8

<sup>648</sup> The Law on Police, Article 8

<sup>649</sup> The Law on Police, Article 8

<sup>650</sup> The Law on Police, Article 1

<sup>651</sup> The Law on Police, Article 21, Directive on the method of determining the eligibility and selection of candidates for police director, Selection criteria and method of verifying the results of work and contribution of candidates for director of police

<sup>652</sup> Information Directory of Ministry of Interior, [www.mup.gov.rs](http://www.mup.gov.rs)

<sup>653</sup> The Law on Police, Articles 112, 118-127

Provisions in the Law on Police, however, do not guarantee transparent processes of selection, competition, training, deployment, evaluation/appraisal, promotion, secondment and dismissal. According to 2014 analysis<sup>654</sup>, „the system of external advertising of vacancies in the Ministry of Interior is underdeveloped and this opens up opportunities for corrupt practices involving receiving and negotiating bribes or services involving recruitment“. The Rulebook on organization and sistematization of working position is considered classified and there is no obligation to publicly announce the competitions for police officers and their superiors' positions<sup>655</sup>.

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 a police officer authorized by them.

Extraordinary promotion in the police is also possible<sup>656</sup>. The employees, whose work in the previous 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. In the Department for combating organized crime all appointments are made with prior approval of the Prosecution for Organized Crime<sup>657</sup>.

Internal Control Sector is accountable to the Minister of Interior. Its independence is threatened by authority given to the Minister to exclude the case on which ICS works and allocate it to another organizational unit in the police<sup>658</sup>. Minister may do this „if the subject of internal control is beyond the jurisdiction of the ICS, if it is associated with other cases, or if it is a case of great importance“<sup>659</sup>, which are broad and imprecise criteria.

## Independence (Practice)

*To what extent are police independent in practice?*

**Score: 25/2015**

Strong politicization and interference of political parties in areas out of their jurisdiction is one of the major problems in Serbia, and the situation in police is not different.

The fact that the Minister, by law and in the practice, appoints and dismisses chiefs of regional police departments results in politicization of police<sup>660</sup>. This is further transferred to lower level, since the recruitment process largely depends on either the chief of department where the position is open, or in some cases on his/her hierarchy/high management. This means that the decision making powers lays with heads of units and/or their superiors, while human resources department takes care of technical support only. They don't supervise the recruitment procedure. There are no commissions for interviews with the candidates and recruitment is usually done without official consultations and marking among relevant structures<sup>661</sup>.

654 Risk Analysis on the Current Situation with Regard to Possibilities and Actual Extent of Corruption within the Law Enforcement, April 2014, Joint European Union – Council of Europe Project "Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia" (PACS)

655 Risk Analysis on the Current Situation with Regard to Possibilities and Actual Extent of Corruption within the Law Enforcement, April 2014

656 The Law on Police, Article 127

657 Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other severe criminal offences, Article 10

658 The Law on Police, Article 177

659 The Law on Police, Article 177

660 Sasa Djordjevic, Belgrade Center for Security Policy, <http://www.bezbednost.org/Vesti-iz-BCBP/5717/Povecati-poverenje-gradjana-u-polici-je-na-Balkanu.shtml>

661 Risk Analysis on the Current Situation with Regard to Possibilities and Actual Extent of Corruption within the Law Enforcement, April 2014



It means that there is no transparent system of recruitment and promotion at any level in practice<sup>662</sup>. This also leaves space for political or other influence on these processes and endangers independence of police officers in practice. This is particularly important, having in mind that politicization is one of the main causes of corruption in the police force<sup>663</sup>.

This was clearly manifested in February 2013, when the public discussion on the new Director of Police has begun and it raised a “dilemma” over whether the police director would be close to deputy prime minister at the time (Aleksandar Vucic) or prime minister and minister of interior Ivica Dacic, both of them presidents of the main parties in the executive branch<sup>664</sup>.

Thus, recruitment and promotion in practice is often done on the basis of belonging or closeness to a political party. Secondment is usually done according to political party affiliation or on the basis of personal relationships – friends and family’s relationship<sup>665</sup>.

This is recognized by the citizens as well. In the 2014 survey, 63% of citizens said they believed that politicians had „fully“ or „to a large extent“ impact on operation of police and additional 20% believed politicians had an impact „to a small extent“. Only 5% thought that they didn’t have an impact at all<sup>666</sup>. Citizens think that police mainly serve to protect the interests of the government and for the protection of individual interests of politicians and tycoons<sup>667</sup>.

In June 2014 heads of almost all major departments in police were dismissed. Although dismissal is in the jurisdiction of the Minister, this was presented in public as a decision of the prime minister<sup>668</sup>. Heads of one of the major units – Criminal Police Department, as well as head of Border Police Department, haven’t been appointed since. Advisor to the minister and former secretary of state in MoI, Vladimir Bozovic, claims that this is a „political problem“ and the result of „unresolved political relations“<sup>669</sup>.

Amongst dismissed officers was the one, accused of being connected with organised crime. The accusation came from a defendant in a court testimony. The tabloids also published allegations about the connection between certain high officials of the police and the criminal structures. There were also stories related to their and their family member’s assets. There were no official reactions nor has it been officially announced that there was an investigation into these allegations<sup>670</sup>.

Service for Combating Organised Crime (SBPOK) is supposed to have greater independence in practice, due to provisions in the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other severe criminal offences, which envisages strong ties between this police unit and Prosecution for Organised Crime<sup>671</sup>. However, provisions according to which all government bodies and services should hand over to the Service every document or other evidence in their possession, or otherwise deliver information that may assist in uncovering criminal offences from its jurisdiction are violated in practice<sup>672</sup>. „Officials in the Ministry of Interior“ bypass the Service for Organized Crime. In practice, Criminal Police Department decides whether information or case, even when send from the Prosecution for Organised Crime, will be transferred to SBPOK or to the Service for Crime Suppression, i.e. non-specialized service within the Criminal Police Department<sup>673</sup>.

662 Sasa Djordjevic, Belgrade Center for Security Policy, NIN weekly, April 3rd 2014

663 Assessment of Corruption in the Police in Serbia, March 2014, Belgrade Center for Security Policy

664 Noted in Assessment of Corruption in the Police in Serbia, March 2014

665 Findings from Assessment of Corruption in the Police in Serbia, based on responses from focus group with representatives of the police, conducted in May 2013

666 Attitude of citizens - accountability, transparency? Research by TNS Medium Gallup, November 2014

667 Attitude of citizens - accountability, transparency? Research by TNS Medium Gallup, November 2014

668 <http://mondo.rs/a703264/Info/Srbija/Velika-cistka-u-policiji-Vucic-smenio-sve-sefove.html>

669 Interview, January 2015.

670 [http://www.b92.net/video/vesti.php?yyyy=2014&mm=06&dd=16&nav\\_id=862329](http://www.b92.net/video/vesti.php?yyyy=2014&mm=06&dd=16&nav_id=862329)<http://www.kurir.rs/vesti/politika/veljovicu-sramoto-sin-ti-radi-za-tajkuna-koga-stitis-od-zatvora-clanak-1472263><http://www.kurir.rs/srbija-kao-kolumbija-veljovic-bio-u-hotelu-sa-cazimom-osmanijem-clanak-986645><http://www.kurir.rs/mafijaske-metode-krivica-protiv-pusica-zbog-reketiranja-100000-maraka-clanak-996707>

671 Article 11

672 Interview with chief inspector Nenad Popovic (retired since January 2015), March 2015

673 Interview with chief inspector Nenad Popovic (retired since January 2015), March 2015

In 2012 special task force (“working group”) was formed for investigation of high level cases involving some former ministers and heads of state owned enterprises. Head of the group was deputy head of the Criminal Police Department. Shortly afterwards tabloids accused him of being involved in hushing up some investigations. He was dismissed from position in the Criminal Police Department, but remained the head of the working group. This undermined the image of the group and its independence. The detailed results of the group were never presented. The Prime Minister Aleksandar Vucic presented such figures as „criminal charges were filed in several cases“, and „in four cases prosecution still needs to make final decision“<sup>674</sup>. The working group was dismissed in October 2014, allegedly because of high costs, and the police Director was claiming that members of the group will continue all their investigations within their regional police department<sup>675</sup>.

According to the minister’s advisor, police is not independent when it comes to investigation of cases and persons connected to ruling parties. In certain cases possible pressure could be identified since some investigations, which the media noted<sup>676</sup>, had a political background, were completed and criminal charges filed in a rush. Chief inspector Popovic indicated the case of the director of Lasta company as one of those cases<sup>677</sup>.

The Ministry occasionally makes an effort to present its work as „politically neutral“, but sometimes those attempts have the opposite effect. Such was the case when the Minister, at the press conference, announced that police had arrested „several persons from different political parties“<sup>678</sup>. The fact that arrested officials were members and/or officials in two ruling and one opposition parties wasn’t in any way connected with offences for which they were suspected<sup>679</sup>.

As for the Internal Control Sector (ICS) and legal provision which authorizes the Minister to exclude a case on which ICS works and allocate it to another organizational unit in the police, the director of ICS claims<sup>680</sup> that the Minister has not given any direct orders to ICS to do so.

# Governance

## Transparency (Law)

*To what extent are there provisions in place to ensure that the public can access the relevant information on police activities?*

**Score: 50/2015**

Legal provisions ensure a certain level of transparency of police activities. Police and the whole Ministry of Interior are subject to the Law on Free Access to Information of Public Importance. This law allows exceptions to the rule that everything may be publically available in cases such as information being marked as confidential.

New Law on Public Procurement, adopted in 2012, has improved the legal framework, providing preconditions for more transparency in procurements for police. In the previous legal framework

- 674 [http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=12&dd=28&nav\\_id=794279](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=12&dd=28&nav_id=794279)
- 675 <http://www.blic.rs/Vesti/Hronika/506291/Veljovic-Istrazujemo-privatizacije-samo-fizicki-ne-postoji-radna-grupa>
- 676 <http://www.blic.rs/Vesti/Hronika/489148/Uhapsen-bivsi-direktor-Laste-Velibor-Sovrovic>
- 677 Interview with chief inspector Nenad Popovic (retired since January 2015), March 2015
- 678 <http://mondo.rs/a765087/Info/Srbija/Nebojsa-Stefanovic-Uhapsene-osobe-iz-tri-politicke-stranke.html>
- 679 <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7307-podaci-o-hapsenjima-po-strankama>
- 680 Interview with chief of ICS Milos Opamica, February 2015

almost all procurement for the police could be treated as confidential<sup>681</sup>, while the new law precisely states in which cases the law doesn't apply and which procedures are used when it is applied to procurements for police<sup>682</sup>.

As for assets of police officials, the Law on Anti-Corruption Agency stipulates that „public officials“ must declare their income and assets, and part of this declaration is publicly available<sup>683</sup>. It means that only the Minister, state secretaries, assistant ministers (heads of sectors) and director of police are covered (e.g. directors of police departments and local police units are not). Another Law<sup>684</sup> envisages that all officers in the Service for combating organized crime must declare their assets and income to the Anti-Corruption Agency. These data are not publicly available.

The Law on Police stipulates that the police is obliged to objectively inform public on their activities, without revealing confidential information<sup>685</sup>. In relations with the media, the police should comply with the law and professional guidelines, instructed by the Minister<sup>686</sup>. Besides that, the police should directly inform individuals and legal entities on matters within their jurisdiction whose resolution is of their interest<sup>687</sup>.

The draft of the new Law on Police envisages that all members of the police will declare their income and assets to ISC, which will be authorized to check it and compare it with their life style<sup>688</sup>.

## Transparency (Practice)

*To what extent is there transparency in the activities and decision-making processes of police in practice?*

**Score: 50/2015**

While the police mostly respect existing rules in the area of transparency, and provide some information pro-actively, the major problems are regarding centralization of information delivery on one side and leaking of unchecked information about on-going investigation on the other side.

Although there are still shortcomings, since the adoption of the Development Strategy of the MoI 2011-2016, the transparency of police work has improved<sup>689</sup>. The number of citizens who believe that police transparency increased has raised in November 2014 survey, compared to previous year. Around 21% of citizens said that police is more or less open in communication with public (compared to 12 in 2013). On the other hand, 39% said that police representatives are not open or not open at all (45% in 2013).

Laws, bylaws and strategic documents are posted on the website of the Ministry<sup>690</sup>. Information Booklet is always available to citizens. For the first time, a report on dealing with citizens' complaints (for first six months of 2014) was published on the web site. The ICS has published reports for 2009-2013, including data about criminal charges filed against members of police<sup>691</sup>. Some documents cannot be found on the MoI's website, such as brief reports on police results in 2013

681 Problem in previous legislation was related to the government decrees that significantly widened scope of confidential procurements for Police, Defense sector and intelligence agencies. However, Constitutional Court did not accept Transparency Serbia initiatives against these decrees.

682 The Law on Public Procurement, Articles 127-131

683 The Law on Anti-Corruption Agency, Articles 2 and 43-47

684 The Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other severe criminal offences

685 The Law on Police Article 5

686 The Law on Police, Article 5

687 The Law on Police, Article 5

688 Interview with chief of ICS Milos Oparnica, February 2015

689 Alternative Report on Implementation of the Anti-Corruption Strategy, BCSP, 2015

690 [http://www.mup.gov.rs/cms\\_cir/sadrzaj.nsf/propisi-menu](http://www.mup.gov.rs/cms_cir/sadrzaj.nsf/propisi-menu)

691 <http://prezentacije.mup.gov.rs/sukp/rez.html>

and 2014 (only for 2011 and 2012). These reports were obtained by Transparency Serbia upon request. Annual reports on work of the MoI are also not available and are delivered only to the top MoI officials<sup>692</sup>. Information Directory is updated.

There is no system of internal advertising of vacancies at the Ministry. In spite of legal obligation of the MoI to publish, at least once a year, a list of vacancies, there is no confirmation that such a list exists. In case police officer wants to advance in service or to request a transfer, even if he/she has the approval of superior officer, he/she could not get information on vacancies. There are no open competitions for vacant positions in the MoI or for additional training, which would set out clear criteria for applying<sup>693</sup>.

Analysis of corruption in the police and manuals that would explain the content of corruption in the police, such as “Strategic Intelligence Assessment of Corruption”<sup>694</sup>, “Anti-Corruption Source Book for police officers” and “Police Ethics for the preservation of personal and professional integrity” are not available to public.

Ministry of interior gets a large number of requests for access to information. The majority is approved, but still there are many complaints filed to the Commissioner because of denial of access. In 2013, there were 1.867 requests, 1.556 of them being fully or partially approved, 248 denied and 82 rejected. There are different data about the number of complaints in 2013 for denial of access – The Ministry claims<sup>695</sup> there were 145, while the Commissioner says<sup>696</sup> 237. According to the Ministry’s data, in 2014, there were 2.561 requests, 2.129 answered, 201 denied, and 49 rejected. The percentage of denied and rejected requests is therefore significantly lower than in 2013, while the number of complaints for denial of access is roughly the same (138).

The Ministry of Interior has a Public Relations Bureau through which it issues press releases and manages the contacts of police officials and the media. Some regional police department have persons responsible for contact with media<sup>697</sup>. Police relations with media are in the most cases centralized. All interviews and statements are arranged with the Ministry’s Bureau. Spokespersons in regional police department seldom provide official statements. In the most cases they dispatch press releases and organise (usually monthly) press conferences in which data, mostly statistical, are presented by local police officials<sup>698</sup>. Information about high profile cases, even when action is taken by regional departments, is usually presented by the minister<sup>699</sup>. Chief inspector Popovic from SBPOK claimed that even the Bureau is marginalized in terms of reporting on police activities – all the credit is given to the Minister or director of police<sup>700</sup>.

Assets and incomes of public officials in the Ministry of Interior are submitting to the Anti-Corruption Agency. In 2013 and 2014 there were two procedures against state secretaries in the MoI for failing to submit declarations in time<sup>701</sup>. According to the Anti-Corruption Agency, there is no precise data on whether police officials in the Sector for combating organized crime submit their reports and the Agency „doesn’t have capacity to check if individuals with obligations imposed by laws other than the Law on Anti-Corruption Agency, fulfill those obligations”<sup>702</sup>. In public and media there was a debate about assets of some police officials<sup>703</sup>, which are not obliged to report their income and assets.

692 Alternative Report on Implementation of the Anti-Corruption Strategy, BCSP, 2015

693 Assessment of Corruption in the Police in Serbia, March 2014, Belgrade Center for Security Policy

694 Published by Internal Control Sector

695 Data delivered to Transparency Serbia, February 2015

696 Annual report for 2013, <http://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2013/gizvestaj2013.pdf>

697 Information Directory, [www.mup.gov.rs](http://www.mup.gov.rs)

698 Interviews with journalists from Nis, Novi Sad, Bor – Predrag Blagojevic, Maja Ledjenac, Dinko Gruhonjic, Sasa Trifunovic

699 <http://ntv.rs/stefanovic-uhapsen-igor-novakovic-zbog-zloupotrebe/>

700 Interview with chief inspector Nenad Popovic (retired since January 2015), March 2015

701 Data from the Anti-Corruption Agency

702 <http://www.politika.rs/rubrike/Tema-nedelje/Imovina-policijskih-funkcionera/Cuvari-naseg-reda-i-svog-kapitala.sr.html>

703 [http://www.blic.rs/Vesti/Tema-Dana/388736/Nacelniku-policije-u-Beogradu-preti-smena-zbog-bahatosti-njegove-porodice/komentar/8392488/komentar-odgovorhttp://www.medio.rs/vesti/srbija/drustvo/na-sumnjiv-nacin-do-bogatstva-kako-je-nacelnik-policije-u-rumi-dosao-do-300000-evra\\_99714.htmlhttp://www.politika.rs/rubrike/Tema-nedelje/Imovina-policijskih-funkcionera/Cuvari-naseg-reda-i-svog-kapitala.sr.html](http://www.blic.rs/Vesti/Tema-Dana/388736/Nacelniku-policije-u-Beogradu-preti-smena-zbog-bahatosti-njegove-porodice/komentar/8392488/komentar-odgovorhttp://www.medio.rs/vesti/srbija/drustvo/na-sumnjiv-nacin-do-bogatstva-kako-je-nacelnik-policije-u-rumi-dosao-do-300000-evra_99714.htmlhttp://www.politika.rs/rubrike/Tema-nedelje/Imovina-policijskih-funkcionera/Cuvari-naseg-reda-i-svog-kapitala.sr.html)

Police still does not inform citizens about acting upon their complaints. There is no unified data base about complaints. According to the ICS, analysis, performed in 2014, on handling complaints concluded that collecting data and informing about the outcome should be in jurisdiction of the Bureau for Complaints within Minister's cabinet. Out of 2.200 complaints analysed, it turned out that only 376 were grounded<sup>704</sup>.

## Accountability (Law)

*To what extent are there provisions in place to ensure that police have to report and be accountable for their actions?*

**Score: 75/2015**

The Code of Police Ethics states that the 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<sup>705</sup>.

Ministry of Interior submits reports on its work and report on security conditions in Serbia to parliamentary committees<sup>706</sup>. Financial report of the Ministry is part of government's final account of the budget. Ministry is also subject to control of the State Audit Institution.

There is a legal mechanism for complaints on police work<sup>707</sup>. Everyone has the right to file a complaint to the Ministry against a police officer if he/she considers that illegal or improper action of the police officers violated his/her rights. If citizen is not satisfied with the response to complaint, he/she can appeal to a commission, consisting of representative of the ICS, representative of police and representative of public, appointed by the minister upon proposal of civil society and „expert organisations“<sup>708</sup>.

Internal Control Sector handles cases in which suspects are members of police. ISC doesn't however, have jurisdiction over the whole Ministry of Interior, just over police<sup>709</sup>. ICS is directly responsible to the Minister. Besides, the ISC there is Department for the control of legality of police operation (within the Police Directorate) in charge of regional police departments and Department for safety and legality of the Gendarmerie Command, in charge for Gendarmerie, and the Department for the control of legality of police operation (Police Directorate of the City of Belgrade). The Anti-Corruption Strategy envisages organizational integration of Department for the control of legality of police operations into the ICS<sup>710</sup>.

Complaints to decisions of the Administrative Sector of the Ministry can be filed to the Administrative Court.

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704 Interview with chief of ICS Milos Oparnica, February 2015

705 The Code of Police Ethics, Article 44

706 The Law on Police, Article 9

707 The Law on Police, Article 180

708 The Law on Police, Article 180

709 The Law on Police, Article 171

710 Anti-Corruption Strategy and Action Plan for its implementation, measure 3.5.2



## Accountability (Practice)

*To what extent do police have to report and be accountable for their actions in practice?*

**Score: 50/2015**

A certain level of accountability of police and the Ministry is achieved in practice through the mechanism of citizens' complaints, work of the Internal Control Sector and the Ministry's reports to parliamentary committees.

The Ministry regularly, every three months, is reporting to parliamentary committees and the minister is answering the questions of the parliamentarians<sup>711</sup>. Director of police is usually also present at the committee session. Reports contain mainly statistical data on police work, estimations on security, but there are no data about the ministry's budget, public procurement, complaints or work of the ICS. During the session in March 2015, when the report for October-December 2014 was considered, parliamentarians asked the minister to submit a report on the work of the ICS<sup>712</sup>. However, similarly to other ministries, there is no practice to compare police work reports with adopted plans and to ensure accountability based on such evidence<sup>713</sup>.

According to a report on work of the ISC<sup>714</sup> for 2014, this sector has filed 148 criminal charges against 183 persons (155 of them police officers). This is an increase compared to 2013, when there were 112 charges against 149 persons (124 police officers). However, with slight variations, the number of police officers charged for criminal offences remained unchanged over past several years. Most of the charges are for „abuse of official position“ (50%), with corruption related charges being second with 10-15% of total number of offences.

Apart from criminal charges, the ICS identified irregularities in work of 424 police officers and suggested their units to initiate procedures for violating official duties – 280 of them for serious violations. Sanctions for serious violation of official duty vary from salary reduction for three month to dismissal. There is no report on actions taken upon the ICS recommendations<sup>715</sup>.

There were 850 citizens' complaints in the first six months of 2014 against police officers<sup>716</sup>. Most of them, 527, were solved by immediate superiors of those against whom complaints were filed. Irregularities were found in 49 cases. Appeal commission considered 140 complaints and found that they were grounded in 21 cases<sup>717</sup>. There are no data on measures and actions carried out on basis of those complaints.

## Integrity mechanisms (Law)

*To what extent is the integrity of police ensured by law?*

**Score: 75/2015**

There are provisions which supposed to ensure integrity of police, stipulated by the Law on Police, the Police Code of Ethics, the Law on Civil Servants and Law on the Anti-Corruption Agency. Some important regulations are, however, missing, such as by-law regulating activities incompatible with the work of the police.

711 <http://www.parlament.gov.rs/aktivnosti/narodna-skupstina/radna-tela/odbori,-pododbori,-radne-grupe.2402.html>

712 [http://www.parlament.gov.rs/30\\_sednica\\_Odbora\\_za\\_odbranu\\_i\\_unutra%C5%A1nje\\_poslove.24708.941.html](http://www.parlament.gov.rs/30_sednica_Odbora_za_odbranu_i_unutra%C5%A1nje_poslove.24708.941.html)

713 <http://www.transparentnost.org.rs/images/stories/materijali/inicijativaianalize/Izvestavanje%20i%20odgovornost%20kao%20mehanizam%20za%20suzbijanje%20korupcije,%20decembar%202014%20TEMPLEJT.docx>

714 Interview with chief of ICS Milos Opamica, February 2015, data delivered to TS from MoI

715 Interview with chief of ICS Milos Opamica, February 2015, data delivered to TS from MoI, also <http://prezentacije.mup.gov.rs/sukp/rez.html>

716 [http://www.mup.gov.rs/cms/resursi.nsf/IZVESTAJ%20ZA%206.%20meseci%202014\\_Prituzbe%20i%20predstavke.pdf](http://www.mup.gov.rs/cms/resursi.nsf/IZVESTAJ%20ZA%206.%20meseci%202014_Prituzbe%20i%20predstavke.pdf)

717 [http://www.mup.gov.rs/cms/resursi.nsf/IZVESTAJ%20ZA%206.%20meseci%202014\\_Prituzbe%20i%20predstavke.pdf](http://www.mup.gov.rs/cms/resursi.nsf/IZVESTAJ%20ZA%206.%20meseci%202014_Prituzbe%20i%20predstavke.pdf)



The Law on Police stipulates that a police officer and other police personnel cannot perform tasks or other activities that are incompatible with the affairs of a police officer<sup>718</sup>. This law, adopted in 2005, envisages that the minister should prescribe an act which would closely define those tasks and activities, as well as the conditions for conducting activities outside normal working hours. According to 2014 research, this act has never been prescribed<sup>719</sup>.

The Code of Police Ethics, adopted in 2006, requires 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 state<sup>720</sup>.

The Law on Police stipulates 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 duty which may lead to disciplinary measures in the range of salary reduction to dismissal<sup>721</sup>.

Police members are also obliged by provisions on the conflict of interest in the Law on Civil Servants. Top officials – those considered public officials – minister, state secretaries, assistant ministers and director of police are subject to provisions 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 and income<sup>722</sup>. The obligation of reporting property also applies to the members of the Service for combating organized crime<sup>723</sup>.

Since the provisions of the Law on Anti-Corruption Agency do not apply to the police members, there are no post-employment restrictions. The police have no mechanism for internal reporting of assets of their members. This mechanism is envisaged by the draft of the new Law on Police<sup>724</sup>.

## Integrity mechanisms (Practice)

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

**Score: 25/2015**

Integrity of members of police is not ensured in practice. In previous years there were numerous police scandals or media allegations of scandals involving police officers. In most cases there was no epilogue, or at least the epilogue was not known to public. Subjects of these scandals were often high ranking officials in the police and the Ministry headquarters. Those scandals and allegations were related to threatening the security of the president<sup>725</sup>, the interception of two leading members of the Serbian Progressive Party<sup>726</sup>, dismissal of several high level officials<sup>727</sup>, the meeting of the Minister of Interior with members of organized criminal groups Darko Saric<sup>728</sup>, the leakage of information from the MoI<sup>729</sup>, Gendarmerie members involved in several crimes<sup>730</sup> and serious accusations against high police officials<sup>731</sup>.

718 The Law on Police, Article 133

719 Assessment of Corruption in the Police in Serbia, March 2014, Belgrade Center for Security Policy

720 The Code of Police Ethics, Article 19

721 The Law on Police, Article 157

722 <http://www.acas.rs/zakoni-i-drugi-propisi/zakoni/o-agenciji-za-borbu-protiv-korupcije/>

723 The Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other particularly serious crimes, Article 16

724 [http://www.mup.gov.rs/cms\\_cir/sadrzaj.nsf/Prednacr\\_ZOP.h](http://www.mup.gov.rs/cms_cir/sadrzaj.nsf/Prednacr_ZOP.h)

725 <http://www.politika.rs/rubrike/Politika/Nikolic-Prisluskuju-me.lt.html>

726 <http://mondo.rs/a266277/Info/Srbija/Deo-MUP-prisluskuje-Nikolica-i-Vucica.html>

727 <http://www.alo.rs/vesti/aktuelno/vucic-pobenseo-na-vrh-mup-smenjeni-sefovi-svih-uprava-u-mup-u/58866>

728 [http://www.rtv.rs/sr\\_lat/politika/mediji:-dacic-se-2008.-sreo-sa-saricevim-saradnikom\\_367969.html](http://www.rtv.rs/sr_lat/politika/mediji:-dacic-se-2008.-sreo-sa-saricevim-saradnikom_367969.html)

729 Noted in 2014 EU progress report

730 [http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=07&dd=16&nav\\_category=16&nav\\_id=732920](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=07&dd=16&nav_category=16&nav_id=732920)  
[http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=10&dd=23&nav\\_category=16&nav\\_id=768999](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=10&dd=23&nav_category=16&nav_id=768999)  
<http://www.seebiz.eu/kobre-bez-prijave-tuzbe-protiv-osmorice-pripadnika-zandar-merije/ar-104735/>

731 <http://www.kurir.rs/vesti/politika/kumovska-veza-bogdan-pusic-i-dane-cankovic-na-saslanju-pred-ispektorima-ukp-clanak-1487959>  
<http://www.kurir.rs/vesti/politika/kumovska-veza-bogdan-pusic-i-dane-cankovic-na-saslanju-pred-ispektorima-ukp-clanak-1487959http://>

Most of scandals were disclosed in tabloids, which indicate a form of political corruption: disclosure of police information<sup>732</sup>. Most of them were never solved. In one of the cases, deputy head of Criminal Police Directorate Bogdan Pusic resigned in September 2013, after being accused in the media of hushing up some corruption-related investigations. He insisted that these allegations should be investigated<sup>733</sup>. There is no report in public if this happened. Pusic remained the head of working group for investigation corruption-related cases until this group was dismissed, in November 2014.

Since there is no by-law precisely regulating tasks and activities incompatible with the job of a police officer, some officers carry out activities which turn out to be in violation of the Law on Police. In addition, they use their police powers and police resources for such activities. ISC noted a few examples, such as police officers being members of the Management Board of the Centre for Social Welfare or a police officer lending his vehicle to a taxi association<sup>734</sup>. A significant part of initiated disciplinary proceedings for serious violations of official duty are against police officers who are working as security guards, providing protection even to persons involved in illegal activities<sup>735</sup>.

One of the key problems for initiating and conducting investigations against police officers is the “code of silence” in police<sup>736</sup>. According to the ICS research on corruption in police, 45% of police officers would never report a corrupt colleague and 36% would do it only if they were sure that there would be any negative consequences for the person who reported the corruption<sup>737</sup>.

According to the Anti-Corruption Strategy and the Action Plan for its implementation, the Ministry of Interior was supposed to develop a plan for the preparation of measures for the strengthening of integrity of employees in the positions holding a risk of corruption (until June 2014) and to establishing personnel monitoring for control of integrity of police members (until March 2014). Those tasks were not fulfilled, allegedly because the adoption of the new Law on Police postponed other activities<sup>738</sup>.

Head of ICS claims that the Code of Police Ethics is outdated. It is often been misusing in disciplinary proceedings – whenever something is wrong, it is declared to be in violation of the Code<sup>739</sup>. When Service for Combating Organised Crime was established, in 2001, they had their own Code of Ethics and every employee had to sign it. Later on the practice was stopped without specific reason. According to representatives of SBPOK, nowadays, awareness on ethics and the ethics code is very limited – there is no awareness raising programmes or regular trainings on ethics<sup>740</sup>.

Prevention, which would include trainings of integrity and ethics even if there were no indication of violation of principles stipulated in the Code, is yet not fully applied in police structures in Serbia. Primary prevention mechanism is partially reflected in the Police Academy programme since ethics and integrity are, to a limited extent, examined during the first year of studies. Secondary prevention, focused on all police officers in the field, isn't present in Serbian Police, at least not in a systematic way<sup>741</sup>.

Within the program of education and professional training of police members in the MoI, there is a subject „Police Ethics“, intended for „all police officers and all employees of the MoI“. Ministry delivered a report according to which trainings were organised in 10 police departments between August and December 2014, with a total of 210 attendants<sup>742</sup>. ICS published the Manuel on Ethics, with case studies. It organised training for 52 future trainers on subject of ethics<sup>743</sup>.

[www.kurir.rs/veljovicev-sin-vozi-mercedes-od-60000-evra-clanak-973877](http://www.kurir.rs/veljovicev-sin-vozi-mercedes-od-60000-evra-clanak-973877)<http://www.politika.rs/rubrike/Hronika/BIA-sumnjici-Rodoljuba-Milovica.sr.html>

732 Assessment of Corruption in the Police in Serbia, March 2014, Belgrade Center for Security Policy

733 [http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=09&dd=26&nav\\_category=16&nav\\_id=758295](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=09&dd=26&nav_category=16&nav_id=758295)

734 Assessment of Corruption in the Police in Serbia, March 2014, Belgrade Center for Security Policy

735 Assessment of Corruption in the Police in Serbia, March 2014, Belgrade Center for Security Policy

736 Risk Analysis on the Current Situation with Regard to Possibilities and Actual Extent of Corruption within the Law Enforcement, April 2014

737 “Report on the work of the ICS”, 2013

738 Alternative Report on the implementation of Anti-Corruption Strategy, Belgrade Centre for Security Policy, 2015

739 Interview with chief of ICS Milos Opamica, February 2015

740 Risk Analysis on the Current Situation with Regard to Possibilities and Actual Extent of Corruption within the Law Enforcement, April 2014

741 Risk Analysis on the Current Situation with Regard to Possibilities and Actual Extent of Corruption within the Law Enforcement, April 2014

742 Data delivered to TRANSPARENCY SERBIA

743 Interview with chief of ICS Milos Opamica, February 2015

# Role

## Corruption investigation (law and practice)

*To what extent do police detect and investigate corruption cases?*

**Score: 50/2015**

Police have uncovered and investigated numerous cases which are statistically treated as corruption-related. However statistics on corruption includes offences which are not related to corruption (or at least corruption was not detected), such as abuse of office or tax evasion<sup>744</sup>.

There was an investigation into 24 privatization cases noted in the EU progress report in 2011 as disputable and possibly involving corruption. The investigation was conducted by the special working group, not the regular units – SBPOK or regional police departments. According to the EU-COE 2014 report, the role of the SBPOK officers was „very important for the 24 privatisation cases when an ad-hoc working group was created to investigate the allegations of corruption and other crimes committed during the processes of privatisations of the state owned enterprises“<sup>745</sup>. This group was composed of 120 investigators divided into 14 teams. By the end of 2013 the investigators were dedicated full time to these cases only. Investigations initiated in 12 of those cases resulted in 5 indictments where criminal charges were filed against 78 persons for 69 criminal offences. The damage resulting from these offences is estimated at 88 million euro – the exact amount was assessed through the joint efforts of the investigators, Financial Police and forensics experts. The work on these cases had also initiated 28 new investigations<sup>746</sup>. However, the working group was dismissed in October 2014. The police director explained that the working group had been dismissed for financial reasons, announcing they would „continue to resolve cases related to economic crimes, but within their (regular) work units“<sup>747</sup>. “

Anti-Corruption Strategy and the Action Plan for its implementation envisage the establishment of a separate organizational unit within the Crime Police whose main task will be to fight corruption. In practice, it was assumed that the working group which was investigating 24 cases would be institutionalized. Deadline for forming this unit, prescribed by Action Plan was October 2014. The working group has been dismissed but the new unit has not been established. The reason for delay is, allegedly, the new Law on Police, expected to be adopted in 2015<sup>748</sup>.

As for possibilities to investigate corruption, a legal framework exists, including the possibility to use special investigative techniques. According to SBPOK representative, the only change is that the new Criminal Procedure Code, which introduced prosecutorial investigation, means one more step in the process of approval of those techniques. Police now can only initiate it, while the prosecutor recommends it, and the judge approves it. This can slow down the process and it is noted that special techniques are used less by SBPOK than in the past 2 or 3 years. On the other hand, many of the corruption-related cases include investigation of crimes committed in the past, where documents were investigated ex post. Special techniques would not be of any use in those cases<sup>749</sup>.

According to police statistics there were 2.098 discovered corruption cases („cases with elements of corruption“) in 2013 and 1.983 in 2014. The vast majority are abuse of office, abuse of position,

744 <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7382-korupcija-u-magacinu>

745 Risk Analysis on the Current Situation with Regard to Possibilities and Actual Extent of Corruption within the Law Enforcement, April 2014

746 Risk Analysis on the Current Situation with Regard to Possibilities and Actual Extent of Corruption within the Law Enforcement, April 2014

747 [http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=10&dd=27&nav\\_id=916784](http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=10&dd=27&nav_id=916784)

748 Alternative Report on the implementation of Anti-Corruption Strategy, Belgrade Centre for Security Policy, 2015

749 Interview with chief inspector Nenad Popovic (retired since January 2015), March 2015

falsification of official documents and embezzlement, with bribery and accepting bribes being in 5th position, with 155 cases in 2013 and 124 in 2014<sup>750</sup>. Compared with surveys on corruption<sup>751</sup>, in which 7-10% of the citizens claim they had personally experienced corruption in all sectors, it means that less than 1% of corruption cases are discovered/reported.

# POLICE

## Recommendations

1. Government and the Ministry should establish anti-corruption unit envisaged by the National Anti-Corruption Strategy and clarify the position of SBPOK and its relation with the new unit;
2. Police should conduct proactive investigations on the basis of identified patterns of corrupt behavior and discovered cases of corruption;
3. Police and the ISC should establish mechanism for reporting and checking declaration of assets and incomes for members of police;
4. Police and the ISC should introduce and clearly define procedure of integrity test for police officers exposed to the high corruption risks;
5. Police should prevent leakage of information and react (by investigation, issuing denials or confirmations) in cases when integrity of police is questioned in media;
6. Minister should prescribe act which would regulate tasks and activities incompatible with the job of a police officer;
7. Police should post a clear explanation on their web-sites and in their premises, for persons who want to report corruption – what one needs to do, what to expect in further proceedings, when they can receive further notice on the proceedings;
8. The police, prosecution and courts should jointly prepare and regularly publish statistical overviews containing the number of police charges filed to prosecutors (number of persons charged and number of criminal acts), prosecutorial report (number of initiated and finished criminal proceedings, number of defendants and number of criminal acts) and court reports (review of the number and types of verdicts) for acts of corruption.
9. Government should consider legislative changes that would initiate increase of number of reported crimes of corruption;

750 Data delivered to TRANSPARENCY SERBIA

751 [http://www.rs.undp.org/content/serbia/en/home/library/democratic\\_governance/corruption-benchmarking-survey---february-2013.html](http://www.rs.undp.org/content/serbia/en/home/library/democratic_governance/corruption-benchmarking-survey---february-2013.html)





# REPUBLIC ELECTORAL COMMISSION

## National Integrity System

**Summary:** Compared to 2011, there have not been significant changes in legislation, practice or in the role of the Republic Electoral Commission. REC is neither an independent state body, nor just another parliamentary committee, but *sui generis* body, established through the law. Its members are lawyers, elected by the Parliament, as representatives of parliamentary political parties. REC gets the funding for all its needs, but it does not have its own (separate) budget, staff nor premises. REC is fully dependent on the Parliament, and uses resources of that institution. REC is in charge of conducting elections, as well as referenda and elections for national minorities' councils. Party affiliations of its members don't influence much the legal aspect of REC's work: Inter-party control and the achieved level of democratic political culture ensure the fair conduct of elections. However, the REC in its current form, does not enable any further improvement in the organization of the election process, voters' education or polling boards members' education. The work of the REC is, in general, transparent. 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 the REC is a collective body.





| REPUBLIC ELECTORAL COMMISSION  |                         |                                       |  |
|--|-------------------------|---------------------------------------|--|
| Overall Pillar Score (2015): 43 / 100<br>Overall Pillar Score (2011): 48 / 100 |                         |                                       |  |
| Dimension  | Indicator               | Legislation                           | Practice                               |
| <b>Capacity</b><br>42 / 100  | Resources               | /                                     | <b>75</b> (2015),<br><b>100</b> (2011) |
|  | Independence            | <b>25</b> (2015),<br><b>25</b> (2011) | <b>25</b> (2015),<br><b>25</b> (2011)  |
| <b>Governance</b><br>46 / 100  | Transparency            | <b>50</b> (2015),<br><b>50</b> (2011) | <b>75</b> (2015),<br><b>100</b> (2011) |
|  | Accountability          | <b>50</b> (2015),<br><b>50</b> (2011) | <b>50</b> (2015),<br><b>50</b> (2011)  |
|  | Integrity               | <b>25</b> (2015),<br><b>25</b> (2011) | <b>25</b> (2015),<br><b>25</b> (2011)  |
| <b>Role</b><br>38 / 100  | Campaign regulation     | <b>0</b> (2015), <b>0</b> (2011)      |  |
|  | Election Administration | <b>75</b> (2015), <b>75</b> (2011)    |  |

**Structure** – The REC consists of 37 permanent members and deputies, including the non-voting secretary (and his/her deputy) and non-voting representative of the Statistical Office of the Republic of Serbia. Remaining 34 members (17 members and their deputies) are lawyers by education, representatives of parliamentary groups, elected by the Parliament proportionally to each party's representation in the Parliament. However, no party or coalition may have more than a half of the members in the permanent structure of the REC<sup>752</sup>. During the electoral period, the REC acts in an extended structure - it includes one representative (and deputy) from each election list, or one representative (and deputy) of each proposer of a presidential candidate. REC doesn't have its own staff, but the employees of the Parliament provide administrative and legal services for the REC instead. REC has jurisdiction only in the technical organization and conducting of the election process, but not in the area of party registers, voters' registers or party financing.

<sup>752</sup> Law on the Election of Members of Parliament, Article 29



# Assessment

## Capacity

### Resources (Practice)

*To what extent does the REC has adequate resources to achieve its tasks in practice?*

**Score: 75 (2015), 100 (2011)**

REC has satisfactory financial and technical resources for regular work and conducting elections. Its human resources, however, depend on the Parliament's staff and political parties' will. REC members are appointed for the period of four years. In practice, new members are appointed after each election, due to changes of composition of the Parliament. Problems might occur when elections (presidential or national minorities' council's elections) are held while the Parliament is in session and therefore the Parliament staff, assigned to work for the REC, has other obligations in the Parliament. Since REC is not an independent body, it does not have any educational programs, neither for its members nor staff. The quality of REC work depends solely on experience and skills of party representatives elected to the REC, and experience and skills of assigned parliament staff.

There are concerns<sup>753</sup> that REC would have problems in its daily work, as well as with the organisation of elections, if four of the staff members, with significant experience, decided to quit their work in the Parliament. Indeed, the REC was hampered in 2014 when both its secretary and president resigned, following their party's decision that party members can't have more than one paid public office, even if it is allowed by the law regulating conflict of interest and accumulation of public functions. Since the party (SNS) didn't propose other candidates, the 2014 elections for national minorities' councils were organized in absence of those key officials.

Parliament's premises used by the REC are adequate. REC's financial plan is approved by the Parliament's Administrative board. For regular work in 2012, the approved budget was 21.5 million RSD (226.000 USD), in 2013 it remained unchanged, and in 2014 it was 28.1 million RSD (295.000 USD)<sup>754</sup>.

Money for organizing extraordinary elections is 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 2012 1.45 billion RSD (15 million USD) was approved for REC to organize joint parliamentary and presidential elections. In 2014, 1.14 billion RSD (12 million USD) was approved for extraordinary parliamentary elections<sup>755</sup>.

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<sup>753</sup> REC member Nenad Konstantinovic, interview, October 2014.

<sup>754</sup> REC's and the Parliament's Information Directory

<sup>755</sup> REC's and the Parliament's Information Directory

## Independence (Law)

*To what extent, in accordance with the legislation, is the REC independent in its work?*

**Score: 25 (2015), 25 (2011)**

In accordance with the Law<sup>756</sup>, the REC is “independent in its work”. However, it is not a fully independent body. REC adopts its Rules on Procedure and decides on its own agenda, without interference from any other authority. All state and other bodies and organizations are obligated by the Law on election of MPs to provide assistance to the REC and to provide it with the necessary data for its work.

However, the Constitution of Serbia doesn’t contain provisions on the establishment of a body in charge of organizing and conducting elections, which means that the REC can be dismissed through the amendment of the Law on the Election of Members of Parliament. Its members are party representatives, so they can be replaced at any time, by purely politically based decisions<sup>757</sup>. Considering that members of the REC are not fully employed in that institution, they may perform other duties. They are entitled to receive compensation for their engagement (30.000 RSD or USD 315 per month)<sup>758</sup>. However, since the REC doesn’t have its own administration, there are no criteria and the method of recruitment of employees to be assessed.

## Independence (Practice)

*To what extent does the REC function independently in practice?*

**Score: 25 (2015), 25 (2011)**

Composition of the REC reflects the majority of the political will in the Parliament. Party affiliation of its members is reflected to work of the REC<sup>759</sup> and no decision, such as regarding instructions for elections, decisions on complaints, composition of polling boards, can be adopted without approval of parliamentary majority<sup>760</sup>. According to the REC member from the opposition party, this doesn’t affect the legal aspect of the REC’s work and in the recent years there were no major complaints that integrity of election process and work of the REC was affected by political influence<sup>761</sup>.

According to the REC’s deputy secretary Veljko Odalovic, complaints are discussed in a professional manner. REC’s working group in charge of regulations attempts to clarify all the circumstances before the complaint is brought to plenary session of the REC, but if no agreement is reached, it is up to majority to decide<sup>762</sup>. It should be noted that the balance of membership in the REC changes in election periods, when representatives of all election contesters join REC.

However, according to 2012 OSCE/ODIHR report, it was noted that the REC members were divided by political lines even when deciding on complaints: “a complaint by the Serbian Radical Party, requesting annulment of the final results and an investigation into all irregularities was automatically rejected because it did not garner a majority of the REC members’ votes. It appeared that instead of working to support the integrity of the process, the REC members were divided along party lines in adjudicating complaints”<sup>763</sup>.

<sup>756</sup> Law on the Election of Members of Parliament

<sup>757</sup> Law on the Election of Members of Parliament, Articles 33-34

<sup>758</sup> ACAS register of public officials assets and income

<sup>759</sup> Expert from NGO “CESID” specialized for monitoring election process Djordje Vukovic, interview, October 2014

<sup>760</sup> REC’s deputy secretary Veljko Odalovic, interview, October 2014.

<sup>761</sup> Member of the REC Nenad Konstantinovic, interview, October 2014, also

Early Parliamentary Elections 16 March 2014 - OSCE/ODIHR Limited Election Observation Mission Final Report

<sup>762</sup> REC’s deputy secretary Veljko Odalovic, interview, October 2014.

<sup>763</sup> Parliamentary and Early Presidential Elections 6 and 20 May 2012 - OSCE/ODIHR Limited Election Observation Mission Final Report

Nevertheless, the REC hasn't made any purely political decisions recently, as was the case in 2007, for example, when it refused to give consent to the embassies of USA and Great Britain for monitoring elections.

# Governance

## Transparency (Law)

*To what extent are there provisions that should ensure that the public can obtain relevant information on the activities and decision-making processes of the REC?*

**Score: 50 (2015), 50 (2011)**

Regulations ensure that the public can obtain, in timely manner, all relevant information on the activities of the REC regarding the election process. However, the REC is not obliged to submit to the Parliament financial reports and regular annual reports on its work although financial reports should be published in the Information Directory, as stipulated by the Law on Free Access to Information of Public Importance<sup>764</sup>. The Law on the Election of Members of Parliament stipulates that the work of bodies for organizing elections is public<sup>765</sup>, while the Rules on Procedure of the REC stipulates that the REC provides transparency of its work with the presence of accredited journalists, by issuing press releases and organizing press conferences<sup>766</sup>.

The Law<sup>767</sup> also stipulates that the REC decisions regarding election process, such as Guidelines for Conduct of Elections, forms, rules and deadlines for conducting election activities, election lists, lists of polling stations, with addresses, the total number of voters, as well as the results of the elections are published in the Official Gazette.

REC doesn't have any responsibilities regarding campaign financing, political party financing, or reporting on campaign expenses.

Stenographic notes and minutes on the work are to be prepared at the 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<sup>768</sup>.

## Transparency (Practice)

*To what extent are reports and decisions of the REC made public in practice?*

**Score: 75 (2015), 100 (2011)**

Decisions of the REC regarding organization and conduct of elections are publically available, in accordance with regulations. However, basic data about the REC, funds used by the REC and

<sup>764</sup> The Law on Free Access to Information of Public Importance, Article 39

<sup>765</sup> The Law on the Election of Members of Parliament, Article 32

<sup>766</sup> Rules on Procedure of REC, Article 16

<sup>767</sup> The Law on the Election of Members of Parliament, Article 34 and 85

<sup>768</sup> Rules on Procedure, [http://rik.parlament.gov.rs/cirilica/propisi\\_frames.htm](http://rik.parlament.gov.rs/cirilica/propisi_frames.htm)



other information as stipulated by the Law on Free Access to Information of Public Importance are either not available or are outdated since the REC's Information Directory hasn't been updated for more than three years (last update August 2011).

REC regularly publishes on its web site and in the Official Gazette all its decisions and reports regarding the organization and conduct of elections and distribution of mandates. In election periods, the REC organizes regular press conferences. Sessions of the REC are open to the public and they can be attended by journalists accredited in the press service. The agenda of the sessions is never announced in advance to the journalists. At the very session, journalists are given all the material the REC is discussing, and the end, adopted versions, are published on the REC's web site in a timely manner. REC has its spokesperson. Furthermore, press releases on important issues are regularly published<sup>769</sup>.

Some decisions adopted by the REC can't be found on its website. There is discrepancy between number of adopted decisions, by categories – reports, guidelines, decisions, rules and explanations identified in the Information Directory and those published on the REC's web-page. The rest may be obtained through a request for free access to information of public importance under condition that the applicant knows what to ask for, since the Information Directory is not updated.

## Accountability (Law)

*To what extent are there provisions that should ensure that the REC has to report and be accountable for its actions?*

**Score: 50 (2015), 50 (2011)**

With regards to the REC's accountability, there has not been any change since 2011. REC is obligated to submit reports on election activities<sup>770</sup>, but is not obligated to report on its activities outside of the election period or to submit financial reports, apart from obligation to publish financial report in the Information Directory, as stipulated by the Law on Free Access to Information of Public Importance (as any other public institution). The State Audit Institution may (but not necessarily) conduct a financial audit of the REC, as a part of the financial audit of the Parliament's financial report.

REC is in charge of complaints against decisions, activities or omissions of polling boards or electoral committees. The rules don't envisage public hearings on complaints before the REC<sup>771</sup>. According to the Law, 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. REC may annul the decision of the lower level electoral body (i.e. municipal electoral committee). If the REC fails to decide within stipulated deadline, it is considered that the objection has been accepted. Against every decision of the REC an appeal can be submitted to the court. The court is obligated to decide within a 48 hour deadline<sup>772</sup>. However, since the REC is a collective body, which decides by majority of votes of its members, individual members are not accountable for its decisions.

<sup>769</sup> Beta news agency journalist Ljiljana Gradinac, interview, October 2014.

<sup>770</sup> Law on the Election of Members of Parliament, Articles 85-86

<sup>771</sup> OSCE/ODIHR report noted this was not in line with the OSCE commitments and other international standards

<sup>772</sup> The Law on the Election of Members of Parliament, Articles 95-97

## Accountability (Practice)

*To what extent does the REC has to report and be accountable for its actions in practice?*

**Score: 50 (2015), 50 (2011)**

Deadlines for dealing with objections on regularity of election process are respected in practice, both by the REC and court<sup>773</sup>. REC sessions when complaints are on the agenda are open for public, but complainants are not invited to attend.

REC decisions are in practice disputed before the Administrative court. For example, during the 2014 parliamentary elections the REC received a total of 15 complaints. Six of them were submitted before the Election Day, and out of those six, four pertained to candidate list registration. These were rejected by the REC as ungrounded and appealed before the Administrative Court which upheld the REC decisions. Complaints of two electoral contestants concerning late disbursement of public funds for the campaign were rejected by the REC on jurisdiction ground. Nine complaints received by the REC on and after the Election Day referred to the composition of polling boards, inaccuracies in the voting records and other irregularities detected on the Election Day. All were rejected but the one - against a polling board decision not to open polling station as there was 12 ballots less than the number of registered voters. The REC granted the complaint and elections in that polling station were conducted a week later<sup>774</sup>.

During 2012 presidential and parliamentary elections, there were more complaints - 26 in the pre-election period, of which 19 pertained to the formation of the polling boards. REC reviewed them in public sessions – 17 were not considered since they were submitted late or by individuals not authorized to do so and seven were dismissed as unsubstantiated<sup>775</sup>. It was noted by the OSCE/ODIHR mission that all session materials were distributed to the REC members only a few minutes before each session. "This raised questions as to whether the REC members had time to look into the details of all cases that they were deciding"<sup>776</sup>.

Six decisions, brought by the REC before the 6 May 2012 elections, were appealed to the Administrative Court. Following the 2012 elections, the REC received 83 complaints related to election-day procedures and the composition of polling boards. All complaints were dismissed by the REC, most on procedural grounds for being submitted late or by individuals not entitled by law to file complaints. Some of these alleged violations could have led to invalidation of results at polling stations concerned. Some members of the REC have proposed that these allegations be looked into by the REC on its own initiative, but this was voted down by majority, citing a 2007 decision of the Supreme Court that the REC may not act ex-officio if complaint is not lodged<sup>777</sup>.

After the first round of 2012 presidential election, one of the candidates, Mr Tomislav Nikolic, submitted a complaint to the REC requesting invalidation of both presidential and parliamentary elections on the basis of an alleged disposal of some 3,000 cast ballots. He also filed criminal charge against unknown persons for election theft<sup>778</sup>.

Meanwhile, the prosecution stated that the sack with election materials was stolen after the counting of votes and it could not have influenced the election results – this complaint was, thus, dismissed as unsubstantiated.

<sup>773</sup> Interviews with the REC member Nenad Konstantinovic, REC deputy secretary Veljko Odalovic and journalist Ljiljana Gradinac, also Early Parliamentary Elections 16 March 2014 - OSCE/ODIHR Limited Election Observation Mission Final Report

<sup>774</sup> Early Parliamentary Elections 16 March 2014 - OSCE/ODIHR Limited Election Observation Mission Final Report

<sup>775</sup> Parliamentary and Early Presidential Elections 6 and 20 May 2012 - OSCE/ODIHR Limited Election Observation Mission Final Report

<sup>776</sup> Parliamentary and Early Presidential Elections 6 and 20 May 2012 - OSCE/ODIHR Limited Election Observation Mission Final Report

<sup>777</sup> Parliamentary and Early Presidential Elections 6 and 20 May 2012 - OSCE/ODIHR Limited Election Observation Mission Final Report

<sup>778</sup> <http://www.rts.rs/page/stories/sr/story/1950/lzbori+2012/1100476/Krivi%C4%8Dne+prijave+protiv+N.N.+lica+.html>

REC received and decided on three complaints after the second round of the presidential election. All complaints were dismissed, one as not allowed and late, one as unsubstantiated and another one as submitted by an unauthorized person.

Reports on conducted elections and resources spent for organisation of elections are of appropriate quality and scope and provide an insight into implemented activities of the REC and election activities and results of the elections<sup>779</sup>.

The State Audit Institution has never conducted a financial audit of the REC.

## Integrity (Law)

*To what extent are there mechanisms that should ensure the integrity of the REC?*

**Score: 25 (2015), 25 (2011)**

Rules on conflict of interest, gifts and hospitality, as stipulated by the Law on Anti-Corruption Agency, refer to members of the REC. They are considered public officials<sup>780</sup> and they are also obliged to submit report on assets and income<sup>781</sup>. Rules envisaged by the Law on Civil Servants and the Code of Conduct of Civil Servants refer to employees of the Parliament that work for the REC.

The Law on Civil Servants contains provisions to prevent conflicts of interest related to the ban on gifts and the abuse of the employment in a state agency, additional work, and reporting of interests in connection with the decision of the state authorities. Defying the provisions that prevent a conflict of interest is considered a serious breach of working duty<sup>782</sup>.

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 gifts.

There are no other special mechanisms or regulations that should protect the integrity of the REC. The Law on the Election of Members of Parliament stipulates only that members and deputy members of the body for conducting elections (REC, regional, municipality election commissions and polling boards) cannot be persons that are inter-related or married. If that rule was violated, the body would be dismissed and voting would be repeated<sup>783</sup>. There is no special Ethical Code that would refer to the REC and specifics of engagement in the election processes.

The Law on the Election of Members of Parliament envisages that the Supervisory Board should be authorized for the integrity of the election process. Supervisory Board's task should be general supervision over political parties' procedures, candidates and media during election campaign. It should have ten members - 5 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 elections<sup>784</sup>.

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779 Beta news agency journalist Ljiljana Gradinac, Blic daily journalist Zlata Djordjevic, interviews October 2014.

780 Law on ACA, Article 2

781 Law on ACA, Articles 39-42

782 The Law on Civil Servants, Articles 25-31 and 109

783 The Law on the Election of Members of Parliament, Article 30

784 The Law on the Election of Members of Parliament, Article 99,100

## Integrity (Practice)

*To what extent is the integrity of the REC ensured in practice?*

**Score: 25 (2015), 25 (2011)**

The only tool for protection of integrity of individual members of the REC— provisions of the Law on Anti-Corruption Agency – is used in practice. There were no procedures in 2013 against the REC members for breaching the obligations set by the Law<sup>785</sup>. REC members' assets and income declarations can be found in the public registry<sup>786</sup>.

In 2013 and 2014 the Anti-Corruption Agency initiated three proceeding against former members of the REC for not submitting assets and income declaration after cessation of public office. Agency pronounced measures of caution to all of them, and filed misdemeanor charges in two cases. One ended with warning pronounced by the Misdemeanor Court, and the other one is still pending<sup>787</sup>.

The only protection of integrity of the REC, as collective body, in its activities regarding election processes is the interparty control within this body. Namely, the REC members are representatives of political parties with opposing interests, and they control each other to a certain extent.

Members of the REC and the REC as collective body don't have any formal or practical obligations regarding impartiality, transparency, efficiency, besides the legal obligations on public disclosing of decisions and bringing decisions within the legally determined deadlines. Both obligations are respected<sup>788</sup>.

When the Administrative Court annuls decisions of the REC, meaning there was misconduct in the work of the REC, this issue is not discussed by the REC.

The only time when the Supervisory Board was established was for the 2000 December elections, and there has been no motion by political parties since 2008 to establish it. REC claims it has no competency to control compliance with campaign regulations, based on the Supreme Court decision from 2006 that this matter is in jurisdiction of the Supervisory Board<sup>789</sup>.

## Role

### Campaign regulation (law and practice)

*Does the REC effectively oversee and ensure financing of political campaigns?*

**Score: 0 (2015), 0 (2011)**

REC is not authorized to deal with candidate and political party finance since October 2009, when this jurisdiction was transferred to the Anti-Corruption Agency. Its only jurisdiction in this area is to transfer request for public funding of election campaign from political parties to the Ministry of Finance<sup>790</sup>.

<sup>785</sup> <http://www.acas.rs/organizacija/sektor-za-kontrolu-imovine-i-prihoda/?pismo=lat>

<sup>786</sup> [http://www.acas.rs/sr\\_lat/registri.html](http://www.acas.rs/sr_lat/registri.html)

<sup>787</sup> <http://www.acas.rs/organizacija/sektor-za-kontrolu-imovine-i-prihoda/?pismo=lat>

<sup>788</sup> [http://www.rik.parlament.gov.rs/cirilica/sednice\\_frames.htm](http://www.rik.parlament.gov.rs/cirilica/sednice_frames.htm)

<sup>789</sup> Early Parliamentary Elections 16 March 2014 - OSCE/ODIHR Limited Election Observation Mission Final Report

<sup>790</sup> The Law on Financing Political Activities, REC's Instruction for Conducting Parliamentary Elections

There is a link on the REC's web site<sup>791</sup> named "Questions about implementation of the Law on Financing Political Activities". This link, however, leads to Government's General Secretariat web-page, with information about relief for flood victims.

## Election Administration (law and practice)

*Does the REC effectively oversee and ensure conducting of free and fair elections and the integrity of the electoral process?*

**Score: 75 (2015), 75 (2011)**

REC effectively organizes and oversees elections and ensures the integrity of the electoral process. Elections are considered free and fair<sup>792</sup>. 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 rare. However, according to one expert, the fact that integrity of the electoral process and public trust in election results is ensured is a result of higher "political culture", not improvement of electoral process -and procedures conducted by the REC<sup>793</sup>. The Limited scope of the REC's authority and its activities hasn't allowed it to make progress in strengthening the election process, especially in such areas as voters' education, polling board members education, improvement of election legislation<sup>794</sup>.

REC publishes the final number of voters 48 hours before the elections, and it publishes the number and addresses of all polling stations. Municipality administrations should deliver to all voters, at the least 5 days before the elections, a notification on the elections with the address of the polling station<sup>795</sup>. Electoral Committees are obligated to enable persons that cannot reach polling stations to vote by sending representatives of the Committee to that person.

REC is capable to quickly and efficiently collect election results and to publish results of the elections. The Law<sup>796</sup> envisages that electoral committees are obligated to deliver minutes and election material to the REC in an 18 hour deadline from the closing of polling stations, while the 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 practice, members of the REC, the representative of the 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 the REC regularly publishes results as they are being processed<sup>797</sup>.

All stages of the election process, from the printing of the voting material, voting, counting of votes and collecting results are monitored by representatives of the parties that are involved in electoral committees, the REC and observers<sup>798</sup>.

However, the REC does not deal with improvement in its own procedures or regulations even in cases when its mistakes are identified by the Administrative Court decisions. REC is not authorized to suggest changes in procedures or regulations when serious problems occur, such as claims by one political party that election results were compromised because sack with ballots was appar-

<sup>791</sup> [http://www.rik.parlament.gov.rs/cirilica/linkovi\\_frames.htm](http://www.rik.parlament.gov.rs/cirilica/linkovi_frames.htm)

<sup>792</sup> Early Parliamentary Elections 16 March 2014 - OSCE/ODIHR Limited Election Observation Mission Final Report, also Parliamentary and Early Presidential Elections 6 and 20 May 2012 - OSCE/ODIHR Limited Election Observation Mission Final Report

<sup>793</sup> Expert from NGO "CESID" specialized for monitoring election process Djordje Vukovic, interview, October 2014, also journalist Zlata Djordjevic, interview, October 2014

<sup>794</sup> REC deputy secretary Veljko Odalovic, interview, October 2014.

<sup>795</sup> The Law on the Election of Members of parliament, Article 54

<sup>796</sup> The Law on the Election of Members of Parliament, Article 77, 78

<sup>797</sup> Journalist Ljiljana Gradinac and journalist Zlata Djordjevic, interviews, October 2014

<sup>798</sup> The Law on the Election of Members of Parliament, journalist Ljiljana Gradinac and journalist Zlata Djordjevic, interviews, October 2014

ently found in the garbage after vote counting at one polling station in 2012 early presidential and parliamentary elections. Further police and the prosecution investigation concluded that ballots went missing after they were counted, but the REC did not discussed on procedures that led to the fact that one sack was lost<sup>799</sup>.

REC also does not have the ability to act ex-officio even in cases of breaching legal provisions concerning the election process, such as campaigning outside the deadlines determined by law<sup>800</sup>.

A single electoral register was established in 2011 and it has been used since 2012 elections. REC doesn't influence the registration of voters into the register, since it is done by local administration, while the register is run by the Ministry for Public Administration. REC is no longer authorized for changes in the voters' list after the list is finalized, from 15 days before the elections till 48 hours before the election. Now such changes are done by the Ministry<sup>801</sup>.

# REPUBLIC ELECTORAL COMMISSION

## Recommendations

1. Government should propose and the Parliament should adopt the law which would establish professional, independent State Election Commission.

## In the meantime:

2. Parliament should provide a separate budget line for financing the REC, for greater transparency of its spending and efficient control.
3. REC should submit work reports and the Parliament should review these reports.
4. REC should update information on its web-page, including Information Directory.
5. REC should introduce the practice to make available material and agenda to the REC members and attending journalists before the session.

799 Parliamentary and Early Presidential Elections 6 and 20 May 2012 - OSCE/ODIHR Limited Election Observation Mission Final Report

800 Early Parliamentary Elections, 16 March 2014 - OSCE/ODIHR Limited Election Observation Mission Final Report. Also, a Supreme Court decision from 2007, maintains that the REC "is not authorized to annul elections in a polling station ex officio, without a complaint being lodged".

801 The Law on the single electoral register Voters Register







# OMBUDSMAN

## National Integrity System

**Summary:** The Ombudsman faces with the problem of lack of resources, primarily human resources, which is a consequence of lack of adequate premises. All governments in the past have failed to provide adequate premises. The Ombudsman acts independently from the executive authority, but there are attempts to draw him into political debates or to politicize his reports.

The Ombudsman's work is transparent and its results are visible. Integrity of the institution of Ombudsman is high, although there have been political attempts to question the integrity of the current ombudsman. The Ombudsman is active and effective in promoting good practice and ethical behavior.



| OMBUDSMAN  |                         |                           |                           |
|--|-------------------------|---------------------------|---------------------------|
| Overall Pillar Score (2015): 77 / 100<br>Overall Pillar Score (2011): 75 / 100 |                         |                           |                           |
| Dimension  | Indicator               | Law                       | Practice                  |
| <b>Capacity</b><br>67 / 100  | Resources               | /                         | 50 (2015),<br>50 (2011)   |
|  | Independence            | 75 (2015),<br>75 (2011)   | 75 (2015),<br>75 (2011)   |
| <b>Governance</b><br>83 / 100  | Transparency            | 100 (2015),<br>100 (2011) | 100 (2015),<br>100 (2011) |
|  | Accountability          | 75 (2015),<br>75 (2011)   | 75 (2015),<br>75 (2011)   |
|  | Integrity               | 75 (2015),<br>75 (2011)   | 75 (2015),<br>75 (2011)   |
| <b>Role</b><br>75 / 100  | Investigation           | 75 (2015), 75 (2011)      |                           |
|  | Promoting good practice | 75 (2015), 50 (2011)      |                           |

**Structure** – The Ombudsman is an independent body, established by the Law, recognized in the Constitution<sup>802</sup>. The Ombudsman is elected for a five year mandate, by the Parliament's, qualified majority - majority of overall number of members of the Parliament, after the nomination by the Parliamentary Committee for Constitutional Affairs. Candidates are nominated to the Committee by the parties' parliamentary groups. The Ombudsman can be dismissed, within conditions stipulated by the Law, by a majority of overall number of members of the Parliament. The Ombudsman is accountable for its work to the Parliament.

The Ombudsman is authorized to control the legality and regularity of the work of administration bodies, except the work of the Parliament, the President of the Republic, Government, Constitutional Court, Courts and Public Prosecutions<sup>803</sup>. The Ombudsman may propose amendments to the laws from its competency and may submit an initiative for changes of other laws, by-laws and general acts<sup>804</sup>, as well as to initiate procedures before the Constitutional Court for the evaluation of the constitutionality and legality of regulations<sup>805</sup>. The Ombudsman has four deputies in charge of children's rights and gender equality, national minority rights, rights of disabled persons and for the protection of rights of prisoners<sup>806</sup>.

802 The Constitution of Serbia, Article 138

803 The Law on Protector of Citizens, Article 17

804 The Law on Protector of Citizens, Article 18

805 The Law on Protector of Citizens, Article 19

806 The Law on Protector of Citizens, Article 6, <http://zastitnik.rs/index.php/lang-sr/o-nama/zamenici-zastitnika-gradjana>



# Assessment

## Capacity

### Resources (Practice)

*To what extent does the ombudsman has adequate resources to achieve its goals in practice?*

**Score: 50/2015 (50/2011)**

The Ombudsman does not have adequate resources for its work. There are not enough human resources, and this is caused by the lack of appropriate premises, and the ombudsman has been facing with this problem since it was established. All governments in the past, regardless of their political support for the Ombudsman, have failed to provide adequate premises.

The Ombudsman has been in temporary premises since its establishment in 2007. From 2010 it shared a building with the Commissioner for Information of Public Importance and Personal Data Protection, and in 2013, when the Commissioner moved to new premises, the Ombudsman got additional offices. Those are still inadequate, however<sup>807</sup>. Those temporary premises were actually given to the Ombudsman in 2010 for its needs, until the building, which was designated by the Government's conclusion as a permanent Ombudsman's office, was renovated. In the meantime, this building was given to a newly founded Government-owned company which is supposed to be a partner in a controversial public-private business deal "Belgrade Waterfront", without previously annulling the first conclusion. A new decision on the Ombudsman's permanent office has not been made<sup>808</sup>.

According to the current Job Classification, the Ombudsman should have 63 employees. In December 2014 it had 52 permanent and 28 temporary employees. In November 2014 a new Job Classification, which envisages 101 permanent staff was adopted by the parliamentary Committee for Administrative, Budgetary, Mandate and Immunity Issues, but it had not been considered by the Parliament by the time this report was written.<sup>809</sup>

In June 2014, the Ombudsman faced a serious problem with its service, when the Parliamentary Committee hesitated to give consent to an extension of engagement for 19 temporarily employed persons in the Ombudsman's service. It coincided with the Ombudsman's harsh criticism of the Government for pressure on media. Chairman of the Parliamentary Committee claimed that the committee had more important issues on the agenda, although it considered such issues as fees for some deputies or consent for employment of staff in political parties' parliamentary groups<sup>810</sup>. Consent was finally given, after six weeks delay<sup>811</sup>.

The Ombudsman still faces the problem of staff leaving because salaries in some other state bodies are higher, and the Ombudsman, unlike the Government, does not have possibility to give financial incentives to its staff<sup>812</sup>.

807 Interview with ombudsman, Sasa Jankovic, April 2015.

808 Ombudsman's Annual report for 2014

809 Interview with ombudsman Sasa Jankovic, April 2015

810 [http://www.transparentnost.org.rs/stari/index.php?option=com\\_content&view=article&id=687%3Askandalozni-izgovor&catid=34%3Afacebook-naslovi&Itemid=27&lang=sr](http://www.transparentnost.org.rs/stari/index.php?option=com_content&view=article&id=687%3Askandalozni-izgovor&catid=34%3Afacebook-naslovi&Itemid=27&lang=sr)

811 Interview with ombudsman Sasa Jankovic, April 2015

812 Interview with ombudsman, Sasa Jankovic, April 2015.



The Ombudsman's budget satisfies the basic needs to conduct anticipated activities with the current number of employees. The Ombudsman is delivering to the Ministry of Finance its financial plan and it becomes a part of the budget of Serbia which is adopted by the Parliament upon the proposal of the Government<sup>813</sup>. The Law envisages that "annual funds for the work of the Ombudsman shall be sufficient to enable the effective and efficient performance of the function, as well as to comply with the macroeconomic policy of the Republic"<sup>814</sup>. The Budget for 2014 was RSD 176.580.000 RSD (USD 2.1 million), which is 7,8% more than in 2013 (RSD 163.824.000 RSD - USD 1.9 million). In 2014 only 90% of the planned budget was spent. The budget for 2015 was cut, due to austerity measures, to almost all beneficiaries, including the Ombudsman. It was RSD 171.417.000 (USD 1.7 million), which was still more than what was spent in 2014<sup>815</sup>.

The Ombudsman's service is well equipped. Additional computers and other technical devices have been purchased in 2014, mainly from the budget funds, or projects financed by international organisations and foreign governments<sup>816</sup>.

According to the Ombudsman<sup>817</sup>, the employees in the Service have appropriate skills, knowledge and experience. Further trainings is hampered because of the lack of staff - absence from work for any reason, including education, creates additional pressure because of the backlog of work<sup>818</sup>.

## Independence (Law)

*To what extent, according to legislation is the ombudsman independent?*

**Score: 75/2015 (75/2011)**

According to the Constitution and the Law, the Ombudsman is independent. The Law envisages that the Ombudsman is "independent and autonomous in performance of its duties" and "no one has the right to influence the work and actions of the Ombudsman"<sup>819</sup>.

According to the Constitution, the Ombudsman is an independent state body which protects citizens' rights and monitors the work of public administration bodies and other bodies to which public powers have been delegated, except Parliament, President, Government, Constitutional Court, courts and public prosecutions. The Ombudsman is elected and dismissed by the Parliament, and it is accountable for its work to the Parliament. The Ombudsman enjoys immunity as a member of the Parliament<sup>820</sup>.

The Law envisages election and dismissal procedures, which gives enough protection to the Ombudsman from politically motivated dismissal, but does not protect election process from direct influence of politics. Namely, the Ombudsman is elected by the Parliament, after the motion of the Parliamentary Committee for Constitutional Affairs. Parties' parliamentary groups can submit their proposals to the Committee. The Ombudsman is elected by the majority of all members of the Parliament votes<sup>821</sup>.

813 The Law on Protector of Citizens, Article 37

814 The Law on Protector of Citizens, Article 37

815 The Law on Budget, <http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2013/4174-13Lat.pdf>  
<http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2014/4598-14.pdf>

816 Annual report for 2014

817 Interview with ombudsman Sasa Jankovic, April 2015

818 Interview with ombudsman Sasa Jankovic, April 2015

819 The Law on Protector of Citizens, Article 2

820 The Constitution of Serbia, Article 138

821 The Law on Protector of Citizens, Article 4

Criteria for the election of the Ombudsman are nationality of Serbia, bachelor's degree in law, ten years of experience in a legal jobs relevant to the purview of the Protector of Citizens, "high moral character and qualifications" and significant experience in the protection of civil rights<sup>822</sup>.

Once elected, the Ombudsman cannot hold other functions or perform a professional activity, duty or work that could influence his independence. He/she cannot be a member of political parties, and he cannot make political statements<sup>823</sup>.

The Ombudsman has the right to a salary that is the same as the salary of the President of the Constitutional Court. In February 2015 that was around RSD 358.000 RSD (USD 3.350), which is app 8.3 average salaries in Serbia<sup>824</sup>.

The Ombudsman can be dismissed after the proposal submitted by the Parliamentary Committee for Constitutional Affairs or at least 1/3 (84) of the members of the Parliament, and by majority of votes of overall number of members of the Parliament (126). However, the Ombudsman can be dismissed only if he/she "performs the function incompetently or unprofessionally, performs other functions, engages in a professional activity, duty or work that can influence his/her independence, if he/she is in the conflict of interest or charged for a felony which makes him unsuitable for performing the function"<sup>825</sup>.

The Ombudsman proposes to the Parliament candidates for four deputies, which are elected for the same period as the Ombudsman and according to the same conditions, besides experience which is in this case five years<sup>826</sup>.

According to the Law<sup>827</sup>, the Ombudsman's employees are chosen through publicly announced competition. The Commission, comprised of three Ombudsman'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). The work of employees is evaluated according to provisions of the Law on Civil Servants and these evaluations may influence on the eventual dismissal. According to these rules civil servants can be dismissed, although such cases have not occurred since the establishment of the Ombudsman<sup>828</sup>.

The Ombudsman cannot enforce the implementation of his recommendations and 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 evaluations because its acts do not have legal power and they formally do not impose obligations for state bodies.

822 The Law on Protector of Citizens, Article 5

823 The Law on Protector of Citizens, Articles 9, 10 and 10a

824 The Ombudsman's Information Directory, <http://zastitnik.rs/index.php/lang-sr/component/content/article/132>

825 The Law on Protector of Citizens, Article 12

826 The Law on Protector of Citizens, Article 6

827 The Law on Civil Servants, Articles 50-57

828 The Law on Civil Servants, Articles 76-81, The Labor Law, Articles 175-191, interview with ombudsman Sasa Jankovic, April 2015

## Independence (Practice)

*To what extent is the ombudsman independent in practice?*

**Score: 75/2015 (75/2011)**

The Ombudsman is independent in practice. However, there are attempts to draw the Ombudsman into political debate and to present his views as politically motivated. Dissatisfied with the Ombudsman's criticism of the Government, officials of the ruling party, including some of members of the Parliament, claimed that the Ombudsman "conduct political pressure", "deals with politics", "spreads lies and gossips" and "abuse the function of Ombudsman for his own political ambitions"<sup>829</sup>. Although "making political statements" is forbidden for the Ombudsman by the Law, officials of the ruling party have not initiated the dismissal of the Ombudsman (at least not until this report was drafted, in April 2015)<sup>830</sup>, but they have insisted he should resign. This was followed by the campaign in several media close to the Government and the ruling party, publishing data from police sources, about the suicide of ombudsman's friend in 1993, claiming that it was an unsolved mystery and indicating that ombudsman should resign because of this<sup>831</sup>. This campaign was fueled by the Ministry of Interior which published only partial documents about the case. Ombudsman replied that he will not succumb to pressure<sup>832</sup>. Allegations proved to be untrue after police published all the documents about the case<sup>833</sup>. However, one of ruling party officials continued to insist that Ombudsman should resign, although he confirmed there is no ground for ombudsman's dismissal<sup>834</sup>. In general, ruling party officials, including Prime Minister insisted that they are "respecting the institution" of the Ombudsman, but that a person, a head of the institution, is "something else"<sup>835</sup>, and claiming they are trying to protect the institution from the person of ombudsman<sup>836</sup>.

The OSCE Mission to Serbia reacted, expressing "concern about the ongoing campaign against the Serbian Ombudsman institution and Ombudsman Sasa Jankovic"<sup>837</sup>. This, caused reaction of Serbian Minister of Foreign Affairs, claiming that the OSCE Mission should have not published such a statement on its own, without consulting the OSCE Permanent Council, chaired by Serbia, which was presiding over the OSCE in 2015<sup>838</sup>. Ombudsman Sasa Jankovic said that the whole case was an attempt of politicization of his work and attempt of ruling parties to drawn him into politics: "The easiest way to defend oneself from criticism is to declare that anyone who criticizes is politically motivated"<sup>839</sup>.

The Ombudsman has the "A class" accreditation by the International Coordinating Committee of National Human Rights Institutions, which means he fulfills stipulated principles including independence as the "key element"<sup>840</sup>.

There is still no complete financial independence of the Ombudsman. There is no difference in budget planning between independent bodies, including Ombudsman, and the executive authority bodies. All of them have to comply with budget policies of the Government of Serbia. In the Ombudsman's Annual report for 2014 it was stated that, "in order to ensure the financial independence in practice, the law should expressly provide that the Ombudsman disposes of the funds that are

829 <https://www.sns.org.rs/novosti/saopštenja/jovicic-sasa-jankovic-vrsi-najvece-politicke-pritiskehttp://www.rts.rs/page/stories/sr/story/9/Politika/1889911/Vladimir+%C4%90ukanovi%C4%87+poziva+ombudsmana+da+podnese+ostavku.html>

830 <http://www.blic.rs/Vesti/Politika/538481/SNS-nece-traziti-smenu-Sase-Jankovica/ostavi-komentar>

831 <http://rs.n1info.com/a53835/Vesti/Napad-na-Sasu-Jankovica.html>

832 [http://www.danas.rs/danasrs/drustvo/necu\\_se\\_povuci\\_izguracu\\_ovo\\_do\\_kraja\\_55.html?news\\_id=300771](http://www.danas.rs/danasrs/drustvo/necu_se_povuci_izguracu_ovo_do_kraja_55.html?news_id=300771)

833 [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=04&dd=25&nav\\_category=16&nav\\_id=984917](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=04&dd=25&nav_category=16&nav_id=984917)

834 [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=04&dd=25&nav\\_category=11&nav\\_id=984961](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=04&dd=25&nav_category=11&nav_id=984961)

835 <http://www.blic.rs/Vesti/Politika/552976/Vucic-Postujem-instituciju-ombudsmana-licnosti-su-nesto-drugo>

836 <http://www.studion.rs/info/vest.php?id=119013&kategorija=Politika>

837 <http://www.osce.org/srbia/152396>

838 <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1896229/Da%C4%8Di%C4%87%3A+Za%C4%8Du%C4%91uju%C4%87e+sao+p%C5%A1tenje+OEBS-a+o+Jankovi%C4%87u.html>

839 Interview with ombudsman Sasa Jankovic, April 2015

840 <http://nhri.ohchr.org/EN/Contact/NHRIs/Pages/default.aspx>

defined in the budget for the work of this body, and that the Government may not, without the consent of the Ombudsman, suspend, delay or restrict the exercise of the authority's budget<sup>841</sup>.

During the re-election of the Ombudsman in 2012 and recruitment of employees there were no recorded attempts of political influence. The re-election of the current Ombudsman in 2012 was supported by all political parties in the Parliament<sup>842</sup>.

# 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: 100/2015 (100/2011)**

There are comprehensive provisions that should ensure that activities of the Ombudsman are transparent and the public can obtain all relevant information on the work and decision-making processes.

The Ombudsman is obliged to submit a regular annual report to the Parliament. The report must include information on activities in the preceding year, noted irregularities in the work of administrative authorities and recommendations to improve the status of citizens in relation to administrative authorities<sup>843</sup>. The deadline for submitting the report is March 15th. The report must be published in the "Official Gazette of the Republic of Serbia" and on the web site of the Ombudsman and it must be delivered to media<sup>844</sup>.

Proceedings before the Ombudsman are not exempt from provisions of the Law on Free Access to Information of Public Importance<sup>845</sup>.

The Ombudsman also needs to notify any complainant and the administrative authority involved about the beginning and end of a proceeding<sup>846</sup>. Regarding publishing individual recommendations to authorities, the Ombudsman is not obliged by the Law to do so, but he/she is given the possibility. Namely, the Law says that "if the administrative authority fails to proceed pursuant to the recommendation, the Ombudsman may inform the public, the National Assembly and the Government, and may recommend proceedings to determine the accountability of the official in charge of the administrative authority"<sup>847</sup>.

The Ombudsman and deputies are obligated to keep the personal data they obtained in performing their function confidential after resigning from the duty. The obligation of secrecy also applies to employees in the professional service of the Ombudsman<sup>848</sup>.

The Ombudsman and its deputies are considered public officials and they have obligations stipulated by the Law on Anti-Corruption Agency, including obligation to submit declarations on assets and income. Part of this data is public<sup>849</sup>.

841 Annual report for 2014

842 <http://www.politika.rs/rubrike/Politika/Sasa-Jankovic-ponovo-izabran-za-zastitnika-gradjana.lt.html>

843 The Law on Protector of Citizens, Article 33

844 The Law on Protector of Citizens, Article 33

845 [http://www.paragraf.rs/propisi/zakon\\_o\\_slobodnom\\_pristupu\\_informacijama\\_od\\_javnog\\_znacaja.html](http://www.paragraf.rs/propisi/zakon_o_slobodnom_pristupu_informacijama_od_javnog_znacaja.html)

846 The Law on Protector of Citizens, Article 29

847 The Law on Protector of Citizens, Article 31

848 The Law on Protector of Citizens, Article 21

849 The Law on Anti-Corruption Agency, Article 47

## Transparency (Practice)

*To what extent is there transparency in activities and decision-making processes of the ombudsman in practice?*

**Score: 100/2015 (100/2011)**

Activities and the decision-making processes of the Ombudsman are transparent in practice. The public has regular access to its work, and the Ombudsman's web site presents even more information than it is stipulated by the law.

Although the Law stipulates that the Ombudsman might publish recommendations "when a public authority fails to comply with it"<sup>850</sup>, the Ombudsman publishes regularly recommendations and all related information – such as replies from authorities. As of April 2015, there are more than 500 recommendations published on the web site. The cases are anonymized<sup>851</sup>.

All annual reports, as well as numerous special reports<sup>852</sup> are also published on the web site<sup>853</sup>. An information booklet is published on the web site, updated, and comprehensive. It includes detailed information about the Ombudsman's budget<sup>854</sup>. Reports contain details on work in general, as well as specific examples. It also contains detailed statistics on contacts with citizens and complaints.

In 2014 there were 23,340 contacts of citizens with the Ombudsman – most of them, 12,288, on telephone. - There were 4,913 citizens received in the office and 4,877 complaints received. The Ombudsman finalized 4,798 cases initiated either through complaints or the Ombudsman's own initiative.

| Finalized actions of the Ombudsman upon complaints in 2014  |              |
|---|--------------|
| Complaints dismissed  | 2,778        |
| Complaints rejected as unfounded  | 1,042        |
| Complaints withdrawn by complainants  | 587          |
| Procedure on complaint discontinued – administration authority has eliminated deficiencies in its operation | 246          |
| Recommendations issued by Ombudsman   | 113          |
| Opinions given by Ombudsman   | 20           |
| Other (Statements by Ombudsman, death of complainant)   | 12           |
| <b>Total</b>  | <b>4,798</b> |

The Ombudsman regularly releases press statements<sup>855</sup>. According to research performed by a public relations agency amongst journalists, the Ombudsman as institution and Ombudsman Sasa Jankovic as individual had the best relationship with media in 2014 among the state authorities and officials<sup>856</sup>.

Declarations of assets and income, submitted by the Ombudsman and his deputies are public on the web-site of the Anti-Corruption Agency<sup>857</sup>.

850 The Law on Protector of Citizens, Article 31

851 <http://zastitnik.rs/index.php/lang-sr/2012-02-07-14-03-33>

852 <http://zastitnik.rs/index.php/lang-sr/izvestaji/posebnii-izvestaji>

853 <http://zastitnik.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>

854 <http://zastitnik.rs/index.php/lang-sr/component/content/article/132>

855 <http://zastitnik.rs/index.php/lang-sr/2011-12-25-10-17-15/2011-12-25-10-13-14>

856 <http://www.pragma.rs/vesti.php>

857 <http://www.acas.rs/pretraga-registra/?pismo=lat>

## Accountability (Law)

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

**Score: 75/2015 (75/2011)**

The Ombudsman is accountable to the Parliament<sup>858</sup>. The Law envisages that Ombudsman submits to the Parliament a regular annual report that includes information on activities in the preceding year, noted irregularities in the work of authorities and recommendations for improvement of the status of citizens' rights in relation to administrative authorities. No other details on what should be included in the report are envisaged by the regulation.

In accordance with the Rules of Procedure of the National Assembly<sup>859</sup> and its provisions on "conducting oversight over the work of state institutions, organizations and bodies", the report is considered by the Parliament's relevant committees, within 30 days from the day of submittal of the report, and the Ombudsman is invited to the session of the Committee.

Upon consideration of the report, the Committee submits a report to the Parliament together with its draft conclusion which may contain recommendations for improvement of the situation, based on recommendations from the Ombudsman's report.

The Parliament considers the report of the Ombudsman and the report of the competent committee, with the committee's draft conclusion. Upon conclusion of the debate, members of the Parliament are not voting for the Ombudsman's report, but they are adopting the Committee's conclusion on the measures for improvement of the situation<sup>860</sup>. The report is made available to the public at the same time it is delivered to the Parliament<sup>861</sup>.

The Ombudsman is obliged by the Law on Free Access to Information to publish the Information Booklet. The content of the Booklet is stipulated by the Instructions for the creation and publication of the Information Booklet on Public Authority Work<sup>862</sup>.

There is no legal remedy against activities of the Ombudsman, because its acts – evaluations, recommendations and opinions on irregularities do not have legal power and they formally do not impose obligations for state bodies nor citizens. However, there is no explicit prohibition to challenge an act of the Ombudsman before a court.

## Accountability (Practice)

*To what extent does the ombudsman has to report and be accountable for its actions in practice?*

**Score: 75/2015 (75/2011)**

The Ombudsman regularly submits annual reports to the Parliament. The report for 2014 was discussed by two relevant parliamentary committees on April 14th and 15th 2015, within the deadline stipulated by the Rules of Procedure of the National Assembly. The draft conclusions, however, had not been adopted by the time this report was written.

<sup>858</sup> The Law on Protector of Citizens, Article 33

<sup>859</sup> The Rules of Procedure of the National Assembly, Articles 237-241

<sup>860</sup> The Rules of Procedure of the National Assembly, Articles 238

<sup>861</sup> The Law on Protector of Citizens, Article 33

<sup>862</sup> <http://www.poverenik.rs/en/pravni-okvir-pi/bylaws-ai.html>



The committees' conclusions on 2013 report were adopted by the Parliament in June 2014. This included the obligation of the relevant parliamentary committees to monitor implementation of recommendations, as well as the obligation of the Government to report, within six months, on implementation of the conclusions<sup>863</sup>. In the Parliament's reply to Transparency Serbia's request, regarding these obligations, it was stated that the Parliamentary Committee for Human Rights had several sessions in which Ombudsman's recommendations, initiatives or specific reports were discussed. The Government, however, had not reported on its activities<sup>864</sup>.

The Ombudsman's annual report contains information about rights in specific fields, such as children's rights, rights of national minorities, gender equality and rights of LGBT population, rights of persons with disabilities, rights of persons deprived of freedom, and about good administration in numerous areas – health system, social welfare, labor, interior, finance and economy, justice, defense, local self-government, building and planning, energy and mining, security services. Each of these chapters includes analysis of the situation and problems, accomplishments by the state and the Ombudsman in the previous period, previous Ombudsman's recommendations which were not accepted, recommendations for further actions and specific examples of breaching citizens' rights in that area<sup>865</sup>. The report also contains general observations on state of citizens' rights. Some of those, especially about situation in the media<sup>866</sup>, triggered some of ruling parties' members of the Parliament to accuse the Ombudsman of being politically biased, publishing observations without evidence. The Ombudsman urged them to read the whole reports, which „contains hundreds of examples“<sup>867</sup>.

Results of the Ombudsman's work are described in detail in the report. There is also detailed data on budget<sup>868</sup>. In 2014 the Ombudsman published 21 special reports, mostly on visits to police stations, prisons and social welfare institutions<sup>869</sup>.

There were no examples of refuting the Ombudsman's acts or official appeals against the Ombudsman's findings and recommendations<sup>870</sup>. The State Audit Institution had not audited the Ombudsman's office<sup>871</sup>. The Ombudsman has its internal financial control – the internal audit<sup>872</sup>.

## Integrity mechanisms (Law)

*To what extent are there mechanisms that should ensure the integrity of the ombudsman?*

**Score: 75/2015 (75/2011)**

There are several regulations, containing rules on integrity and ethical behavior, which are followed by the Ombudsman. The Law on Protector of Citizens envisages that ombudsman and his/her deputies must not hold other public office, perform another professional activity, or any duty or task that might influence their independence and autonomy, they must not be members of political parties nor make any political statements<sup>873</sup>. The Law on Anti-Corruption Agency applies to the Ombudsman and deputies and it includes provisions on conflict of interest, other jobs and func-

863 [http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala\\_akta/2014/RS39-14.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2014/RS39-14.pdf)[http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala\\_akta/2014/RS40-14.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2014/RS40-14.pdf)

864 Reply to TS request, January 2015, <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7333-vlada-ne-izvrsava-obaveze>

865 <http://zastitnik.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>

866 More on this topic in NIS chapter Media

867 [http://www.danas.rs/danasrs/drustvo/pravo\\_danas/djukanovic\\_jankovicu\\_predjite\\_u\\_politicare\\_jankovic\\_moja\\_politika\\_je\\_kontrola\\_vlasti\\_1118.html?news\\_id=300317](http://www.danas.rs/danasrs/drustvo/pravo_danas/djukanovic_jankovicu_predjite_u_politicare_jankovic_moja_politika_je_kontrola_vlasti_1118.html?news_id=300317)

868 <http://zastitnik.rs/index.php/lang-sr/izvestaji/godisnji-izvestaji>

869 <http://zastitnik.rs/index.php/lang-sr/izvestaji/posebni-izvestaji>

870 Interview with ombudsman Sasa Jankovic, April 2015

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

872 Interview with ombudsman Sasa Jankovic, April 2015

873 The Law on Protector of Citizens, Articles 9, 10 and 10a

tions, gifts and hospitality, assets and income declarations<sup>874</sup>. The Law on Civil Servants, which contains provisions on conflict of interest, also applies to the Ombudsman's staff<sup>875</sup>.

The Ombudsman proceeds according to the Code of Good Management and the International Ombudsman Association Code of Ethics<sup>876</sup>. The Code of Good Management was written by the Ombudsman in 2010 and delivered to the Parliament. It was never discussed nor adopted by the Parliament<sup>877</sup>. It was based on the European Code of Good Administrative Behavior, adopted by European Parliament in 2001, and it contains basic rules on ethical behavior which the Ombudsman controls in his work<sup>878</sup>.

The International Ombudsman Association Code of Ethics covers independence, neutrality and impartiality, confidentiality and includes a selection of best practices<sup>879</sup>.

## Integrity mechanisms (Practice)

*To what extent is the integrity of the ombudsman ensured in practice?*

**Score: 75/2015 (75/2011)**

There had never been a public complaint against the Ombudsman regarding a possible breach of rules on neutrality, impartiality, nor breach of the rules on conflict of interest, until 2014 when representatives of the ruling party started accusing him of being politically biased. This coincided with ombudsman's remarks regarding freedom of media<sup>880</sup>. It happened again in March and April 2015 after the Ombudsman had published its 2014 annual report<sup>881</sup>. The Ombudsman dismissed allegations and accusations<sup>882</sup>. He got support from Commissioner for Information of Public Importance and Personal Data Protection, as well as from numerous public figures in a petition, initiated by one non-governmental organization<sup>883</sup>.

The Ombudsman's and deputies' asset declarations are published in timely manner. They are comprehensive to the extent stipulated by the Law on Anti-Corruption Agency<sup>884</sup>.

As for confidentiality, in the previous period there was one warning from the Commissioner for Information of Public Importance and Personal Data Protection for revealing data which should have been hidden in a document provided to an information seeker<sup>885</sup>.

According to the Ombudsman, there were no examples that employees in the Service were acting contrary to the ethical rules or breaching the integrity standards. In 2014 there were two warnings to employees for minor breaches of work duties, but the cases were not related either to ethics nor integrity<sup>886</sup>. According to the Ombudsman, employees are, regularly trained about integrity, but details about training are not available<sup>887</sup>.

874 The Law on Anti-Corruption Agency, Articles 27-47

875 The Law on Civil Servants, Articles 23a, 25-31

876 <http://zastitnik.rs/index.php/lang-sr/vazni-pravni-akti/eticki-kodeks-medjunarodnog-udruzenja-ombudsmana>

877 <http://www.paragraf.rs/dnevne-vesti/210213/210213-vest10.html>

878 [www.ombudsman.rs/attachments/-01\\_KODEKS%20tekst%20finalni.DOC](http://www.ombudsman.rs/attachments/-01_KODEKS%20tekst%20finalni.DOC)

879 [http://zastitnik.rs/attachments/288\\_IOA%20Najbolje%20prakse.doc](http://zastitnik.rs/attachments/288_IOA%20Najbolje%20prakse.doc)

880 [http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=04&dd=15&nav\\_category=11&nav\\_id=980940](http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=04&dd=15&nav_category=11&nav_id=980940)

881 <http://www.rts.rs/page/stories/sr/story/9/Politika/1889911/Vladimir+C4%90ukanovi%C4%87+poziva+ombudsmana+da+podnese+ostavku.html> More details in Independence - Practice Chapter

882 [http://www.danas.rs/danasrs/drustvo/necu\\_se\\_povuci\\_izguracu\\_ovo\\_do\\_kraja\\_55.html?news\\_id=300771](http://www.danas.rs/danasrs/drustvo/necu_se_povuci_izguracu_ovo_do_kraja_55.html?news_id=300771)

883 <http://www.policycenter.info/apel-upozorenja-demokratskoj-javnosti/>

884 <http://www.acas.rs/acasPublic/imovinaFunkcioneraSearch.htm>

885 Interview with ombudsman Sasa Jankovic, April 2015

886 Interview with ombudsman Sasa Jankovic, April 2015

887 Interview with ombudsman Sasa Jankovic, April 2015

# Role

## Investigation (Law and Practice)

*To what extent is the ombudsman active and effective in dealing with complaints from the public?*

**Score: 75/2015 (75/2011)**

The Ombudsman is effective in dealing with citizens' complaints, although it has arguably reached its maximum efficiency within its existing capacities. According to the Ombudsman, „the current volume of activity is unsustainable“<sup>888</sup>. The number of complaints brought before the Ombudsman had been increasing since the establishment of the institution in 2007, until 2013. In 2014 it decreased for the first time<sup>889</sup>. Apart from acting on complaints, the Ombudsman acts proactive. One of the prominent examples was investigations about incidents during the Pride Parade in 2014 in which Prime-minister's brother was involved<sup>890</sup>.

Citizens have the possibility to address the Ombudsman on several phone numbers and talk directly with employees that deal with their cases. Each year, there are over 20,000 contacts with citizens.

| Information on contacts with citizens               |              |              |
|---|--------------|--------------|
| Types of contacts                                   | 2013         | 2014         |
| No. of citizens received in person                  | 5099         | 4913         |
| No. of phone conversations with citizens            | 13338        | 12288        |
| Various citizens' submissions other than complaints | 1220         | 1262         |
| No. of formal complaints                            | 5025         | 4877         |
| <b>Total number of contacts with citizens</b>       | <b>24682</b> | <b>23340</b> |

Each of these contacts is resulting in a formal procedure – whether investigation is initiated or just formally concluded where there is no ground for further action.

| Procedures completed by the Protector of Citizens |              |              |              |
|---|--------------|--------------|--------------|
|   | 2012         | 2013         | 2014         |
| Pursuant to complaints and on own initiative      | 3957         | 4705         | 4.798        |
| Pursuant to legislative initiatives               | 20           | 349          | 76           |
| Pursuant to other contacts with the citizens      | 15213        | 17959        | 16989        |
| <b>Total activities completed</b>                 | <b>19190</b> | <b>23013</b> | <b>21863</b> |

When it comes to citizens' complaints, the Ombudsman conducts the proceeding for each complaint, except for complaints for which is not competent, which are untimely, premature, anonymous, disorderly or submitted by an unauthorized person. A large number of complaints received are rejected by the Ombudsman because they do not meet the statutory requirements for dealing with them.

<sup>888</sup> Annual report for 2013

<sup>889</sup> Annual report for 2014

<sup>890</sup> <http://www.blic.rs/Vesti/Hronika/526480/Ombudsman-o-premlacivanju-Andreja-Vucica-tokom-Parade-ponosa>

| Outcome of handling of complaints  |             |             |
|--|-------------|-------------|
|  | 2013        | 2014        |
| No. of dismissed complaints  | 2560        | 2778        |
| Unfounded complaints   | 1203        | 1042        |
| Authority rectified the irregularity upon learning that control of its work was initiated (investigation closed) | 560         | 587         |
| Complaints covered by recommendations  | 183         | 246         |
| Complaints dropped by complainants   | 142         | 113         |
| Opinion of the Protector of Citizens   | 32          | 20          |
| Statement of the Protector of Citizens   | 19          | 6           |
| Death of a complainant   | 6           | 6           |
| <b>Total:</b>  | <b>4705</b> | <b>4798</b> |

There was total of 1,113 full investigations concluded in 2014, which is 12,5% less than in 2013<sup>891</sup>. Irregularities were found in 833 cases and 799 recommendations were provided to authorities. The law stipulates that an administrative body is obliged to notify the Ombudsman within 15 to 60 days whether it has proceeded on a recommendation and removed the shortcoming. Most of recommendations (87.5%) were fulfilled, leaving 8.5 % unfulfilled and 4% still within the timeframe for fulfillment<sup>892</sup>.

The most numerous are the cases of violation of good governance (44% of all complaints), followed by complaints regarding economic, social and cultural rights (40%). Most complaints refer to work of representatives of ministries (23%), government's agencies, administrations, public services and local self-government.

According to investigation, published in media in May 2015, the public has positive perception of the Ombudsman<sup>893</sup>.

## 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: 75/2015 (50/2011)**

The Ombudsman is very active and effective in promoting good practice and ethical behavior. According to the Law, the Ombudsman cannot perform the control of work of the Government as a collegial body and its commissions, but it can control ministries and all other executive bodies<sup>894</sup>. The majority of the Ombudsman's initiatives, recommendations and opinions are directed to the Government, which is in charge for implementation of recommendations concerning ministries or other state bodies.

In 2014 the Ombudsman submitted seven initiatives to the Government to adopt or amend regulations. None was accepted. In May 2013, the Ombudsman submitted the amendments to two laws, from the field of children welfare. The Government gave a negative opinion to this proposal, and informed the President of the Parliament that it will promptly make better proposals for improving the situation in these fields. The Ombudsman's proposal has never been discussed by the Parliament, and the Government had not made its own proposal since.

<sup>891</sup> Annual report 2014

<sup>892</sup> Annual report 2014

<sup>893</sup> <http://www.blic.rs/Vesti/Politika/553454/OTKRIVAMO-Sta-stoji-iza-kampanje-protiv-ombudsmana-Vlast-se-plasi-rejtinga-Sase-Jankovica>

<sup>894</sup> The Law on Protector of Citizens, Article 17

The Code of Good Governance, which was drafted by the Ombudsman and delivered to the President of the Parliament in 2010, has never been discussed nor adopted by the Parliament.

# OMBUDSMAN

## Recommendations

1. Government should provide permanent and adequate premises for the work of the Ombudsman
2. After the premises are provided, the increase of the number of employees should be envisaged by the Ombudsman and approved by the Parliamentary committee.
3. Parliament should provide mechanism for monitoring the implementation of the Ombudsman's recommendations as well as parliamentary committees' recommendations regarding Ombudsman's annual report. Parliament should foresee sanctions for not reporting on implementation and not implementing recommendations.
4. Parliament should include the "right to good management" as a basic civil right while amending the Constitution of Serbia.



# THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

## National Integrity System

**Summary:** The Commissioner<sup>895</sup> still faces the problem of limited resources, primarily with the number of staff, but the improvement within this area has started since the problem with premises had been solved. The Commissioner needs 94 employees, it was envisaged that at the end of 2014 it has 73 employees, but in December 2014 it had 57. There is a legal framework that guarantees the independence of the Commissioner to a certain level, but it could be further improved. The commissioner is elected by the Parliament upon parliamentary committee proposal and political impartiality in such procedure could be questioned. However, the Law gives solid protection to the commissioner from arbitrary removal from the office. In practice the Commissioner acts independently from political influence. There have been no attempts to interfere with the activities of the Commissioner, apart from occasional verbal attacks against the head of the institution. The operational independence of the institution largely depends on the skills and qualities of the commissioner. The work of the institution is transparent, even beyond the limits laid down by the law. Relevant information on the organization and functioning of the Commissioner is available to the public. The Commissioner is recognized as being active in the anti-corruption field, in particular through raising awareness regarding free access to information and corruption in general.

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895

The Commissioner with capital "C" refers to the institution and the commissioner with "c" refers to person, the head of the institution.





## COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

Overall Pillar Score (2015): 79 / 100

Overall Pillar Score (2011): 73 / 100

| Dimension                     | Indicator               | Law                                   | Practice                                |
|-------------------------------|-------------------------|---------------------------------------|---|
| <b>Capacity</b><br>69 / 100   | Resources               | <b>50</b> (2015),<br><b>50</b> (2011) | <b>75</b> (2015),<br><b>50</b> (2011)   |
|                               | Independence            | <b>75</b> (2015),<br><b>75</b> (2011) | <b>75</b> (2015),<br><b>50</b> (2011)   |
| <b>Governance</b><br>79 / 100 | Transparency            | <b>50</b> (2015),<br><b>50</b> (2011) | <b>100</b> (2015),<br><b>100</b> (2011) |
|                               | Accountability          | <b>75</b> (2015),<br><b>75</b> (2011) | <b>75</b> (2015),<br><b>75</b> (2011)   |
|                               | Integrity               | <b>75</b> (2015),<br><b>75</b> (2011) | <b>100</b> (2015),<br><b>75</b> (2011)  |
| <b>Role</b><br>100 / 100      | Investigation           | <b>100</b> (2015), <b>100</b> (2011)  |   |
|                               | Promoting good practice | <b>100</b> (2015), <b>100</b> (2011)  |   |

**Structure** – The Commissioner for Information of Public Importance is an independent institution established in accordance with the Law adopted in 2004. In 2008, the Law on Personal Data Protection was adopted and the Commissioner became the Commissioner for Information of Public Importance and Personal Data Protection. For reasons of promoting transparency, free access of information is considered to be the anti-corruption area of the Commissioner's activities and this analysis is primarily focused on this part of its jurisdiction.

The head of the institution is a commissioner, elected by the Parliament for a seven years term. The commissioner has two deputies, one in charge of free access to information area and other in charge of data protection. They are elected by the Parliament upon the proposition of the commissioner. There are six sectors within institution: Sector for Harmonization and Cooperation (with Department for Personal Data protection and Group of the Right to Access Information), Sector for Appeals and Enforcement - Access to Information, Sector for Appeals and Complaints - Data Protection, Sector for Supervision (with six departments in charge of data protection within various areas, such as banking, insurance, trade, health, education, state authorities, judicial authorities), Sector of Information Technology, Sector for Common Affairs (logistics).



# Assessment

## Capacity

### Resources (Law)

*To what extent, according to legislation, does the commissioner or its equivalent have adequate resources to achieve goals of its work?*

**Score: 50/2015 (50/2011)**

There have not been any changes regarding legal framework for the Commissioner's resources since NIS 2011. The Law envisages that "required funding for the operations of the Commissioner and his/her expert service shall be allocated from the budget of the Republic of Serbia"<sup>896</sup>. This means that the Commissioner, as any other state body, prepares its draft financial plan, which is later approved (or rejected) 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 of providing premises<sup>897</sup>.

In accordance with the Law, the Commissioner is entitled to the same salary and other employment rights as a judge of the Supreme Court, as well as the right to reimbursement of costs incurred in the performance of his/her duties<sup>898</sup>. The salary level of the Commissioner's staff is regulated through the Law on Civil Servants<sup>899</sup>.

Legal provisions set the framework to provide resources to the Commissioner in the amount sufficient for the performance of his/her duties. However, there is no guarantee that it will be done. Parliament and the Government have discretion to reject the financial plan or work organization act of the Commissioner.

Some austerity measures apply on the Commissioner. Amendments to the Law on Budget System in December 2013 introduced the ban on employment in the public sector without approval of the Government. The Commissioner, as well as other independent authorities and Parliament, were excluded from this ban, by a provision which stated they only needed approval of the parliamentary committee for administrative issues and the budget<sup>900</sup>. Another austerity measure, which applied to the Commissioner, was reduction of the salaries - 20% on salaries above RSD 60.000 (USD 535) and 25% on salaries above RSD 100.000 (USD 900), envisaged by the Law on Decrease of Net Income of Persons in Public Sector<sup>901</sup>.

<sup>896</sup> The Law on Free Access to Information of Public Importance, Article 34

<sup>897</sup> Interview with the Commissioner, April 2015

<sup>898</sup> The Law on Free Access to Information of Public Importance, Article 32

<sup>899</sup> The Law on Free Access to Information of Public Importance, Article 34

<sup>900</sup> <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2013/4566-13.pdf>

<sup>901</sup> [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi\\_zakona/4559-13Lat.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/4559-13Lat.pdf)

## Resources (Practice)

*To what extent in practice does the commissioner or its equivalent has adequate resources to achieve its?*

**Score: 75/2015 (50/2011)**

One of the biggest problems in the past, the lack of adequate premises, has been solved. In October 2013 the Government provided premises which, according to the Commissioner, meet the needs of the systematized number of staff. However, this space might turn out to be unsatisfactory in the future if Commissioner's jurisdiction, and hence its capacity, continue to grow. Capacity building of the Commissioner is envisaged by the Action Plan for implementation of the National Anti-corruption Strategy, and by the Public Administration Reform Strategy<sup>902</sup>.

Lack of premises in the past was an obstacle to employ the required number of staff. This affected the efficiency of solving the cases, and as the result, there was backlog in several thousand cases<sup>903</sup>.

According to the Human Resources Plan,, it was envisaged that at the end of 2014 the Commissioner has 73 employees. This Plan, however, could not be implemented due to the lack of money and procedural problems, as well as due to the fact that in 2014 the legal act was adopted which introduced ban on employment in public sector, independent authorities needed approval from parliamentary board to employ new staff. This approval was given partially to the Commissioner for new recruitments in 2014 - for seven new employees.

In 2014 the new Rule book on internal organization and job systematization was adopted and approved by the parliament's Committee on Administrative, Budgetary Mandate and Immunity Issues. The new Rulebook on internal organization envisages a total of 94 employees. On January 1<sup>st</sup> 2014 the Commissioner's Office had 50 permanent employees, and it ended 2014 with 56 employees, which is 59% of the total number of envisaged employees. The discrepancy between the envisaged and actual number is lower in the sector for free access to information (19/25), but this sector, which is considered to be most important form the anti-corruption point of view, has the largest number of cases in work.

As for technical resources, according to the Annual report, the Commissioner has the equipment to meet the needs of the existing capacity of the Service. In 2014 the equipment was purchased for a total of RSD 3.1 million (USD 30,000) from the budget of the Commissioner.

The budget of the Commissioner in 2014 was RSD 163 million (USD 1.6 million) and it was in accordance with the Commissioner's financial plan. It was higher than in previous years (RSD 141 million USD 1.75 million in 2012 and RSD 145 million USD 1.7 million in 2013), and there was a further increase in 2015, despite the austerity measures to RSD 168 million (USD 1.65 million). In 2014 the Commissioner spent 80% of its budget (RSD 131 million or USD 1.3 million), partly because the plan to employ new staff has not been implemented, partly because of rational behavior in spending<sup>904</sup>.

The employees in the service, according to the statement of Commissioner, generally have appropriate skills and experience. Of the total number of staff, 51 out of 56 have a university degree. The vast majority of civil servants have significant previous experience of work, mostly in public administration<sup>905</sup>.

902 Interview with Commissioner Rodoljub Sabic, April 2015

903 Commissioner's Annual Report for 2014, <http://www.poverenik.org.rs/en/o-nama/annual-reports.html>

904 Commissioner's Annual Report for 2014, <http://www.poverenik.org.rs/en/o-nama/annual-reports.html>

905 Interview with Commissioner Rodoljub Sabic, April 2015

## Independence (Law)

*To what extent, in accordance with legislation, is the commissioner independent in its work?*

**Score: 75/2015 (75/2011)**

There are some provisions in the law seeking to ensure the independence of the Commissioner, but the legislation could be further improved.

The commissioner is elected by the Parliament, upon proposal made by the Parliamentary Committee for Information<sup>906</sup>. According to analysis prepared by the Centre for European Studies, the problem with this solution is that the parliamentary committee, “in principle, has neither the expertise nor the political impartiality to propose the commissioner”. Also, the free access to information area of work of the Commissioner is wrongly placed in the field of public information from which is derived the jurisdiction of the Parliamentary Committee for Information for the nomination of candidates (instead of, for instance, the Committee in charge of public administration<sup>907</sup> or justice or human rights).

The Commissioner is, by the Law, an independent state body<sup>908</sup>. 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 persons<sup>909</sup>.”

Apart from general requirements, the appointment procedure envisages which professional criteria the candidate should meet: “a person of established reputation and expertise in the field of protecting and promoting human rights”. There are no specific requests regarding expertise in administrative law, person who is an official or employed in a state body or political party, is not an eligible candidate for the commissioner<sup>910</sup>.

As for mandate and salary, as elements of independence, the Law prescribes that the mandate of the commissioner is longer than that of members of the Parliament – it is seven years with a maximum of two consecutive terms<sup>911</sup>. As noted above, the salary of the Commissioner is equal to the one of Supreme Court judge<sup>912</sup>.

The Commissioner needs approval of the parliamentary Administrative Committee for regulations governing the work of its staff<sup>913</sup>. On the other hand, the Commissioner is independent when deciding on the employment of the staff<sup>914</sup>.

The Law gives solid protection to the commissioner 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; performing duty “unprofessionally and negligently”<sup>915</sup>. The formulation “unprofessionally and negligently” could be interpreted in different ways and it could lead to removal of the commissioner based on political reasons.

906 Law on Free Access to Information of Public Importance, Article 30

907 Commissioner for Free Access to Information and Personal Data Protection, CPES, August 2014

908 Law on Free Access to Information of Public Importance, Article 1

909 Law on Free Access to Information of Public Importance article 32

910 Law on Free Access to Information of Public Importance, Article 30

911 Law on Free Access to Information of Public Importance, Article 30

912 Law on Free Access to Information of Public Importance, Article 32

913 Law on Free Access to Information of Public Importance, Article 34

914 Law on Free Access to Information of Public Importance, Article 34

915 Law on Free Access to Information of Public Importance, Article 31



A motion to remove a commissioner from office can be initiated by at least one third of members of the Parliament. The Information Committee of the Parliament then determines whether reasons for removal from the office pertain and informs the Parliament. The same majority is needed for removal as it is for appointment. There are no provisions on immunity of the commissioner.

## Independence (Practice)

*To what extent is the commissioner independent in its work in practice?*

**Score: 75/2015 (50/2011)**

The Commissioner is independent in practice from those subjected to its jurisdiction and it acts independently from political influence. According to the commissioner statement, “when you are at the forefront of independent institutions about the only thing you have to keep in mind is that you are working strictly in accordance with the law, regardless of political constellations, especially not on the orders of one or another political party”<sup>916</sup>.

According to one expert, the only problem is the fact that current commissioner overshadows the institution of the Commissioner, which could weaken the institution in the future, when the commissioner’s mandate expires<sup>917</sup>.

There have been no attempts to interfere with the activities of the Commissioner, apart from occasional verbal attacks against the head of the institution<sup>918</sup>. Those attempts are, however, fewer than in the previous period. For example, the attempt of the Ministry of Defense to redefine the scope of the Commissioners jurisdiction, in a dispute over Ministry’s refusal to allow access to certain information, could be interpreted as an attack on institution’s independence. The Commissioner, however, insisted that his decision be executed<sup>919</sup>. This resulted in a remark made by one member of the Parliament of the ruling coalition that the Law on Free Access to Information of Public Importance should be revised because “the line which separates information important for national security from that which is available to the public is not clear”<sup>920</sup>. There was, however, no official motion for revision of the law and jurisdiction of the Commissioner.

It could be concluded that the operational independence of the institution largely depends on the skills and qualities of the commissioner<sup>921</sup>. The current commissioner, as noted in the analysis by one NGO, has “won the confidence of citizens and praise from non-governmental organizations, journalists’ associations, as well as international monitors (the Council of Europe, the World Bank and the European Commission, OSCE Mission)”<sup>922</sup>

916 [http://www.danas.rs/danasrs/ukratko/korektor\\_nije\\_neprijatelj.83.html?news\\_id=92903](http://www.danas.rs/danasrs/ukratko/korektor_nije_neprijatelj.83.html?news_id=92903)

917 Expert from NGO sector who insisted to remain anonymous

918 [http://www.politika.rs/rubrike/Drustvo/Godine-karijere-nijedan-zapamcen-slucaj.lt.htmlhttps://www.cenzolovka.rs/misljenja/kako-verovati-povereniku/http://www.politika.rs/rubrike/Drustvo/Sabic-odgovara-Lazanskom-Protiv-zaludjivanja-javnosti.sr.htmlhttp://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1926941/%C5%A0abi%C4%87+odgovara+Narodnoj+banci.htmlhttp://www.tvmost.info/vesti/sabic\\_se\\_ukljucio\\_u\\_napade\\_na\\_ministarstvo\\_odbrane/13042](http://www.politika.rs/rubrike/Drustvo/Godine-karijere-nijedan-zapamcen-slucaj.lt.htmlhttps://www.cenzolovka.rs/misljenja/kako-verovati-povereniku/http://www.politika.rs/rubrike/Drustvo/Sabic-odgovara-Lazanskom-Protiv-zaludjivanja-javnosti.sr.htmlhttp://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1926941/%C5%A0abi%C4%87+odgovara+Narodnoj+banci.htmlhttp://www.tvmost.info/vesti/sabic_se_ukljucio_u_napade_na_ministarstvo_odbrane/13042)

919 [http://www.mod.gov.rs/sadrzaj.php?id\\_sadrzaja=7761http://www.poverenik.rs/yy/soapstenja-i-aktuelnosti/1990-soapstenje-ministarstva-odbrane-dezinformisanje-javnosti.html](http://www.mod.gov.rs/sadrzaj.php?id_sadrzaja=7761http://www.poverenik.rs/yy/soapstenja-i-aktuelnosti/1990-soapstenje-ministarstva-odbrane-dezinformisanje-javnosti.html)

920 <http://www.nspm.rs/hronika/momir-stojanovic-trebalo-bi-preispitati-zakon-o-zastitniku-gradjana-i-povereniku-za-informacije-od-javnog-znacaja.html>

921 Commissioner for Free Access to Information and Personal Data Protection, CPES, August 2014

922 Commissioner for Free Access to Information and Personal Data Protection, CPES, August 2014

# Governance

## Transparency (Law)

*To what extent are there provisions that should ensure that the public can obtain relevant information on the activities and decision-making processes of the commissioner?*

**Score: 50/2015 (50/2011)**

Provisions of the Law on Free Access to Information of Public Importance, regarding obligation to publish and regularly update Information Booklet<sup>923</sup>, document with information about institution, also apply to the Commissioner<sup>924</sup>. The same stands for the Instruction for the creation and publication of the Information Booklet, which prescribes in details content of this document<sup>925</sup>.

There are no special provisions about the transparency of appeal proceeding before the Commissioner<sup>926</sup>. Instead, rules from the Law on General Administrative Procedure are applied, which means that communication is kept between the relevant parties (appellant/Commissioner, Commissioner/ holder of information)<sup>927</sup>.

The Law on Free Access to Information of Public Importance obliges the Commissioner to make publicly available its annual report on the activities undertaken by the state authorities in the implementation of the Law and on the Commissioner's activities and expenses<sup>928</sup>.

Public officials in this institution (commissioner, deputy commissioners and secretary general of the Commissioner's Service) are obliged to submit assets declarations to the Anti-Corruption Agency. The Law on Anti-Corruption Agency stipulates that part of these declarations (income from public sources, information on real estate, vehicles and stocks) is available to the public<sup>929</sup>.

## Transparency (Practice)

*To what extent the activities and decision-making processes of the commissioner are transparent in practice?*

**Score: 100/2015 (100/2011)**

Activities and decision-making processes of the Commissioner are transparent in practice. All relevant information on the organization and functioning of the Commissioner, on its decisions and decision making processes are available to the public. The Commissioner's Information Booklet<sup>930</sup> is very comprehensive. All procedures, services, structures and budgets are explained in detail.

The Commissioner's activities are presented in its annual report, which is regularly submitted to the Parliament and presented to the public<sup>931</sup>. Besides the annual report, the Commissioner publishes a monthly statistical overview of cases in progress<sup>932</sup>.

923 <http://www.poverenik.rs/en/information-booklet/information-booklet.html>

924 Law on Free Access to Information of Public Importance, Article 39

925 <http://www.poverenik.rs/en/pravni-okvir-pi/bylaws-ai.html>

926 Law on Free Access to Information of Public Importance, Articles 19-21, 23

927 [http://www.paragraf.rs/propisi/zakon\\_o\\_opstem\\_upravnom\\_postupku.html](http://www.paragraf.rs/propisi/zakon_o_opstem_upravnom_postupku.html)

928 Law on Free Access to Information of Public Importance, Article 36

929 Law on Anticorruption Agency, Articles 43, 46, 47

930 <http://www.poverenik.rs/en/information-booklet/information-booklet.html>

931 <http://www.poverenik.rs/en/o-nama/annual-reports/2048-izvestaj-poverenika-za-2014-godinu.html>

932 <http://www.poverenik.rs/en/o-nama/monthly-statistical-reports/2106-zbirni-mesecni-statisticki-podaci.html>

The Commissioner's web-site is informative, and the commissioner publishes almost daily information about his other activities and comments on current events related to the free access to information and transparency in general<sup>933</sup>. This includes information on cases where public authorities did not comply with the Commissioners' binding decisions and information about appeals and complaints related to the matter of public importance<sup>934</sup>.

The Commissioner participates in events organized by other independent authorities, journalist's associations, international organizations in Serbia, civil society organizations. Those occasions are used to promote the right of access to information and the fight against corruption in general<sup>935</sup>.

According to data from the Anti-Corruption Agency's website, all public officials in the Commissioner's office submitted assets declaration<sup>936</sup>.

## Accountability (Law)

*To what extent are there provisions that should ensure that the commissioner has to report on its work and to be accountable for its actions?*

**Score: 75/2015 (75/2011)**

There have not been changes, since NIS 2011, regarding provisions which are supposed to ensure that the Commissioner has to report and be accountable for his/her actions. There is a solid legal framework in this regard. The Law obliges the Commissioner to submit to the Parliament an annual report on the activities undertaken by the public authorities in the implementation of the Law on Free Access to Information of Public Importance and on its own activities and expenses<sup>937</sup>. The deadline for submitting the report on activities from the previous year is March 31st<sup>938</sup>.

The Commissioner's report is discussed by the parliamentary committee in charge of information and committee in charge of state administration (as well as committee in charge of human rights, from the aspect of personal data protection), and then the plenum considers the committee's recommendations and conclusions. There is no legal duty to publish report.

The Commissioner's decisions are subject to judicial review by the Administrative Court, but this right is reserved for requestors of information, unsatisfied with the Commissioner's decisions. This means that the Administrative court denies possibility to the body that the information is originally requested from to appeal on a Commissioner's decision regarding that request. The Commissioner's decisions are "binding, final and enforceable"<sup>939</sup>.

There are special provisions about whistle-blowing for the Commissioner's staff. The general rules for the public administration apply here also, as does the Law on Protection of Whistle-blowers<sup>940</sup>.

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933 <http://www.poverenik.rs/en/press-releases-and-publications.html>

934 <http://www.poverenik.rs/en/press-releases-and-publications.html>

935 Annual report for 2014 Chapter 6, <http://www.poverenik.rs/en/o-nama/annual-reports/2048-izvestaj-poverenika-za-2014-godinu.html>

936 <http://www.acas.rs/pretraga-registra/>

937 Law on Free Access to Information of Public Importance, Article 36

938 Law on Free Access to Information of Public Importance, Article 36

939 Law on Free Access to Information of Public Importance, Article 28

940 [http://www.paragraf.rs/propisi/zakon\\_o\\_drzavnim\\_sluzbenicima.html](http://www.paragraf.rs/propisi/zakon_o_drzavnim_sluzbenicima.html)<http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2014/3140-14%20LAT.pdf>[http://www.paragraf.rs/propisi/zakon\\_o\\_radu.html](http://www.paragraf.rs/propisi/zakon_o_radu.html)

## Accountability (Practice)

*To what extent does the commissioner have to report on its work and to be accountable for its actions in practice?*

**Score: 75/2015 (75/2011)**

The Commissioner fulfills its duty to submit annual reports to the Parliament, within the stipulated deadline<sup>941</sup>. The Commissioner's reports contain all the information as envisaged by the law, as well as other useful information, such as overview of problems in the work of the institution and recommendations for the improvement of the situation in the field of free access to information<sup>942</sup>.

Reports are published on the web-site of the Commissioner<sup>943</sup> and promoted by the commissioner<sup>944</sup>. Since 2011, the Parliament has taken these reports into consideration. Relevant parliamentary committees are adopting conclusions on the report with recommendations for improvement of the situation, and these conclusions are discussed and adopted by the Parliament in the plenum. In 2014, the conclusions, for the first time, included concrete measures which should be taken by the Government and by the Parliament itself<sup>945</sup>. However, not only that the most of the measures were not implemented, but the Government also failed to report to the Parliament on implementation<sup>946</sup>. The Parliament did not react on this and in 2015 one of the committees adopted general conclusion, without concrete measures<sup>947</sup>. By the time this report was finished (June 2015), other two committees (for public administration and for human rights) had not adopted conclusions on the report for 2014, although they had considered the Commissioner's report in April and May 2015, respectively.

According to Zoran Gavrilovic from non-governmental organization Birodi, the accountability of the Commissioner is not an issue at all, but the problem is the fact that the Parliament does not pay attention to the Commissioner's recommendations and its own recommendations regarding the Commissioner's reports<sup>948</sup>.

A judicial review mechanism of the Commissioner's decisions exists and functions. According to the annual report, in 2014, the Administrative Court received 193 legal actions against the Commissioner's decisions, of which 70 were brought against the Commissioner's decisions and resolutions, while 123 legal actions were brought because the Commissioner failed to decide on complaints within the statutory 30-day period<sup>949</sup>. Out of those 193, the Administrative Court adjudicated 90 as follows: 26 legal actions were rejected, 17 were dismissed, in 46 legal actions the procedure was terminated and one case was returned for renewed procedure because an acknowledgement of receipt as evidence of untimely legal actions was not attached to the case files, following which the Commissioner passed the same decision. This means that the Administrative Court did not overturn any decision of the Commissioner in 2014.

941 <http://www.poverenik.rs/sr/izvestaji-poverenika.html>

942 Annual report, Chapter 8

943 <http://www.poverenik.rs/sr/izvestaji-poverenika.html>

944 <http://www.poverenik.rs/en/press-releases-and-publications/2049-godisnji-izvestaj-poverenika-za-2014-godinu.htm> I

945 <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/6550->

946 <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7333-vlada-ne-izvrsava-obaveze>

947 <http://www.transparentnost.org.rs/index.php/en/ts-and-media/press-issues/7637-parliamentary-committee-vague-on-access-to-information-absence-of-will-to-perform-proper-supervision-over-executive-authority>

948 Interview, April 2015

949 Annual report for 2014 <http://www.poverenik.rs/en/o-nama/annual-reports/2048-izvestaj-poverenika-za-2014-godinu.html>

## Integrity mechanisms (Law)

*To what extent are there provisions that should ensure the integrity of the commissioner?*

**Score: 75/2015 (75/2011)**

There have not been any changes since NIS 2011 regarding the legal framework on integrity. There are provisions which are supposed to ensure the integrity of the Commissioner.

The Law on Free Access to Information of Public Importance defines the Commissioner as “autonomous and independent”<sup>950</sup> and it stipulates that the Commissioner shall neither seek nor accept orders or instructions from government bodies or other persons in the exercise of its powers<sup>951</sup>. Rules on conflict of interest, gifts and assets declaration are stipulated by the Law on Anti-Corruption Agency. Those rules apply to public officials, which include the commissioner, his deputies and general secretary of the Commissioners Service<sup>952</sup>. There is no general Code of Conduct which would apply to civil servants, including the Commissioner’s staff, but some rules are set by the Law on Civil Servants<sup>953</sup>. It states that 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 affiliates<sup>954</sup>.

To be eligible, a candidate for commissioner must not be employed by a state body or a political party. However, there is no ban for the commissioner to be a member of a political party<sup>955</sup>.

## Integrity mechanisms (Practice)

*To what extent is the integrity of the commissioner ensured in practice?*

**Score: 100/2015 (75/2011)**

The integrity of the Commissioner is fully ensured in practice, within determined legal framework.

There has not been any reported violation of integrity rules, neither by the commissioner and his deputies, nor by employees in the Commissioner’s service.

The Commissioner has adopted an Integrity Plan, as envisaged by the Law on Anti-Corruption Agency and by-laws issued by the Agency<sup>956</sup>. The Integrity Plan was adopted in December 2012, within the deadline determined by the Agency<sup>957</sup>. Furthermore, the Commissioner has issued internal acts aiming to foster integrity and prevent the loss of public funds, including the Directive on use of working time, the Rulebook on the use of payment cards, the Rulebook on the use of financial assets for entertainment expenses, the Normative on consumption of fuel for official vehicles, the Directive on the use of official vehicles in the Office of the Commissioner, the Decision on the use of official mobile phones, the Rulebook on the employment and Rules of procedure of the Appeal Commission<sup>958</sup>.

<sup>950</sup> Law on Free Access to Information of Public Importance, Article 32

<sup>951</sup> Law on Free Access to Information of Public Importance, Article 32

<sup>952</sup> Law on Anti-corruption Agency, Articles 27-42

<sup>953</sup> Law on Civil Servants, Articles 25, 30-31

<sup>954</sup> Law on Civil Servants, Article 25

<sup>955</sup> Law on Free Access to Information of Public Importance, Article 30

<sup>956</sup> [http://www.acas.rs/wp-content/uploads/2013/11/SISTEM\\_ZASTITE\\_PODATAKA.pdf](http://www.acas.rs/wp-content/uploads/2013/11/SISTEM_ZASTITE_PODATAKA.pdf)

<sup>957</sup> Data from the Commissioner, also [http://www.acas.rs/wp-content/uploads/2013/11/SISTEM\\_ZASTITE\\_PODATAKA.pdf](http://www.acas.rs/wp-content/uploads/2013/11/SISTEM_ZASTITE_PODATAKA.pdf)

<sup>958</sup> <http://www.poverenik.rs/en/o-nama/commissioners-work-acts/aktuelni-akti.html>

# Role

## Investigation (law and practice)

*To what extent is the commissioner active and effective in dealing with complaints?*

**Score: 100/2015 (100/2011)**

The Commissioner is active and successful in dealing with complaints.

The procedure for lodging a complaint to the Commissioner is simple and it is explained in detail in the Commissioner's Information Booklet<sup>959</sup>. It can be done in writing to the postal address, by e-mail, or verbally for the record at the Commissioner's Office<sup>960</sup>.

According to annual report, the Commissioner received 5.778 new cases (in the field of free access to information) in 2014 and there were 2.971 cases carried over from 2013. A total of 5,563 cases were solved in 2014<sup>961</sup>. The volume of the Commissioner's activities in the field of freedom of information in 2014 was 26% higher than in 2013. The Commissioner says that this increase resulted from employees' increased efforts to tackle the backlog of cases from the period when the Commissioner's Office was understaffed and also from employment of certain, although still insufficient, number of employees, who's hiring was endorsed by the Parliament<sup>962</sup>.

Out of 5,563 solved cases, there were 3,739 complaints and 90% of those were grounded. It should be noted that in the majority of those cases (2,026), after the intervention of the Commissioner, authorities provided information to information-seeker and the procedure was terminated. Regarding cases where access to information was ordered by the Commissioner's decisions (1,056 decisions), from the feedback the Commissioner received, in 2014 in 78% of cases public authorities complied with the orders, which was 0.5% lower compared with 2013, while the number of cases in which compliance was ensured in the enforcement procedure has increased. Potentially, this figure may be somewhat higher, as it would be safe to assume that there were public authorities that complied with the Commissioner's decisions, but failed to notify him of that<sup>963</sup>. Those figures indicate that, although understaffed, the Commissioner deals effectively with complaints<sup>964</sup>.

Public perception of the Commissioner is excellent, which could be concluded from media, NGOs' relationships with the Commissioner, his participation in events organized by independent authorities, media associations and NGOs, as well as from discussions in the Parliament when the Commissioner's reports are considered<sup>965</sup> or statements by representatives of the international organizations and the EU<sup>966</sup>. The public is well acquainted with the Commissioner's services, through very frequent public statements<sup>967</sup> and authored articles in media<sup>968</sup> and through his blog<sup>969</sup>, participation in public debates and seminars, as well as through activities in social networks<sup>970</sup>.

959 <http://www.poverenik.rs/yu/informator-o-radu/aktuelni-informator.html>, Chapter 10

960 Information Directory, Chapter 10, <http://www.poverenik.rs/yu/informator-o-radu/aktuelni-informator.html>

961 Annual report for 2014 <http://www.poverenik.rs/en/o-nama/annual-reports/2048-izvestaj-poverenika-za-2014-godinu.html>

962 Interview with commissioner Rodoljub Sabic, April 2015

963 Annual Report 2014

964 Interview with Zoran Gavrilovic, NGO Birodi, April 2015

965 <http://www.politika.rs/rubrike/Politika/Sabicev-izvestaj-u-senci-sukoba-poslanika-DS-a-i-SNS-a.it.html>

966 <http://www.naslovi.net/2014-12-15/rtv/devenport-sabic-pokazao-kako-se-bori-za-ljudska-prava/12689131>

967 <http://www.poverenik.rs/yu/saopstenja-i-aktuelnosti.html>

968 <http://www.poverenik.rs/yu/iz-medija.html>

969 <http://blog.b92.rs/blog/12170/Freedom-of-Information/>

970 <https://twitter.com/rodoljubsubic>



## Promoting good practice (law and practice)

*To what extent is the commissioner active and effective in raising awareness within the authorities and the public about standards of transparency?*

**Score: 100/2015 (100/2011)**

The Commissioner is generally very active and effective in raising awareness within the authorities and the public about standards of transparency. The Commissioner regularly launches initiatives and issues opinions for improvement of legislation and practice in the field of transparency and free access to information, takes part in trainings for public authorities' employees, and promotes transparency in public and in the media.

This activity was noted in the 2013 EU Progress Report, as well as by the Head of the EU Delegation in Serbia, who stated "that Commissioner can be proud of his work on raising awareness and knowledge of the citizens of Serbia, and of a large percentage of successful interventions in protecting their rights"<sup>971</sup>.

The Commissioner does not have the authority to propose to the Parliament the adoption of the law, but in 2014, as in previous years, the Commissioner launched numerous public initiatives (to the Government and the Parliament) to adopt new or amend existing legislation. Two out of nine initiatives listed in 2014 annual report were accepted by relevant ministries or the Government<sup>972</sup>. The commissioner provided 35 opinions related to implementation of the Law on Free Access to Information of Public Importance and other regulations in order to ensure respect for the core principles underlying the freedom of information. Most of these opinions were accepted.<sup>973</sup> The Commissioner has published, so far, three publications presenting the views and opinions from the Commissioner's experience in the field of freedom of information<sup>974</sup>.

In 2014, the Commissioner answered nearly 800 questions from citizens, but also from the public authorities, explaining procedures or providing other form of assistance in the implementation of regulations which are meant to provide higher transparency. These measures resulted in continual improvements in proactive publication of information, an increase in the number of information booklets published on the websites of public authorities, more active involvement of public authorities in the facilitation of the exercise of right on free access to information and better education of the authorities<sup>975</sup>.

Press releases by the Commissioner are a common way to draw attention of the media and public, as well as competent officials in public authorities to certain occurrences or actions of those authorities that hamper the rights protected by the Commissioner<sup>976</sup>. In addition, as an activity to promote transparency, the Commissioner awards annual prizes on the International Right to Know Day to public authorities for the best Information Booklet and for promotion of access to public information and transparency<sup>977</sup>.

The commissioner himself has been awarded several times for his contribution to the fight against corruption and promotion of transparency: in 2011 he received the Award for Contribution to the Fight against Corruption (by the EU mission and the Anti-Corruption Council), the award for "Person of the Year" (OSCE) and he has been declared for honorary member of the Independent Associa-

<sup>971</sup> <http://www.naslovi.net/2014-12-15/rtv/devenport-sabic-pokazao-kako-se-bori-za-ljudska-prava/12689131>

<sup>972</sup> Annual report for 2014

<sup>973</sup> Annual report for 2014

<sup>974</sup> <http://www.poverenik.rs/yu/publikacije/-prirucnici.html>

<sup>975</sup> Data from Annual report for 2014

<sup>976</sup> <http://www.poverenik.rs/en/press-releases-and-publications.htm>

<sup>977</sup> <http://www.poverenik.rs/yu/saopstenja-i-aktuelnosti/1882-dan-prava-javnosti-da-zna-28-septembar-2014.html>

tion of journalists of Serbia. In 2012 he received the award for contribution to Europe (European Movement in Serbia and the International European movement). The Commissioner, as institution, was awarded by NGO Birodi in 2013 as the institution with the highest level of integrity. This award was the result of research conducted by NGO Birodi, which concluded that “the functioning of the Commissioner had an impact on reducing the number of authorities who ignore their obligations under the Law on Free Access to Information of Public Importance. Eight years of intensive work of the Commissioner and the annual reports are a clear indication that the practice was changed considerably. Decisions of the Commissioner are now, in most cases, executing”<sup>978</sup>.

# The Commissioner for Information of Public Importance and Personal Data Protection

## Recommendations

1. Parliament should, when amending the Constitution, stipulate 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. Parliament should change the legal basis for dismissal of the Commissioner with purpose to be less dependent on arbitrary interpretations;
3. Government should ensure the execution of the Commissioner’s decisions whenever it is necessary;
4. Ministry, the Government and the Parliament should change the Law on Free Access to Information of Public Importance in order to allow the Commissioner to initiate misdemeanor procedures for the violation of that Law;
  - Changes should include the provision that would provide access to part of the data on on-going procedures, in a way that doesn’t violate personal data protection;
  - Changes should introduce an obligation of the proponents of a law and by-laws to ask for the Commissioner’s opinion regarding provisions that could influence the publicity of the authority bodies’ work.

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978 The fight against corruption in Serbia - Alternative Report Bureau for Social Research - BIRODI, 2013





# STATE AUDIT INSTITUTION

## National Integrity System

**Summary:** Ever since it was founded, the State Audit Institution (SAI) has faced the problem of inadequate premises, and consequently the problem of insufficient human resource capacities for comprehensive audit of all budget users. The situation has been improved over the past seven years, but the capacities are still far from satisfactory.

The legal framework sets the basis for independent work of the SAI. SAI representatives claim they do not face any pressure from the Government or politicians in general. On the other hand, some experts are pointing out that criteria according to which the subjects of audit are selected are not transparent which means that selection could be done under influence from other actors, outside the SAI.

The transparency of the SAI work has increased since NIS 2011, annual reports and the Information Directory are published, and all audit reports are available to the public. SAI reports on audit of the state budget are discussed by the relevant parliamentary committee, but not by the Parliament in the plenum. Other reports are not considered even by the committee. SAI regularly files criminal and misdemeanor charges for violations discovered during the audits.



| SUPREME AUDIT INSTITUTION  |   |   |   |
|--|---|---|---|
| Overall Pillar Score (2015): 73 / 100<br>Overall Pillar Score (2011): 69 / 100 |   |   |   |
| Dimension  | Indicator                               | Law                                     | Practice                                |
| <b>Capacity</b><br>58 / 100  | Resources                               |   | <b>50</b> (2015),<br><b>50</b> (2011)   |
|  | Independence                            | <b>75</b> (2015),<br><b>75</b> (2011)   | <b>50</b> (2015),<br><b>50</b> (2011)   |
| <b>Governance</b><br>88 / 100  | Transparency                            | <b>100</b> (2015),<br><b>100</b> (2011) | <b>75</b> (2015),<br><b>50</b> (2011)   |
|  | Accountability                          | <b>75</b> (2015),<br><b>75</b> (2011)   | <b>75</b> (2015),<br><b>75</b> (2011)   |
|  | Integrity                               | <b>100</b> (2015),<br><b>100</b> (2011) | <b>100</b> (2015),<br><b>100</b> (2011) |
| <b>Role</b><br>58 / 100  | Effective financial audits              | <b>50</b> (2015), <b>25</b> (2011)      |   |
|  | Detecting and sanctioning misdeemeanors | <b>75</b> (2015), <b>75</b> (2011)      |   |
|  | Improving financial management          | <b>50</b> (2015), <b>50</b> (2011)      |   |

**Structure** – SAI is an independent institution established in accordance with the Law on SAI adopted in 2005. It is accountable for its work to the Parliament of Serbia. The Council of SAI is the highest body of the Institution and the President of the Council is at the same time the President of the SAI and General State Auditor. Members of the Council are elected for a five-year term upon proposal of the Finance Committee of the Parliament. They were elected in 2007, and in 2012 two of them (including president) were re-elected and three new members were elected. There are seven sectors within the SAI - Sector for auditing of the budget of the Republic and of budget funds, Sector for auditing of local authorities' budgets, Sector for auditing of organisations of mandatory social insurance, Sector for auditing of public enterprises, business companies and other legal entities established by direct and indirect beneficiaries, Sector for auditing of the National Bank of Serbia, public agencies and other public funds beneficiaries, Performance Audit Sector and Sector for Audit Support (Unit for Legal and General Affairs, Finance and Accounting Unit, Human Resources Unit and Information Technology Unit). Heads of the Audit Sectors are Supreme State Auditors, elected by the SAI Council for a six-year term. Besides the Belgrade head office, the SAI also has offices in three cities - Novi Sad, Nis and Kragujevac, where some of the activities are carried out.

The budget of the SAI is provided from the overall budget of Serbia on the basis of a financial plan determined by the SAI, with the consent of the Parliamentary Committee for Finances.





# Assessment

## Capacity

### Resources (Practice)

*To what extent does the SAI has adequate resources to achieve its goals in practice?*

**Score: 50/2015 (50/2011)**

Since its founding, SAI did not have adequate premises which affected its ability to strengthen human resource capacities. Offices were dispersed in five locations in Belgrade which causes communication problems and increases overall operating costs<sup>979</sup>. Due to the lack of office space the employment plan has not been fulfilled. This problem is recognized in 2013 Anti-corruption Strategy and Action Plan<sup>980</sup>. The deadline for the Government to solve this problem passed in December 2014. On November 19<sup>th</sup>, 2015, the Institution is assigned office space in Belgrade, the total area of 2224 square meters, where it will move in first half of 2016.

On the other hand, the SAI has adequate financial resources, and its financial plan is always fully accepted by the relevant parliamentary committee. It only happened once, in 2012 budget revision that resources were decreased for 3%, but the SAI finally accepted the argumentation from the Committee about general austerity measures and lack of resources<sup>981</sup>. However, for the year 2016, SAI got 90 million RSD less than it asked for.

SAI budget for 2013 was RSD 530 million (USD 6.25 million) but SAI spent only RSD 481 million (USD 5.66 million). In 2014 the budget was RSD 717 million (USD 8.5 million) and SAI spent RSD 472 (USD 5.6 million), and in 2015 the budget is RSD 577 million (USD 5,7 million)<sup>982</sup>.

The full budget was not spent because the SAI could not fulfill its employment plan due to lack of office space. There were 222 employees (184 auditors) at the end of 2014, and the plan was to enter 2015 with 311 employees. The current job organization envisages 426 employees, but the new employment plan envisages an increase by 78 in 2015, which would mean a total of 300<sup>983</sup>. Even if the plan is fulfilled it would still mean that SAI is seriously understaffed and unable to fulfill its all tasks.

According to the SAI Annual Report, apart from lack of space, another obstacle for increasing number of employees is “a complex procedure of employment of staff provided by the Law on Civil Servants”, which is additionally complicated by the need for obtaining the consent of the relevant parliamentary committee. This measure (consent of the committee) was introduced as one of austerity measures, aiming to limit recruitment in the public sector<sup>984</sup>.

SAI representatives claim that employees are provided with adequate training. According to SAI 2014 Annual report, “the strategic interests of the institution are permanent training and upgrading of skills”, as envisaged in the Strategic Plan of the SAI.

979 The 2014 SAI Annual Report

980 Action Plan, measures 3.1.1.5 and 3.2.2.3 <http://www.acas.rs/zakoni-i-drugi-propisi/strategija-i-akcioni-plan/>

981 Data provided from the SAI President Radoslav Sretenovic, May 2015

982 SAI Annual Report and data provided from the SAI

983 SAI 2014 Annual Report and data provided from the SAI

984 <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2013/4566-13.pdf>

## Independence (Law)

*To what extent is there formal operational independence of the SAI?*

**Score: 75/2015 (75/2011)**

There have been no changes regarding the legal framework for independence since NIS 2011. The Law stipulates formal independence of the SAI. The Constitution does not stipulate provisions with regard to the independence of the SAI Council members, but it determines that the SAI is an autonomous state body<sup>985</sup>. The Constitution also stipulates that realisation of all budgets (Republic, Province and local self-governments) shall be audited by the State Audit Institution<sup>986</sup>. According to the Law on SAI, the SAI is an “autonomous and independent state institution”, and “acts pursuant to which the Institution exercises its auditing competence cannot be challenged before courts or other government bodies”.

One major loophole in the legislation which might endanger the independence is the procedure for election of the president and members of the Council of the SAI<sup>987</sup> - they are nominated by party representatives in the parliamentary committee, and elected by the Parliament. This way, “the personal independence is not assured and it depends on the balance of power in the Parliament”<sup>988</sup>. A former member of the Parliament and member of the relevant committee dealing with matters related to the SAI, Radojko Obradovic, agrees that these provisions, in theory, do not guarantee sufficient level of independence<sup>989</sup>.

There are, however, other provisions which should enable independence of the SAI - in the aspect of its scope of work and relation with other institutions and regarding position of the Council members. Namely, according to the Law on SAI, the Institution performs the following tasks (amongst others): plans and performs audits, enacts by-laws and other enactments for the purpose of implementing of the Law on SAI, submits reports on auditing, takes standpoints and gives opinions and other forms of public announcements regarding the application and implementation of particular provisions of the Law. The Law also states that the SAI “extends professional assistance to the Assembly, the Government and to other government bodies on particular significant measures and important projects, in a manner that does not diminish the independence of the Institution”<sup>990</sup>. There is also a provision regarding individual independence of the Council members, stating that “in taking decisions the Council members may not compromise their or the Institution’s independence”<sup>991</sup>.

On the other hand, in the Law on SAI, there is also provision enabling less than 10% of members of the Parliament (20 out of 250) to initiate the initiative to dismiss the SAI Council member<sup>992</sup>. It takes a majority of members of the Parliament (126 out of 250) to dismiss the SAI Council member, but the initiative itself might be regarded as pressure on the Council member. The analyses published by the NGO CPES noted this as “problematic from the aspect of independence” and recommended revision of mechanism of dismissal or, at least, raising the number of members of the Parliament which can initiate the procedure<sup>993</sup>.

Financial independence of the 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 Serbia<sup>994</sup>.

985 Constitution of Serbia, article 96

986 Constitution of Serbia, article 92

987 Research “State Audit Institution”, CPES, May 2014

988 Research “State Audit Institution”, CPES, May 2014

989 Interview, January 2015

990 The Law on SAI, Article 5

991 The Law on SAI, Article 13

992 The Law on SAI, article 23

993 Research “State Audit Institution”, CPES, May 2014

994 The Law on SAI, Article 51

The auditing plan for the following year is determined by the Council of the SAI and other state bodies cannot impact that program<sup>995</sup>. The Law stipulates that the SAI should decide independently on subjects of auditing, topics, scope and type of audit, outset and duration of auditing. However, the independence of the SAI in defining its tasks can be in conflict with provisions of other laws. This is the case with the Law on Financing Political Activities that envisages the possibility of the Anti-Corruption Agency to request from the SAI to perform an audit of political party reports<sup>996</sup>.

## Independence (Practice)

*To what extent is the SAI free from external interference in the performance of its work in practice?*

**Score: 50/2015 (50/2011)**

Results of auditing and criminal or misdemeanor charges raised against officials indicate that the SAI functions free from external involvement. SAI itself confirms that it faces external pressure during the auditing, such as obstruction from some auditing subjects with submitting documents. However, according to the SAI, this does not have influence on independence of the institution<sup>997</sup>.

The fact that the SAI is accommodated in the premises which belong to the National Bank of Serbia (NBS), which is subject to audit of the SAI, also doesn't endanger the SAI's independence, because there is no direct relation between the SAI and the NBS. According to the SAI, those premises are provided for the SAI by the State Direction for Public Property<sup>998</sup>. On November 19<sup>th</sup>, 2015, the Institution is assigned office space in Belgrade, the total area of 2224 square meters. However, an expert points out that it is difficult to conclude whether the SAI is independent only on the basis of audit reports. In the past there have been cases that in the reports major irregularities were not found, but it turned out later, that police investigations were launched over the functioning of those subjects. Also, the question of the annual audit plan could be raised, especially since the criteria by which the plans are preparing, have never been published<sup>999</sup>.

No direct attempts of influence by politicians in appointments and election of members of the SAI Council and employees, nor political interventions in the activities of the SAI have been recorded by experts, NGO's or media. However, members of the SAI Council are proposed to the Parliamentary Finance Committee (which is the formal proposer of candidates to the Parliament) by political parties<sup>1000</sup>. This gives the impression in public that members of the Council, although they are not members of political parties, are representatives of political parties<sup>1001</sup>. In 2007, when five members of the Council were elected, all of them were proposed by ruling parties. In 2012 only two of them (including the SAI president) were re-elected. All elected members were proposed by ruling parties again. However, it should be noted that two out of three new members were already the SAI employees.

995 Law on SAI, Articles 14 i 35, Rules on Procedure of SAI, Article 10

996 Law on Financing Political Activities, Article 34

997 Information and data provided from the SAI President Radoslav Sretenovic, May 2015

998 Information and data provided from the SAI President Radoslav Sretenovic, May 2015

999 Interview with expert on the SAI, who insisted to remain anonymous, May 2015

1000 Law on SAI, article 19

1001 Media had been reporting on elected members of the Council as party "personnel" <http://www.blic.rs/Vesti/Politika/22906/Drzavnirevizori-bez-uslova-za-rad->

# Governance

## Transparency (Law)

*To what extent are there provisions that should ensure that the public can obtain relevant information on the relevant activities and decisions of the SAI?*

**Score: 100/2015 (100/2011)**

There have been no relevant changes in the regulations since NIS 2011. There are comprehensive legal provisions which should ensure that the work and activities of the SAI are available to the public. SAI is obliged to publish on its web-site the Information Directory on its work<sup>1002</sup> and to regularly update data in the Directory. This document, besides others, should contain data on the organizational structure, description of competencies, authority 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 procurement, 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 information<sup>1003</sup>.

SAI is obliged to publish the annual work report, and to submit it to the Parliament<sup>1004</sup>. The Law does not specify what should be included in the report. It is defined by the SAI's own Rules of Procedure. According to this document, the report should contain data on implementing the annual audit program, provided and spent assets and final accounts of the SAI, as well as data 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 auditor<sup>1005</sup>. The deadline for submitting the work report for the previous year is 31<sup>st</sup> March of the current year<sup>1006</sup>.

The Law envisages that "the work of the Institution is public in accordance with the Law and the Rules of Procedure"<sup>1007</sup>. As for publishing audit reports, the Law, does not specify anything apart from obligation to deliver reports to the Parliament and to the assemblies of the local authorities on audits related to subjects within their competence<sup>1008</sup>. The Rules of Procedure state that the draft and proposal of the audit report are confidential and that the report of auditing subjects on measures taken to fulfill recommendations from the auditing report is a public document. The Rules of Procedure also stipulates that the Institution "publishes acts on its web-site". During the auditing only information about the subject, phase of auditing process and expected time of finishing auditing can be published<sup>1009</sup>. When irregularities in auditing are found, a press release is published "in the media determined by the President of the SAI"<sup>1010</sup>.

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1002 Law on Free Access to Information of Public Importance, Article 39

1003 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>

1004 Law on SAI, Article 45

1005 Rules on Procedure of SAI, Article 45

1006 Law on SAI, Article 45

1007 Law on SAI, Article 49

1008 Law on SAI, Article 44

1009 Rules on Procedure of SAI, Article 48

1010 Rules on Procedure of SAI, Article 48

## Transparency (Practice)

*To what extent is there transparency in the activities and decisions of the SAI in practice?*

**Score: 75/2015 (50/2011)**

The transparency of the SAI work has increased since 2011, annual reports and Information Directory are published, and all Audit Reports are available to the public. However, the criteria according to which the subjects of audit are selected are still not transparent.

An expert raised the question of why those criteria are not published when all audits in the current year are completed and when auditing reports are presented to the public<sup>1011</sup>. In answer to this question, the SAI says that neither the Law nor the auditing standards<sup>1012</sup> require public disclosure of the criteria for the selection of audit subjects<sup>1013</sup>. It is part of the audit methodology and criteria are contained in the annual audit plan<sup>1014</sup>.

SAI's Information Directory is updated occasionally, not monthly, as determined by the Commissioner for Public Information, although the SAI claims in its Annual 2014 report that updating is done "in accordance to the Law on Free Access to Information of Public Importance"<sup>1015</sup>.

During 2014, the Institution received 32 requests for access to public information, and information seekers were citizens, media, NGOs and other civil society groups, political parties, and authorities. The Institution replied to all requests<sup>1016</sup>.

SAI held two press conferences in 2015 - in July and in December with presentation of the results of the audit of purposefulness and the audits of the financial reports<sup>1017</sup>.

SAI does not have outreach programmes or public channels for receiving information from citizens about suspected misuse of public funds. However, it claims that it "almost daily receives information in which citizens warn of the way public funds are spent and that information is sent to the competent supreme state auditors. These are discussed and taken in account when planning annual audit program"<sup>1018</sup>. Citizens' petitions are submitted to the SAI by e-mail and regular mail. SAI claims that it plans to open a direct channel of communication with the citizens and organizations which report suspected irregularities<sup>1019</sup>. SAI did not indicate precisely when this should happen, stating only it should be done "in the course of the next strategic period".

In addition to this, UNDP office in Serbia has supported a number of things, from the new SAI website, special meetings with journalists (including a joint one with the parliamentary sub-committee), while a larger scale initiative was dedicated to outreach of SAI to the local level, in order to develop its prevention pillar. This was done with Standing Conference of Towns and Municipalities (SCTM), covering almost all municipalities – through a series of workshops, roundtables where municipal and other local authorities had the opportunity to directly hear from SAI about the most recurrent audit findings and ask various questions being outside of the audit cycle. In addition, an e-learning platform was recently launched through SCTM and already over 600 local level practitioners applied to the courses<sup>1020</sup>.

1011 Interview with an expert on the SAI, who insisted to remain anonymous, May 2015

1012 Information and data provided from the SAI President Radoslav Sretenovic, May 2015

1013 Annual Report 2014

1014 Report submitted by SAI to Commissioner for Public Information

1015 Interview with staff member

1016 SAI Annual Report for 2014

1017 Information and data provided from the SAI President Radoslav Sretenovic, May 2015

1018 <http://www.skgo.org/reports/details/1688>



## Accountability (Law)

*To what extent are there provisions that should ensure that the SAI has to report and be accountable for its actions?*

**Score: 75/2015 (75/2011)**

There have not been any changes in legislation since NIS 2011 regarding accountability of the SAI. The SAI is obliged to report to the Parliament by submitting the annual report and the report on the audit of the final account of the budget of the Serbia<sup>1019</sup>.

The report submitted to the Parliament, among other things, should contain data on execution of the annual plan of audit, secured and spent assets and the final account of the SAI, work of the Council of SAI, realization of exams for auditors and training of auditors<sup>1020</sup>. SAI is also obliged to deliver reports upon the request of the Parliament with information and data that the Parliament asks for<sup>1021</sup>. Reports are considered by the Parliamentary Committee for Finances which then delivers its standpoints and recommendations to the Parliament. There is also a sub-committee specifically dedicated to reviewing SAI reports and liaising with SAI on a regular basis.

The Parliament decides on proposed recommendations, measures and deadlines for their implementation<sup>1022</sup>.

SAI must deliver a financial plan to the Parliamentary Committee for Finances, which should then be forwarded, with the consent of the Committee, to the Ministry of Finance<sup>1023</sup>.

SAI does not perform an audit of its own final accounts, but the Parliament can entrust an audit of the final accounts of the SAI to enterprises that conduct auditing, in accordance with the law on accounting and auditing<sup>1024</sup>. Data on final accounts are part of the annual work report of SAI. There is no obligation to audit the final accounts.

On the one of problems in the legal framework regarding accountability was pointed out in the Center for Applied European Studies 2014 Report on the SAI<sup>1025</sup>. It is about the relationship between the Council and the President of the SAI, who has the triple role: head of the SAI, the Auditor General (who signs all auditing reports) and also member and president of the Council, whose vote counts double in a case of a tied vote at the Council sessions. This raises the question of the role of the Council. On the other hand there is no supervisory mechanism within the institution. As things stand, internal audits can't be formed in the SAI, since there is no non-managerial authority to which it would be accountable<sup>1026</sup>. However, in 2015 SAI organized it's own internal audit, that conducted three audits<sup>1027</sup>.

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1019 Law on SAI, Article 43

1020 Rules on Procedure of SAI, Article 45 [http://SAI.rs/images/pdf/dokumenti/akti/Poslovnik\\_SAI.pdf](http://SAI.rs/images/pdf/dokumenti/akti/Poslovnik_SAI.pdf)[http://www.dri.rs/images/pdf/dokumenti/akti/Poslovnik\\_DRI.pdf](http://www.dri.rs/images/pdf/dokumenti/akti/Poslovnik_DRI.pdf)

1021 Law on SAI, Article 46

1022 Law on SAI, Article 48

1023 Law on SAI, Article 51

1024 Law on SAI, Article 52

1025 Research "State Audit Institution", CPES, May 2014

1026 Research "State Audit Institution", CPES, May 2014

1027 SAI draft annual report for 2015.

## Accountability (Practice)

*To what extent does the SAI have to report and be accountable for its actions in practice?*

**Score: 75/2015 (75/2011)**

SAI regularly submits to the Parliament the annual work report that contains information on the published audits, provided and spent assets and final account of the 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 the SAI<sup>1028</sup>. Reports are presented to members of the Parliament by the President of the SAI Council. The Parliamentary Committee for Finances and the Parliament in plenum were adopting conclusions based on SAI reports in previous years without any concrete recommendations. They merely stated that the SAI's Report was a comprehensive presentation of the activities of the Institution<sup>1029</sup>.

Although 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 the SAI, there has never been such a request by members of the Parliament<sup>1030</sup>. However, the SAI itself requested such an audit and it was performed for the first time in 2015. The Montenegrin State Audit Institution conducted an audit of the Annual Financial Report of the SAI for 2014. The final report on this audit has not yet been published<sup>1031</sup>.

## Integrity (Law)

*To what extent are there mechanisms that should ensure the integrity of the SAI?*

**Score: 100/2015 (100/2011)**

There are several mechanisms which are supposed to ensure the integrity of the audit institution.

State auditors and employees are obliged to respect and implement the Code of Ethics of the SAI<sup>1032</sup>, adopted in 2009, as well as the International Organization of Supreme Audit Institutions (INTOSAI) Code of Ethics<sup>1033</sup>. 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 stipulated, without precise elaboration of the meaning of that provision, and the SAI Council is in charge of interpretation of the Code provisions<sup>1034</sup>. The Council adopted the conclusion that each employee of the SAI must be given a copy of the Code and that each employee must sign the statement that they have read the Code and that they are aware of the consequences for violating its provisions<sup>1035</sup>.

In February 2014 the Council adopted the Statement on the verification of ethical behavior in the course of the audit. This Statement is signed by all supreme state auditors and all members of the audit team and submitted to the Auditor General when submitting the audit report. It is done for each individual audit and it is deposited in the permanent audit file<sup>1036</sup>.

<sup>1028</sup> <http://www.dri.rs/cir/dokumenti.html>

<sup>1029</sup> [http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala\\_akta/2014/RS41-14.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2014/RS41-14.pdf)[http://www.parlament.gov.rs/upload/archive/files/cir/pdf/akta\\_procedura/2015/02-881\\_15\\_lzvestaj%20odbora.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/akta_procedura/2015/02-881_15_lzvestaj%20odbora.pdf)

<sup>1030</sup> Interview with former member of the Parliament and member of the parliamentary Committee for Finances Radojko Obradovic, May 2015

<sup>1031</sup> Information and data provided from the SAI President Radoslav Sretenovic, May 2015

<sup>1032</sup> [http://www.SAI.rs/images/pdf/dokumenti/kodeks/Eticki\\_kodeks\\_SAI.pdf](http://www.SAI.rs/images/pdf/dokumenti/kodeks/Eticki_kodeks_SAI.pdf)

<sup>1033</sup> International Organization of Supreme Audit Institution's Code of Ethics <http://intosai.connexcc-hosting.net/blueline/upload/1codethaudstande.pdf>

<sup>1034</sup> SAI Code of ethics, Articles 27 and 28

<sup>1035</sup> Information and data provided from the SAI President Radoslav Sretenovic, May 2015

<sup>1036</sup> Information and data provided from the SAI President Radoslav Sretenovic, May 2015

Certain rules for preventing conflict of interest are regulated by the Law on SAI, which stipulates that a person who was a member of the Government in the following two years after termination of mandate cannot be a member of the SAI Council<sup>1037</sup>. Also, members of the Council, supreme state auditor, authorized state auditors and auditors cannot hold positions in a state body, municipal bodies or 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 the SAI jurisdiction, nor can they perform other business activities that could have a negative influence on its independence, impartiality and social reputation as well as to the trust in SAI and its reputation<sup>1038</sup>. A member of the Council and auditor cannot participate in the process of auditing, if he/she was employed by the subject of audit or performed work for this subject, in the five year period from the termination of such engagements<sup>1039</sup>.

Provisions of the Law on Anti-Corruption Agency that regulate the status of all public officials and matters of conflict of interest and gifts and hospitality are applied to members of the Council and auditors<sup>1040</sup>. According to the Law on Anti-Corruption Agency, the SAI is obliged to run records on gifts received by the members of the Council and to deliver a copy of the records for the previous year to the Anti-Corruption Agency by 31<sup>st</sup> March of the current year<sup>1041</sup>.

Members of the SAI Council are obliged to report property to the Anti-Corruption Agency and part of this data is public<sup>1042</sup>. Two years after termination of office they are obliged 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 related to the SAI<sup>1043</sup>.

It is forbidden for members of the Council to be relatives or spouses<sup>1044</sup>. The Law stipulates 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 the SAI has engaged are obliged to keep this data confidential even after the expiration of employment or hiring<sup>1045</sup>.

## Integrity (Practice)

*To what extent is the integrity of the SAI ensured in practice?*

**Score: 100/2015 (100/2011)**

Integrity of the SAI is fully ensured in practice. There have not been any cases of violation of the Code of Ethics by employees or members of the Council. Also, there were no cases of questions raised in public, in the media or in the Parliament, regarding the integrity of the SAI, the Council members or the SAI employees. The Anti-Corruption Agency has not undertaken any measures against members of the SAI Council or auditors<sup>1046</sup>. All members of the Council and other officials in the SAI have reported their assets to the Anti-Corruption Agency<sup>1047</sup>.

All new employees in the SAI, after taking duty, receive a copy of the Code of Ethics, and they sign a statement that they are familiar with Code's contents and the consequences of non-compliance

1037 Law on SAI, Article 16  
 1038 Law on SAI, Article 17, 30  
 1039 Law on SAI, Articles 18, 30  
 1040 Law on Anti-Corruption Agency, Articles 39-42  
 1041 Law on Anti-Corruption Agency, Articles 39-42  
 1042 Law on Anti-Corruption Agency, Articles 43-47  
 1043 Law on Anti-Corruption Agency, Article 38  
 1044 Law on SAI, Article 18  
 1045 Law on SAI, Article 42  
 1046 <http://www.acas.rs/organizacija/sektor-za-kontrolu-imovine-i-prihoda/>  
 1047 <http://www.acas.rs/pretraga-registra/>

with the Code<sup>1048</sup>.

According to data delivered by the SAI, the Institution organized workshops for employees on ethical issues in 2014, but no further details on the number or scope of those workshops were given. Organization of further workshops in 2015 is planned<sup>1049</sup>.

SAI has also created a questionnaire on ethics and ethical behavior which is an integral part of the audit methodology<sup>1050</sup>.

SAI is a member of the Working Group on Ethics and Auditing EUROSAI, which is an instrument to support European supreme audit institutions in promoting the relevance of ethical behavior, in particular through the exchange of individual experiences<sup>1051</sup>.

# Role

## Effective financial audits

*To what extent does the SAI provide effective audits of public expenditure?*

**Score: 50/2015 (25/2011)**

SAI has significantly increased the number and the scope of its audits since 2008 when it performed just a partial audit of the budget of Serbia on a small sample of total expenditure. In 2014 the SAI carried out the audit of financial statements and regularity of operations for 67 subjects, including local authorities, state owned enterprises, funds for social insurance, National bank, and public institutions<sup>1052</sup>. Some subjects planned for 2015 auditing will be audited for the second time since 2008, which signifies improvement in the capacities of the SAI. In 2014 the SAI also conducted six audits of the reports audit subjects submitted as replies to recommendations given by the SAI. This is also an important improvement since it is the only way to confirm whether recommendations are really fulfilled in proper way.

With regards to the legal framework the 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, regularity of business, appropriate use of public funds, system of financial management, system of internal controls, internal audits, accounting and financial procedures of the auditees, regularity of operations of the managing and governing bodies, and other responsible persons<sup>1053</sup>.

However, the SAI has carried out two performance audit so far. First one was an audit of efficiency of use of official vehicles, published in 2014. The key finding of this audit was that the system is poorly regulated but in the SAI 2014 Annual Report there was no mention whether the system was improved after the audit. Following that audit one criminal charge was filed<sup>1054</sup>. Another performance audit was published in 2015 – audit of efficiency of use real estate owned by the state<sup>1055</sup>. According

1048 Information and data provided from the SAI President Radoslav Sretenovic, May 2015

1049 Information and data provided from the SAI President Radoslav Sretenovic, May 2015

1050 Information and data provided from the SAI President Radoslav Sretenovic, May 2015

1051 Information and data provided from the SAI President Radoslav Sretenovic, May 2015

1052 SAI Annual Report for 2014

1053 Law on SAI, Article 9

1054 SAI press issue, January 27th 2015, Beta News Agency

1055 [http://www.b92.net/biz/vesti/srbija.php?yyyy=2014&mm=09&dd=21&nav\\_id=902197http://www.dri.rs/revizije/izvestaji-o-reviziji/arhiva-2015.347.html](http://www.b92.net/biz/vesti/srbija.php?yyyy=2014&mm=09&dd=21&nav_id=902197http://www.dri.rs/revizije/izvestaji-o-reviziji/arhiva-2015.347.html)

to an expert<sup>1056</sup>, the SAI will face big challenges in conducting performance audits of the budget of Serbia. The programme budget, fully introduced only in 2015 had poorly defined indicators and goals and it will be very difficult to estimate the purposefulness of programmes and projects<sup>1057</sup>.

In 2015, the SAI began auditing of political parties. SAI claimed earlier that it had no capacities to audit political parties. On the other hand, control of political parties financial reports is jurisdiction of the Anti-Corruption Agency. In 2015, SAI conducted audits of financial statements and regularity of operations of three major parliamentary political parties – ruling Serbian Progressive Party and Socialist Party of Serbia and opposition Democratic Party<sup>1058</sup>.

Audits conducted in previous period revealed a lot of common problems which seem to be repeating, primarily in the area of public procurement. Nevertheless, there has been some improvement in the area of establishing effective internal auditing in public bodies. This is important because it will help to remove a lot of “technical” irregularities which the SAI auditors find in the course of auditing. In such a manner, their time and energy is spent on those “minor” problems instead of focusing on systems, such as public procurement, which present much larger problem<sup>1059</sup>.

Further developing of internal audits would be needed to allow SAI to focus its work on performance audit. There are INTOSAI standards that regulate the relationship between external and internal audit. While a Working Group between SAI and MoF (which houses the Central Harmonization Unit dealing with internal audit) does exist, with a purpose of coordinating activities and advancing the two systems, SAI has not yet managed to fully depend on one single internal audit report<sup>1060</sup>.

All SAI’s audit reports are presented to the Parliament. However, in recent years the Parliament didn’t discuss audits of the budget of Serbia. SAI recently signed a Memorandum with the parliamentary Committee for Finances in order to “enhance mutual relations and cooperation in the control of public spending”<sup>1061</sup>. SAI has actually offered to help members of the Parliament, members of the Committee to understand the findings of the audit reports. SAI pledged to appoint a representative who will coordinate activities with the members of the Committee and a sub-committee dedicated exclusively to SAI.<sup>1062</sup>

## Detecting and sanctioning misdemeanors

*Does the SAI detect and investigate misbehavior of public officeholders?*

**Score: 75/2015 (75/2011)**

SAI has the possibility and the obligation to submit to the court a request for initiating misdemeanor proceedings or to file criminal charges, if it discovers during auditing any activities that indicate the existence of the elements of a misdemeanor or criminal act<sup>1063</sup>.

SAI has filed numerous charges against officials for misdemeanors, criminal acts or economic offences detected in the course of auditing. However, judicial institutions have been very slow in responding to these charges<sup>1064</sup>. According to research carried by Transparency Serbia in early

<sup>1056</sup> Interview with an expert for the SAI who insisted to remain anonymous, May 2015

<sup>1057</sup> Interview with an expert for the SAI who insisted to remain anonymous, May 2015

<sup>1058</sup> <http://www.dri.rs/revizije/izvestaji-o-reviziji/arhiva-2015.347.html>

<sup>1059</sup> Interview with an expert for the SAI who insisted to remain anonymous, May 2015

<sup>1060</sup> Comment of Jelena Manic Petronikolos, Programme Analyst – Good Governance in United Nations Development Programme, September 2015.

<sup>1061</sup> [http://www.parlament.gov.rs/Potpisan\\_Memorandum\\_o\\_saradnji\\_izme%C4%91u\\_Odbora\\_za\\_finansije,\\_republi%C4%8Dki\\_bud%C5%BEet\\_i\\_kontrolu\\_tro%C5%A1enja\\_javnih\\_sredstava\\_i\\_Dr%C5%BEavne\\_revizorske\\_institucije.25863.941.html](http://www.parlament.gov.rs/Potpisan_Memorandum_o_saradnji_izme%C4%91u_Odbora_za_finansije,_republi%C4%8Dki_bud%C5%BEet_i_kontrolu_tro%C5%A1enja_javnih_sredstava_i_Dr%C5%BEavne_revizorske_institucije.25863.941.html)

<sup>1062</sup> [http://www.parlament.gov.rs/Potpisan\\_Memorandum\\_o\\_saradnji\\_izme%C4%91u\\_Odbora\\_za\\_finansije,\\_republi%C4%8Dki\\_bud%C5%BEet\\_i\\_kontrolu\\_tro%C5%A1enja\\_javnih\\_sredstava\\_i\\_Dr%C5%BEavne\\_revizorske\\_institucije.25863.941.html](http://www.parlament.gov.rs/Potpisan_Memorandum_o_saradnji_izme%C4%91u_Odbora_za_finansije,_republi%C4%8Dki_bud%C5%BEet_i_kontrolu_tro%C5%A1enja_javnih_sredstava_i_Dr%C5%BEavne_revizorske_institucije.25863.941.html)

<sup>1063</sup> Law on SAI, Article 41

<sup>1064</sup> Transparency Serbia 2014 research “Monitoring sanctioning of violation of anti-corruption legislation” <http://www.transparentnost.org.rs/>



2014, out of 125 misdemeanor charges filed in 2012, only 26 were solved by the end of 2013 and out of 205 charges filed in 2013 only 38 were solved. SAI President Radoslav Sretenovic said at the time that he was not satisfied with the way misdemeanor courts acted upon charges filed by the Institution, primarily due to the slow proceedings<sup>1065</sup>.

As for criminal charges, the research revealed that out of 20 charges filed between January 2011 and October 2013 there was not a single indictment by the beginning of 2014<sup>1066</sup>.

New data, obtained from the SAI in May 2015, shows that since the beginning of the functioning of the Institution (2008) 205 misdemeanor procedures were completed. Out of those, there were 153 convictions, five acquittals, and 46 terminated procedures (passed statute of limitation)<sup>1067</sup>. One charge was rejected. SAI did not provide information how many misdemeanor charges in total were filed in this period.

As for economic offenses, 42 proceedings were concluded. Out of these, there were 28 convictions, two acquittals, and 11 proceedings were terminated. One charge was rejected<sup>1068</sup>.

When it comes to criminal charges, in eight cases the defendants were obliged to pay a certain amount to charity in exchange for the abandonment of the prosecution<sup>1069</sup>, two proceedings were finalized and four were rejected. Other proceedings are still on-going<sup>1070</sup>.

In audits carried out in 2014, state auditors found irregularities in the list of assets and liabilities worth 16 billion dinars (USD 160 million), in the payment of salaries and other benefits worth RSD 1.2 billion (USD 12 million) and in 50% of controlled public procurements<sup>1071</sup>.

When the SAI determines that the subject of audit has not addressed the noted 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 and to issue a recommendation for dismissing the responsible person and notify the public on this matter<sup>1072</sup>.

On three occasions, the SAI has faced the refusal of audited subjects to fulfill the Institution's recommendations. In one of those cases (Smederevska Palanka municipality), SAI filed with the local authority a request to dismiss the mayor. The local assembly, however, refused to do so, and the SAI informed the Parliament of the outcome<sup>1073</sup>. Two local hospitals also refused to fulfill recommendations. Criminal charges were filed against managers of those hospitals<sup>1074</sup>.

One problem noted in NIS 2011 regarding sanctioning mechanisms remains in NIS 2015. Transparency Serbia 2014 research confirmed that public prosecution still does not have the practice to conduct further investigations on the basis of SAI reports after their publishing, and it acts only on the basis of charges filed by the SAI. On the other hand, it is questionable whether SAI, considering it is not their primary function, has skills and resources to detect all violations covered by their audit reports<sup>1075</sup>.

[images/stories/materijali/Monitoring%20sankcionisanja%20kršenja%20antikorupcijskih%20propisa/Sankcionisanje%20kršenja%20antikorupcijskih%20propisa%20u%20Srbiji,%20Transparentnost%20Srbija,%20februar%202014.pdf](#)

1065 Transparency Serbia 2014 research "Monitoring sanctioning of violation of anti-corruption legislation"

1066 Transparency Serbia 2014 research "Monitoring sanctioning of violation of anti-corruption legislation"

1067 Data provided by the SAI, May 2015

1068 Data provided by the SAI, May 2015

1069 Form of bargain, according to Article 283 of the Criminal Procedure Code

1070 Data provided by the SAI, May 2015

1071 The SAI press issue, January 27th 2015, Beta News Agency

1072 Law on SAI, Article 40

1073 Data provided by the SAI, May 2015, also <http://www.smederevskapalanka.rs/index.php/2-uncategorised/616-2015-02-13-10-41-59>

1074 Data provided by the SAI, May 2015

1075 Transparency Serbia 2014 research "Monitoring sanctioning of violation of anti-corruption legislation"





## Improving financial management

*To what extent is the SAI effective in improving the financial management of the Government?*

**Score: 50/2015 (50/2011)**

There has been some improvement in the financial management of the Government as the result of the SAI actions. Progress can be noted in the area of establishing internal controls and internal audits of public funds users, but some irregularities, especially in the area of public procurement are repeated year after year.

During 2014 audit, subjects were sent “reply reports” to gather evidence that they had acted on the recommendations given in 2013. By the end of 2014, out of 1058 recommendations, subjects had acted on 666 recommendations, 372 recommendations were in the process of execution (and subjects replied they needed longer period to implement them), and 20 recommendations were not acted upon.

An expert on the SAI work agrees that many of recommendations cannot be fulfilled within 90 days, the period in which subjects need to reply and report on recommendations’ implementation. However, the most important is that the SAI should not just rely on those reports by audited subjects, but should control whether they really did as they reported. In previous years, the lack of the SAI resources somehow guaranteed to the audited subject that once they have had audit performed, they wouldn’t be “disturbed” by the SAI for many years. This situation has changed a bit, and in 2015, the SAI is auditing again some of subjects audited a few years earlier. It has also started controls of reply reports. It is, according to this expert, the only way to improve the system of financial management – the existence of a constant “threat” that they might be subject of audits<sup>1076</sup>.

Another problem is the fact that the Parliament has never discussed the actions of the Government and ministries based on the SAI’s recommendations<sup>1077</sup>. In 2013, a parliamentary conclusion on SAI’s annual report obliged the SAI to present the parliament the report on fulfillment of the SAI’s recommendation from audits for 2011<sup>1078</sup>. There was no evidence that the Parliament ever discussed this report. In the 2014 conclusion and in the 2015 draft of the conclusion (the conclusion was not adopted by the time this report was finished) there was no such request<sup>1079</sup>.

# STATE AUDIT INSTITUTION

## Recommendations

1. SAI should increase the number of auditors, so all suspicions reported to the SAI can be checked;
2. Parliament should amend the Law on SAI in order to include in mandatory audit program of the SAI financing of political parties. Parliament should amend the Law on Financing Political Activities to determine the scope of audit so that it doesn’t overlap with the control performed by the Anti-Corruption Agency;

<sup>1076</sup> Interview with expert for the SAI who insisted to remain anonymous, May 2015

<sup>1077</sup> Interview with former member of the Parliament and member of the Parliamentary Committee for Finances Radojko Obradovic, May 2015

<sup>1078</sup> [http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala\\_akta/2013/RS39-13.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2013/RS39-13.pdf)

<sup>1079</sup> [http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala\\_akta/2014/RS41-14.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/ostala_akta/2014/RS41-14.pdf)

3. SAI should focus on strengthening its Performance Audit Sector in order to increase the scope and volume of work of this Sector (or strengthening its capacities for performance audit in a different way)
4. Government and the Parliament should improve legal framework for strengthening internal audits and budget inspections, so that the SAI can focus on matters of the appropriateness of public expenditures; Ministry of Finance and the Government should strengthen the capacity of budget inspection
5. SAI should introduce the practice of submitting misdemeanor charges even before it submits report on audit;
6. SAI should include public procurement planning procedures in the audit program;
7. SAI should make more transparent (through an outreach program) a channel for citizens to report irregularities. Criterion on which the SAI makes its auditing plan should be made public after the audit is completed. This should include explanations on whether information received from citizens or institutions (PPO, ACAS) was checked.
8. Committee for Finances should regularly follow-up fulfillment of the SAI's recommendations in audited institutions e.g. through public hearings on the most strategic issues raised by SAI in its report, or mobile committee sessions to a municipality that has significant findings, etc.



# ANTI-CORRUPTION AGENCY

## National Integrity System

**Summary:** The Anti-Corruption Agency (ACA) is an independent body, in charge of conflict of interest prevention, control of party and campaign financing and prevention of corruption in general. Duties and deadlines for fulfilling tasks of the Agency are however still not clearly defined, thus limiting accountability of this body in terms of its results.

Prevention is one of the Agency's main jurisdictions and it is fully engaged in this field. Agency is also active in the field of anti-corruption training and education. However, the impact of its activities in prevention is limited due to lack of follow-up by the Parliament and the Government. Agency's position is further weakened through unclear division of competences and role between the ACA and the Government's Anti-Corruption Council, the Government's coordinative body and the Ministry of Justice. Improvement of the Agency's role in all fields is envisaged by the Anti-corruption Strategy (2013), but the Government and Parliament did not sufficiently supported the realisation of this aim.

Furthermore, the Anti-Corruption Agency does not have adequate resources to achieve all envisaged goals. Agency needs greater powers, in particular to perform more effective control of asset declarations. Agency also lacks human resources, IT equipment and funds for organisation of training and education.

Despite these challenges, the Anti-Corruption Agency's operations are generally considered to be professional and independent, although party representatives and/or affected public officials occasionally claim that decisions are politically biased. Agency is accountable to the Parliament and submits comprehensive annual reports regularly. Accountability mechanisms within the Agency were put to test in 2012 when the Director was dismissed by the Board for discrediting the reputation of the Agency.



| ANTI-CORRUPTION AGENCY   |                |                           |                         |
|--|----------------|---------------------------|-------------------------|
| Overall Pillar Score (2015): 67 / 100<br>Overall Pillar Score (2011): 60 / 100 |                |                           |                         |
| Dimension  | Indicator      | Law                       | Practice                |
| <b>Capacity</b><br>75 / 100  | Resources      | 75 (2015),<br>75 (2011)   | 50 (2015),<br>50 (2011) |
|  | Independence   | 100 (2015),<br>100 (2011) | 75 (2015),<br>50 (2011) |
| <b>Governance</b><br>63 / 100  | Transparency   | 75 (2015),<br>75 (2011)   | 50 (2015),<br>25 (2011) |
|  | Accountability | 75 (2015),<br>75 (2011)   | 75 (2015),<br>50 (2011) |
|  | Integrity      | 50 (2015),<br>50 (2011)   | 50 (2015),<br>50 (2011) |
| <b>Role</b><br>67 / 100  | Prevention     | 100 (2015), 75 (2011)     |                         |
|  | Education      | 75 (2015), 75 (2011)      |                         |
|  | Investigation  | 25 (2015), 25 (2011)      |                         |

**Structure** – The Anti-Corruption Agency is established by the Law on Anti-Corruption Agency, adopted by the National Assembly in October 2008. Agency, which became operational in January 2010, is authorized in mainly prevention and education, and some aspects of control. Law enforcement is in hands of police and prosecutors' offices. Agency deals with issues of declarations of assets and income, conflict of interest, control of the financing of political parties and election campaigns, implementation of the National Anti-corruption Strategy and the Action Plan.

Agency is run by the Director, elected in a public competition for a 5 year term by the Agency's Board. Nine Board members are appointed for a 4 year term by the Parliament 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 agreement. Agency consists of five departments – Department for Prevention, Department for Oversight of Officials' Assets and Incomes and Complaints, Department for Resolving Conflicts of Interest, Department for Oversight of Financing Political Activities and Department for International Cooperation.





# 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: 75/2015 (75/2011)**

Agency drafts its own financial plan and delivers it to the Ministry of Finance, which can modify it. Government adopts the draft budget, with the Agency's budget as part of it, and forwards it to the Parliament. Members of the Parliament may change the budget by amendments, providing that balance of the budget does not change - for each increase in expenses, other expenses must be decreased or income must be increased<sup>1080</sup>. There is no legal guarantee that the Agency's draft budget will not be modified by the Finance Ministry, Government or Parliament. Such guarantee does not exist even for expenses where the amount is pre-determined in the law (e.g. funds for control of election campaign reports on the basis of Law on Financing Political Activities).

Apart from direct budget funds, the Agency can use funds from donations for specific projects and its "own revenues". Revenues might come from activities such as drafting integrity plans for the private commercial sector<sup>1081</sup>. The Agency "autonomously disposes with funds from the budget and its own revenues"<sup>1082</sup>, but has to obey the general budget system rules.

Law on Civil Servants sets quotas for the highest level employee rank, which makes it difficult to employ a sufficient number of highly qualified and experienced employees. Law envisages that "regulations pertaining to civil servants and general service employees" shall apply to the Agency.

Austerity measures, introduced through amendments to the Law on Budget System in December 2013 affected the Agency as well. Employment in the public sector without approval of the Government is banned. Agency, as well as other independent authorities and the Parliament, need approval of the Parliamentary Committee for Administrative issues and the budget instead<sup>1083</sup>. According to the Law on the Anti-Corruption Agency, the Agency already needed approval of the Parliamentary Committee for Rules on Internal Organization and Job Classification<sup>1084</sup>. Now, another Parliamentary Committee has to approve recruitments based on these Rules.

Another austerity measure for public sector applied to the Agency, was a reduction of the salaries - 20% on salaries above RSD 60.000 (USD 535) and 25% on salaries above RSD 100.000 (USD 900), envisaged by the Law on Decrease of Net Income of Persons in Public Sector<sup>1085</sup>. It was replaced by 10% reduction of salaries, since November 2014<sup>1086</sup>.

1080 Law on Budget System, Article 44

1081 Law on the Anti-Corruption Agency, Article 3. Since late 2012, the term "own revenues" does not exist in the Budget system law anymore and there is no separate column to present such income nor special rules about using of it.

1082 Law on the Anti-Corruption Agency, Article 3

1083 <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2013/4566-13.pdf>

1084 Law on the Anti-Corruption Agency, Article 23

1085 [http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi\\_zakona/4559-13Lat.pdf](http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/4559-13Lat.pdf)

1086 <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2014/3796-14.pdf>

## Resources (Practice)

*To what extent does the ACA have adequate resources to achieve its goals in practice?*

**Score: 50/2015 (50/2011)**

Anti-Corruption Agency does not have adequate resources to achieve its goals in practice in all its competencies. It faces problems of human resources, IT capacities, and lack of funds for organisation of training and education. Lack of human resources is mostly a consequence of lack of the office space. It is in particular absurd, since in 2012, the Government, on the basis of Agency's request, purchased a new building for the Agency, paying for it RSD 520 million (USD 4,9 million). Building suited the Agency's needs at the time, but soon after it turned out to be inadequate for any further growth<sup>1087</sup>. Another problem is that the Law envisages some formal activities, administrative work and communication with public officials (e.g. formal approvals) which engage the Agency's scarce human resources, not allowing it to focus more on resolution of actual conflict of interest and control of assets declarations

Agency's budget hasn't changed significantly since 2013. It was RSD 191.5 million (USD 2.25 million) in 2013, RSD 195 million (USD 2.3 million) and RSD 194 million (USD 1.92 million) in 2015. Agency, however, provided additional RSD 138 million (USD 1.37 million) from international donations and the EU supported projects in 2015.

Almost 90% of the Agency's budget is spent on salaries and regular functioning expenses. It means there are no funds for new employments, researches and surveys, IT equipment, software. The new Job Classification, approved in September 2015, envisages 139 employees<sup>1088</sup>. In December 2014, the Agency had 76 employees (2 of them temporarily) and seven persons engaged on contract basis, less than in December 2013 (79 employees, six of them temporarily and 10 on contract bases).

According to the Agency's Director, restrictions and quotas regarding employment and salaries, set by the Law on Civil Servants, reflect the most on the IT staff. Agency has difficulty finding and keeping staff in this sector<sup>1089</sup>.

Agency organizes public competitions for new employees. Candidates must meet demands regulated by the job description, which includes appropriate academic titles and working experience. Agency's competition commission organises interviews with candidates and additional tests. There are no special rules or norms regarding ethics screening. Also, there is no initial specialist training for new employees, which means they are trained in the course of work.

Career development rules are set by the Law on Civil Servants, applied in the Agency. All employees have training opportunities, mostly through donor-supported projects, which include foreign experts' visits or courses and seminars in the Agency or abroad<sup>1090</sup>.

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1087 Interview with the ACA Director Tatjana Babic and Vice Director Vladan Joksimovic, April 2015.

1088 <http://www.acas.rs/wp-content/uploads/2010/03/Pravilnik-o-sistematizaciji-radnih-mesta-oktobar-2015.pdf>

1089 Interview with the ACA Director Tatjana Babic and Vice Director Vladan Joksimovic, April 2015.

1090 Interview with the ACA Director Tatjana Babic and Vice Director Vladan Joksimovic, April 2015.

## Independence (Law)

*In accordance to the legislation, to what extent is the ACA independent?*

**Score: 100/2015 (100/2011)**

There have not been changes in legal framework regarding the Agency's independence since NIS 2011. The Law on the Anti-Corruption Agency sets the Agency as independent state body, accountable to the Parliament, with a mechanism which protects the director from direct influence of politics.

Director is appointed for a five year term by the Agency's Board, 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"<sup>1091</sup>. Director 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 expertise<sup>1092</sup>.

Parliament appoints members of the Agency Board for a four year term. Appointment of Board members is the only opportunity for politics to interfere with the Agency's independence. Three nominators are clearly political bodies: the Administrative Committee of the Parliament; the President of the Republic; the Government. Other nominators are the Supreme Court of Cassation; the State Audit Institution, the Ombudsman and Commissioner for Information of Public Importance, through mutual 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 should be further decreased by the possibility of each nominator to propose one candidate for the function only<sup>1093</sup>. Board members also may not be members of political parties<sup>1094</sup>.

There is good protection from unjustified removal of Board members - a member can be dismissed by the Parliament, but only at the Board's proposal. The procedure may be initiated following the motion 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. 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<sup>1095</sup>.

Agency also has a deputy director, who is appointed by the Director among three candidates chosen by the Agency Board after a public competition. Deputy Director's mandate ends when new Director is appointed<sup>1096</sup>. Other employees are civil servants and can be dismissed only in accordance with the Labor Law and Law on civil servants<sup>1097</sup>.

<sup>1091</sup> Law on the Anti-Corruption Agency, Articles 17 and 20

<sup>1092</sup> Law on the Anti-Corruption Agency, Article 16

<sup>1093</sup> Law on the Anti-Corruption Agency, Article 9

<sup>1094</sup> Law on the Anti-Corruption Agency, Article 8

<sup>1095</sup> Law on the Anti-Corruption Agency, Article 13

<sup>1096</sup> Law on the Anti-Corruption Agency, Article 21

<sup>1097</sup> Law on the Anti-Corruption Agency, Articles 23 and 24

## Independence (Practice)

*To what extent is the ACA independent in practice?*

**Score: 75/2015 (50/2011)**

Anti-Corruption Agency operates mostly in a professional and non-partisan manner. Party representatives have occasionally claimed that the Agency's decisions against their officials have been political<sup>1098</sup>. In practice, however, the Agency has made numerous decisions against representatives of all political colors and initiated misdemeanor procedures against all political parties for violating the Law on Financing Political Activities<sup>1099</sup>.

According to Zoran Gavrilovic from anti-corruption NGO Birodi, the Agency could fully prove its independence by being even more proactive. He pointed to the proceedings against the Minister of Justice as a prime example. In that case the Agency started proceedings against the Minister for conflict of interest – he did not exempt himself in the process of election of judges and prosecutors when candidates were his advisors<sup>1100</sup>. Agency recommended the Minister's dismissal, he appealed to the Agency's Board, as the appellate authority, and the Board after three months was unable to make a decision on the case – there was no majority either for accepting or rejecting the appeal<sup>1101</sup>.

Director of the Agency Tatjana Babic, claims that the Agency has not met any direct attempt of political influence, but there have been some obvious indirect attempts through the media, as in case of the Minister of Justice who had accused the Agency of being corrupt – “having their hand in the honey jar”. There was also the case of the Minister of Energy, against whom the Agency initiated proceedings for abuse of public office for promotion of a political party in the election campaign. The minister accused the Agency of being more interested in “attracting public attention by sensational headlines in the media than in monitoring the legality of the work of public officials”<sup>1102</sup>.

As an attempt of interfering in the Agency's independence, the Director noted the fact that the Ministry of Justice altered the Agency's reports for the EU in the process of legislation screening, without consulting the Agency and without its approval<sup>1103</sup>. The Ministry also drafted the Action Plan for Chapter 23 of the EU negotiations process, in which, according to the Agency, it tried to “establish the supervisory function of the Ministry of Justice in relation to the Agency – in analysis of its jurisdiction, assessment of organizational structure, number of employees and their level of training, and monitoring the implementation of the Law on the Agency”<sup>1104</sup>. Problems of that kind, even if not affecting independence of the Agency's work as such, are limiting its ability to fulfill all legal duties.

Nevertheless, the director says that the Agency has fine cooperation with law enforcement authorities/police and prosecution, namely with the Republic Prosecution's Department for the Fight against Corruption.

First Director of the Agency, elected in July 2009 was dismissed in November 2012 for discrediting the reputation of the Agency, by demanding from the Government to provide two flats for the Agency's employees, one of which was intended for her, and for negligent performance of duties – not organising properly control of the financing of political parties in the election year<sup>1105</sup>. Decision was made by the Agency's Board unanimously. Former Director claimed she had been “replaced in a staged procedure”, under “the influence of interest groups against which the Agency acted”. Her appeal was later dismissed by the Administrative Court<sup>1106</sup>.

1098 <http://www.nadlanu.com/pocetna/info/srbija/Trivan-Agencija-za-borbu-protiv-korupcije-je-zloupotrebjena.a-184015.291.html><http://www.novimagazin.rs/vesti/agencijakrivicne-prijave-protiv-ukic-dejanovi-i-jesiahttp://www.vesti-online.com/Vesti/Srbija/220120/Vucic-Odgovoricu-agenciji-koja-je-produzena-ruka-DS>

1099 [http://www.acas.rs/wp-content/uploads/2014/09/web\\_ODELJENJE\\_ZA\\_KONTROLU\\_FUNKCIONERA\\_1\\_10\\_2014.pdf](http://www.acas.rs/wp-content/uploads/2014/09/web_ODELJENJE_ZA_KONTROLU_FUNKCIONERA_1_10_2014.pdf)<http://www.acas.rs/finansiranje-politickih-subjekata/>

1100 <http://www.politika.rs/rubrike/Hronika/Agencija-za-borbu-protiv-korupcije-predlaze-smenu-ministra-Selakovica.lt.html>

1101 <http://goo.gl/oDzBGV>

1102 <http://www.nspm.rs/hronika/zorana-mihajlovic-odbacila-optuzbe-agencije-za-borbu-protiv-korupcije.html?alphabet=l>

1103 Interview with the Agency Director Tatjana Babic, April 2015

1104 <http://www.acas.rs/agencija-povodom-nacrta-akcionog-plana-za-poglavlje-23/?pismo=lat>

1105 <http://www.blic.rs/Vesti/Politika/352232/Smenjena-direktorka-Agencije-za-borbu-protiv-korupcije-Zorana-Markovic>

1106 Information from the Agency, interview with Director and Deputy Director, April 2015

# Governance

## Transparency (Law)

*To what extent provisions are ensuring that the public can obtain relevant information on the activities and decision-making processes of the ACA?*

**Score: 75/2015 (75/2011)**

Law on the Anti-Corruption Agency stipulates that the Agency must prepare an annual report on its work. Agency also issues opinions and directives for enforcing the Law, initiatives for amending and enacting regulations in the field of combating corruption, pronounces measures for violation of the Law, as well as in the field of financing of political parties<sup>1107</sup>.

Agency is obligated by the Law on Free Access to Information of Public Importance to publish and regularly update an Information Directory<sup>1108</sup>. The Agency is obligated, by this Law, to submit data upon request for access to information, including data on the processes it is running, unless that jeopardizes the control process itself or the privacy of individuals. Information should be given “without delay” and no later than within 15 days<sup>1109</sup>.

Agency keeps several registers and records – register of officials, register of property and income of officials, list of legal entities in which an official owns a share or stock in excess of 20%, catalogue of gifts, annual financial statements and election campaign costs reports of political parties<sup>1110</sup>. According to the Law, only part of the public officials’ income and assets declaration is available to the public<sup>1111</sup>.

Law envisages that procedure in which the Agency establishes whether there was a violation of the Law and imposes sanctions is closed to the public<sup>1112</sup>. The measure, however, except measures of “caution (warning)” is publicly pronounced and also published in the “Official Gazette of the Republic of Serbia” and other media<sup>1113</sup>. There is no strict provision whether information about proceedings and measures should be made public after the Agency’s Director pronounces the measure, or after the appeal proceedings before the Agency’s Board.

Agency is also obliged to notify the complainant of the outcome of the complaint he or she submitted<sup>1114</sup>. There is a provision in the Law about restriction of information, stating that the Agency shall, when informing the public, or replying to complaints, restrict such information that may affect conducting of a proceeding provided under law, privacy or any other interest protected by the Law<sup>1115</sup>.

<sup>1107</sup> Law on the Anti-Corruption Agency, Article 5

<sup>1108</sup> Law on Free Access to Information of Public Importance, Article 39

<sup>1109</sup> Law on Free Access to Information of Public Importance, Article 16

<sup>1110</sup> Law on the Anti-Corruption Agency, Article 5 and 68

<sup>1111</sup> Law on the Anti-Corruption Agency, Articles 46 and 47

<sup>1112</sup> Law on the Anti-Corruption Agency, Article 50

<sup>1113</sup> Law on the Anti-Corruption Agency, Article 54

<sup>1114</sup> Law on the Anti-Corruption Agency, Article 65

<sup>1115</sup> Law on the Anti-Corruption Agency, Article 70



## Transparency (Practice)

*To what extent is there transparency in the activities and decision-making processes of the ACA in practice?*

**Score: 50/2015 (25/2011)**

Agency publishes all the information it is obliged to publish. Annual report is regularly published on the Agency's web site, and it contains information about activities in numerous areas the Agency has jurisdiction<sup>1116</sup>. However, although there is a lot of information about its activities and decision making processes, it is often difficult to find it on the Agency's web site. Web site, although significantly improved since NIS 2011, is still not comprehensive enough or not updated regularly.

Agency is not very active in terms of public events - in 2014 it organised two conferences, one press conference and its representatives took part in four other round tables or conferences. It did, however, reply to 491 journalists' questions, significantly more than in 2013 (180)<sup>1117</sup>. These questions were mainly about the Agency's jurisdiction or about specific procedures against public officials. According to the Agency's annual report, in this way "decisions and other acts" were made available to the public.

On the other hand there is no systematic way of publishing the Agency's decisions on its web-site<sup>1118</sup>. In addition to that, the Agency is not systematizing and publicizing its practice in the area of conflict of interest to provide a reference material and guidance to public officials and other interested parties. Occasionally, press issues are published about procedures against political parties or public officials, and some of the Agency's departments (such as Department for Oversight of Officials' Assets and Incomes and Complaints) publish comprehensive data for certain period<sup>1119</sup>. Some units, on the other hand, (such as Unit for complaints) have no information at all about its activities,<sup>1120</sup> or that information are published within the discussion on Department for Oversight of Officials' Assets and Incomes and Complaints.

Likewise, the Agency's Information Directory is not updated. In April 2015, there was information that the Directory was last updated in June 2014 and that a new version would be posted soon<sup>1121</sup>. A lot of information in the Directory, which is supposed to be updated monthly, was out-dated.

In 2014 the Agency received 105 requests (61 from the citizens, 33 from CSOs, eight from other public authorities and three from political parties) based on the Law on Free Access to Information and replied to all of them<sup>1122</sup>. There were 46 requests in 2015.

All the registries, required by the Law, are available to the public<sup>1123</sup>. However, there was no change in interpretation of the Law provision regarding whether some information from declarations of assets should be made public. Agency is publishing only information on whether a public official has or does not have a bank deposit (without information on their value), whereas the Law provides for publishing of information about "savings deposits, without specifying the bank and account number"<sup>1124</sup>.

1116 <http://www.acas.rs/izvestaji/godisnji-izvestaj/?pismo=lat>

1117 Data from the ACA 2014 annual report

1118 <http://www.acas.rs/praksa-agencije/odluke/>

1119 <http://www.acas.rs/organizacija/sektor-za-kontrolu-imovine-i-prihoda/>

1120 <http://www.acas.rs/praksa-sektora-za-predstavke-i-kancelarije-okruga/>

1121 <http://www.acas.rs/izvestaji/informator/?pismo=lat>

1122 <http://www.acas.rs/izvestaji/informator>

1123 <http://www.acas.rs/pretraga-registra/>

1124 Law on the Anti-Corruption Agency, Article 47



## 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: 75/2015 (75/2011)**

Agency is accountable to the Parliament. It submits the annual report on its work to the Parliament, no later than March 31<sup>st</sup> of the current year for the preceding year<sup>1125</sup>. Agency may also submit special reports at request of the Parliament or on its own initiative. Those reports are also submitted to the Government<sup>1126</sup>. Within the Agency, the Director is accountable to the Board, and employees to the Director.

There is no legal provision regarding mandatory independent financial review of the Agency's work, but it is subject to control by the State Audit Institution, as all other public bodies.

Public officials can appeal against the Agency's first instance decisions to the Agency's Board, and there is also judicial protection, before the Administrative Court.<sup>1127</sup> Agency cannot issue misdemeanor or criminal sanctions defined by the Law<sup>1128</sup>, but rather files misdemeanor reports to misdemeanor courts, and/or criminal charges to public prosecution offices. In those cases there is no formal decision issued by the Agency, and subsequently, there is no legal remedy against it. However, there is regular legal remedy in misdemeanor or criminal procedures, as envisaged by the Criminal Procedure Code and Law on Misdemeanors.

Agency is obliged, by the Law, 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 law. 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 law on torts and contracts<sup>1129</sup>.

Internal rules for protection of whistle-blowers who would report misconduct in the Agency were adopted in December 2015.<sup>1130</sup>

## Accountability (Practice)

*To what extent does the ACA have to report and be accountable for its actions in practice?*

**Score: 75/2015 (50/2011)**

There are several occasions when the Agency's accountability mechanisms have been tested in practice. In November 2012 the Agency's Board unanimously dismissed the Agency's Director for discrediting the reputation of the Agency and neglecting performance of duties<sup>1131</sup>. The procedure was initiated when the Board discovered that the Government, just before the 2012 election, had granted two flats to the Agency. One flat was intended for the Director and the other one for one of the Agency's employees. The procedure for the State Authorities to get flats from the Government was regulated by the Government's decision and there was no violation of the Law, but the Board

<sup>1125</sup> Law on the Anti-Corruption Agency, Articles 3 and 26

<sup>1126</sup> Law on the Anti-Corruption Agency, Article 26

<sup>1127</sup> Law on the Anti-Corruption Agency, Articles 52, 53

<sup>1128</sup> Law on the Anti-Corruption Agency, Articles 72-76

<sup>1129</sup> Law on the Anti-Corruption Agency, Articles 69-71

<sup>1130</sup> <http://www.acas.rs/wp-content/uploads/2010/03/PRAVILNIK-O-UNUTRA%C5%A0NJEJEM-UZBUNJIVANJU.pdf>

<sup>1131</sup> [http://www.acas.rs/wp-content/uploads/2012/11/Odluka\\_o\\_razresenju\\_Zorane\\_Markovic.pdf](http://www.acas.rs/wp-content/uploads/2012/11/Odluka_o_razresenju_Zorane_Markovic.pdf)<http://www.acas.rs/2012-11-09-14-59-40/>

considered it improper and unethical for the Agency, especially its Director, to get flats from the body it controls. In the procedure which followed, the Board, for the first time since the appointment of the Director, seriously reviewed her work, instead of relying on her reports at the Board sessions. It turned out there were other irregularities, such as improper organisation of Department for Oversight of Financing Political Activities, which turned out to have caused significant problems in the election year<sup>1132</sup>.

Controversial flats were returned to the Government after the dismissal of the Director. Acting Director, appointed by the Board invited a budget inspection and administrative inspection to carry out the control of the Agency's work in the previous period. Administrative inspection made several recommendations in January 2013 and, according to the Agency's representatives, all of them have been fulfilled<sup>1133</sup>. Report of the Budget Inspection, from October 2013, indicated more serious breaching of laws and procedures. Agency fulfilled all recommendations and eliminated deficiencies. In July 2014 it informed prosecution of all findings which indicated possible criminal responsibility. There had been no reply from the prosecution by the time this report was compiled<sup>1134</sup>.

There was another case when the Agency addressed prosecution after discovering irregularities in its own work. One of the Board members, which was also a member of the Appeals Commission for the procedure of employment through public competition, in April 2012 found out irregularities in the minutes, claiming she had attended some of the meetings. Board's investigation in this subject was hampered by the then Director. It finally turned out that some of the signatures in the minutes had been forged. In April 2013 the Agency reported this to the prosecutor's office. There had been no reply by the time this report was compiled<sup>1135</sup>.

As for other levels and mechanisms of accountability within the Agency, the organizational units submit regular work reports to the Director<sup>1136</sup>. Board decides on appeals made to the decisions of the Director. In 2014, 132 decisions were brought. In 91 cases appeals were rejected, 24 were accepted and seven were accepted partially. In nine cases the Board has decided that the procedure should be amended. One procedure was stopped until another issue had been solved<sup>1137</sup>.

Administrative Court informed the Agency that nine suits against the Board's decisions were rejected, two procedures had been terminated and one suit was accepted. In 2014, there were 21 more court cases against the Agency's decisions on-going before the Administrative, and 39 in 2015<sup>1138</sup>.

Annual reports, which are regularly submitted to the Parliament, are available to the public. They are clearly presented and with an appropriate level of details<sup>1139</sup>.

There are special provisions to protect whistle-blowers who report misconduct in the Agency, and there have been no cases of whistleblowing within the Agency<sup>1140</sup>.

The Agency has its internal auditor. State Audit Institution had never done audit of the Agency.

1132 Interviews with the Board members Zoran Stojiljkovic and Zlata Djordjevic, April 2015

1133 Interview with the Agency Deputy Director Vladan Joksimovic, April 2014

1134 Interview with the Agency Deputy Director Vladan Joksimovic, April 2014

1135 Interviews with the Board members Zoran Stojiljkovic and Zlata Djordjevic and Deputy Director Vladan Joksimovic, April 2015

1136 <http://www.acas.rs/izvestaji/godisnji-izvestaj/?pismo=lat>

1137 Annual report for 2014

1138 Annual report for 2014 and information from Agency

1139 <http://www.acas.rs/izvestaji/godisnji-izvestaj/?pismo=lat>

1140 Interview with the Director Tatjana Babic and Deputy Director Vladan Joksimovic, April 2015

## Integrity mechanisms (Law)

*To what extent are there mechanisms which are ensuring the integrity of members of the ACA?*

**Score: 50/2015 (50/2011)**

There are some mechanisms which are supposed to ensure the integrity of members of the Agency. Law on the Anti-Corruption Agency, which envisages some integrity mechanisms for public officials, applies to members of the Agency's Board, the Director and other officials of the Agency. Law regulates matter of gifts and hospitality, post-employment restrictions, assets and income declarations. However, control of possible breaching of these provisions is done by the Agency itself.

As for special requirements, the Law states that a person who meets the general requirements for employment in the state administration bodies, should hold a university degree and has minimum nine years of experience and has not been convicted for a criminal offence making him unworthy to discharge the function of member of the Board may be elected to that post. Member of the Board may not be a member of a political party. The same stands for the Director<sup>1141</sup>.

As for the employees, the Law says that the regulations pertaining to civil servants and nominated officials apply to the Agency Secretariat employees. Director may issue a special Code of Conduct for the Secretariat staff<sup>1142</sup>. There is no special Code of Conduct and the Code of Conduct for Civil Servants is applying in the Agency<sup>1143</sup>. Law on Civil Servants also has some integrity mechanisms for civil servants, such as conflict of interest rules, gifts and hospitalities, but none about assets and income declarations<sup>1144</sup>. Post-employment restrictions cannot apply to civil servants due to legal and constitutional limits and those provisions can refer only to public officials<sup>1145</sup>.

According to the Agency representatives, there is no special integrity screening in recruitments procedures<sup>1146</sup>.

## Integrity mechanisms (Practice)

*To what extent is the integrity of members of the ACA(s) ensured in practice?*

**Score: 50/2015 (50/2011)**

Question of integrity of the Agency's members was put to test on two separate occasions, with different outcomes. First one was dismissal of the Director in November 2012, initiated for breaking ethical norms (see accountability (practice)). Second one was the case of the Board deciding on an appeal by the Minister to the Agency's recommendation for his dismissal from office (see independence (practice)). Board could not make a decision and the question was raised in the public of possible impartiality or conflict of interest of several Board members. According to Zoran Gavrilovic from the anti-corruption NGO "Birodi", the root of this problem lies in the composition of the Board. One of the members is the wife of political party official, the minister's party colleague, the other one is a close relative of another minister, and the third member was nominated by the minister (after the ministry's commission made the recommendation) as a candidate for judge at

<sup>1141</sup> Law on the Anti-Corruption Agency, Articles 8 and 16

<sup>1142</sup> Law on the Anti-Corruption Agency, Article 24

<sup>1143</sup> Interview with the Director Tatjana Babic and Deputy Director Vladan Joksimovic, April 2015

<sup>1144</sup> Law on Civil Servants, Articles 25-31

<sup>1145</sup> Law on Civil Servants, Article 31, Law on the Anti-Corruption Agency, Article 38

<sup>1146</sup> Interview with the Director Tatjana Babic and Deputy Director Vladan Joksimovic, April 2015

the European Court of Human Rights<sup>1147</sup>. None of them excluded themselves from deciding in this case<sup>1148</sup>. In the past there were cases when the Board members would exclude themselves from deciding in cases, such as one member which was lawyer, exempting from the cases against public official whom he represented as attorney<sup>1149</sup>.

Regarding the Agency employees, there were no identified cases of breaching integrity rules<sup>1150</sup>. On one occasion, a public official against whom the Agency has filed criminal charges accused the Agency for delivering details from the charges to the media. However, the Agency dismissed those claims<sup>1151</sup>.

In 2014 the Agency employees attended training in several areas, including whistle-blowers protection and data processing and data protection<sup>1152</sup>.

# Role

## Prevention (Law and Practice)

*To what extent does the ACA engage in preventive activities regarding fighting corruption?*

**Score: 100/2015 (75/2011)**

Prevention is one of the main Agency's jurisdictions and it is fully engaged in this field<sup>1153</sup>. Agency consists of five departments. One of them is Department for prevention, which includes departments for: education, civil society cooperation and surveys; Anti-corruption Strategy and Action Plan implementation's supervision and legislation analysis; integrity plans.

In 2013 the Agency developed the Action Plan for implementation of integrity plans, as an instrument intended for public authorities and their efficient implementation of planned measures aimed for elimination of corruption risks. Based on the 2,100 integrity plans received (out of 4,800 public authorities obliged by the Law to adopt integrity plans), the basis for integrity assessment of the Serbian public sector was established. Agency conducted a survey including more than 6,000 users of services of public authorities in the health care, local self-government and judicial system. This research investigated integrity assessment of public authorities from the perspective of citizens using their services<sup>1154</sup>.

In 2014 the Agency drafted the report on the quality and objectivity of integrity plans adopted by the 53 institutions from different systems (ministries, courts, centres for social work, gerontology centres, local self-government, schools, health centres, etc.). On the basis of the received and analysed integrity plans, the Agency has prepared the report on the self-assessment of the integrity of public authorities in the Republic of Serbia<sup>1155</sup>. In addition to statistics, the report included the analysis of the most risky areas and work processes recognized by institutions, as well as recommendations for the reduction and elimination of systemic risk of corruption – both on the national level and at the level of the specific system<sup>1156</sup>.

1147 Interview with Zoran Gavrilovic from NGO Birodi, April 2015

1148 <http://www.blic.rs/Vesti/Politika/535606/JA-TEBI-TI-MENI-Branice-Selakovica-ne-moze-mu-niko-nista>

1149 Interview with the Board members Zoran Stojiljkovic and Zlata Djordjevic, April 2015

1150 Interview with the Director Tatjana Babic and Deputy Director Vladan Joksimovic, April 2015

1151 [http://www.rtv.rs/sr\\_lat/politika/jesic-podneo-krivicnu-prijavu-protiv-agencije\\_480686.html](http://www.rtv.rs/sr_lat/politika/jesic-podneo-krivicnu-prijavu-protiv-agencije_480686.html)[http://www.rtv.rs/sr\\_lat/drustvo/agencija-nedopustivo-objavljivanje-krivicnih-prijava\\_480666.html](http://www.rtv.rs/sr_lat/drustvo/agencija-nedopustivo-objavljivanje-krivicnih-prijava_480666.html)

1152 Annual report for 2014

1153 Law on the Anti-Corruption Agency, Article 5

1154 Annual report for 2013

1155 [http://www.acas.rs/wp-content/uploads/2010/07/PI\\_izvestaj.pdf?pismo=lat](http://www.acas.rs/wp-content/uploads/2010/07/PI_izvestaj.pdf?pismo=lat)

1156 Annual report for 2014

Agency also issues opinions on the implementation of the Law, and responds to request for the anti-corruption advices from the public and from other government agencies. In 2014 the Agency received 356 requests for opinions on the implementation of the Law (374 in 2013). Most of them (313) were about possible conflict of interest of public officials and possibility to have more than one public office.

Monitoring regulations and analysing them in terms of their harmonization and consistency from the viewpoint of the fight against corruption is also under the jurisdiction of the Agency. Agency developed a methodology for the assessment of corruption risks in regulations, which could be used by the state authorities in the process of drafting regulations. In 2013, the Agency analysed and issued opinions on risks of corruption in the provisions of 20 draft laws, two by-laws and two decrees.

Regarding the effect of these analyses, the Agency pointed out in its 2013 Annual report that some ministries “cooperated with the Agency in the process of drafting the law, and accepted its suggestions and recommendations for eliminating risks of corruption”<sup>1157</sup>. In 2014 it reported that „some of the recommendations“ had been accepted in whole or in part in drafts of laws that were passed in the meantime.

In 2014 and 2015 the Agency has prepared opinions on the risk assessment of corruption in the 34 draft regulations. Agency has also prepared a report with recommendations for elimination of corruption risks in public-private partnerships and concessions, as well as initiative for amendments to the Law on Public Enterprises and the Regulation regarding appointment of directors of state owned companies. This field is considered to be very corruption prone<sup>1158</sup>.

Agency was within the Working group for drafting the new Anti-corruption Strategy and the Action Plan for its implementation. According to the Agency, some of its most important suggestions were not adopted. As the Agency is in charge of supervision the implementation of the Strategy and Action Plan, it delivered the first report in March 2014, and the next one in March 2015. Parliament had been discussing on the first report in June 2014 and concluded that state authorities need to fulfill their obligations, as determined by the Strategy and Action Plan. However, in according to later report, it could be concluded that the conclusion of the Parliament did not have effect – in 2014 only 90 out of 372 envisaged activities were fulfilled and only 54 of them in time and in a proper way<sup>1159</sup>.

Since 2013 the Agency has took over another of its roles stipulated by the Law – to “organise coordination of the state bodies in the fight against corruption“. This has meant regular meetings with all state authorities included in fight against corruption – from independent bodies to judiciary, police and prosecution. These meetings resulted in two reports – on corruption risks in education and health system, with recommendations becoming part of the legislation which followed, or being accepted in terms of changing procedures<sup>1160</sup>. However, in February 2014 the meetings ceased. Reason for this was the lack of initiative by the state authorities, and even resistance to be a part of the coordination effort. This may be related to the attempt of the Government to take all the credit in the anti-corruption field, which resulted in appointment of the Vice Prime Minister as coordinator for the fight against corruption, and later, when he became the Prime Minister, even as coordinator for implementation of the Anti-corruption Strategy<sup>1161</sup>. His jurisdiction of coordination was supposed to refer to the Government bodies, but there were fears that this could be an attempt to impose coordination over independent bodies, parliament or judiciary<sup>1162</sup>.

1157 Annual report 2013

1158 <http://www.transparentnost.org.rs/images/stories/inicijativeianalize/Efekt%20novog%20Zakona%20o%20javnim%20preduzecima-politizacija%20ili%20profesionalizacija,%20oktobar%202014.pdf>

1159 Report on implementation of the National Anti-corruption Strategy and Action Plan, March 2015

1160 Interview with the Agency Director Tatjana Babic and Deputy Director Vladan Joksimovic, April 2015.

1161 <http://www.blic.rs/Vesti/Politika/391874/Jasan-politicki-cilj--zemlja-bez-korupcije-i-kriminala>

1162 Transparency Serbia's analyses of the section of the Anti-Corruption strategy, that left unclear who's responsible for coordination and who's



## Education (Law and Practice)

**Score: 75/2015 (75/2011)**

Agency has competences and it is active in the field of anti-corruption training and education. It works with state authorities, public officials, civil servants, with journalists, and students, and it cooperates with civil society. Scope of activities and, consequently, the number of participants is limited by the Agency's budget and number of employees in the department in charge of education<sup>1163</sup>. There are also suggestions that the Agency should focus more on the wider public and youth – pupils and students instead of public officials and civil servants<sup>1164</sup>.

In April 2013 the Agency has organised a public anticorruption campaign, promoting its jurisdiction to deal with complaints, and inviting people to report corruption. During the campaign, there were 82 reports with 50 more until the end of the year<sup>1165</sup>.

In 2013, the Agency organized and conducted 23 seminars lasting 37 days, with a total of 417 participants. Attendees were public administration employees (178), students (172), representatives of civil society organisations (38) and journalists (29)<sup>1166</sup>.

In 2014, the Agency adopted the program and the plan for professional training on ethics and integrity in the public sector, which includes sessions: "The role and value of public servants - a code of ethics," "Corruption risky situations in the workplace", "The Role of Ethics Code in resolving ethical dilemmas "and" Responsibility for ethical behavior." Agency also designed the training program and the manual for trainers in the field of ethics and integrity in the public sector. In 2014 there were 51 future trainers trained<sup>1167</sup>.

Agency also organises education for public servants in cooperation with the Staff Management Service of the Government of Serbia and Division of Human Resource Management of Vojvodina province. There were five seminars in 2013 and 13 in 2014, with 200 participants. Subjects were ethics in public administration, conflicts of interest and assets control, prevention of corruption, integrity plans<sup>1168</sup>.

Trainings were also organised in cooperation with local authorities – for youth, in cooperation with faculties, for students, as well as seminars for employees of state owned enterprises and private companies, in cooperation with the Chamber of Commerce<sup>1169</sup>.

In 2015 the Agency's Division for Education developed a training plan for public officials, civil servants and other public sector employees on integrity and elimination of corruption. As the Action Plan for Implementation of the National Anti-Corruption Strategy introduced an obligation for public officials, civil servants and other public sector employees (estimated at 700,000) to undergo training in this area, the Agency has developed a series of educational videos that will be used to quickly and cost-effectively deliver training on issues related to anti-corruption and integrity to all eligible employees<sup>1170</sup>.

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responsible for monitoring as well as analyses of the Government's decision on forming Coordination body (02-8536/2014), published in January 2015 <http://www.transparentnost.org.rs/images/stories/materijali/29012015/Izvestaj%20o%20sprovedjenju%20Nacionalne%20strategije%20za%20borbu%20protiv%20korupcije%202013%202018%20i%20Akcionog%20plana,%20oblasti%20politicke%20aktivnosti,%20javne%20finansije%20i%20mediji,%20Transparentnost%20Srbija,%20januar%202015.pdf> ; also interview with Zoran Gavrilovic from NGO Birodi, April 2015, also <http://goo.gl/snN0JU>

1163 Interview with the Agency Director Tatjana Babic and Deputy Director Vladan Joksimovic, April 2015.

1164 TS analyses, January 2015; also interview with Zoran Gavrilovic from NGO Birodi, April 2015

1165 Interview with then head of the media and PR department Lidija Kujundzic, April 2015

1166 Annual report for 2013

1167 Annual report for 2014

1168 Annual report for 2013 and 2014

1169 Annual report for 2014

1170 <http://en.jrga.org/news/jrga-and-aca-develop-educational-videos-to-train-public-servants-on-ethics-integrity-and-anticorruption-standards/>

On the occasion of International Anti-Corruption Day, the Agency organised the competition for elementary and high school students, college students and teachers, under the title: “If we do not respect the rules, then ...”. There were 216 participants<sup>1171</sup>.

In 2014 Agency has organized two meetings with civil society organisations representatives, one of them on subject: “CSO participation in the process of designing or monitoring of public policies and involvement of NGOs in the process of creating and monitoring local anti-corruption plans”. There were also two meetings in 2015.

## Investigation (Law and Practice)

*To what extent is the ACA engaged in investigation regarding alleged corruption?*

**Score: 50/2015 (25/2011)**

Agency is not authorized to initiate criminal investigations (such as police or prosecutorial agencies). There are some Agency’s activities which have elements of investigation: checking assets and income declarations; control of political parties financing and checking their annual and campaign costs reports; dealing with citizens’ complaints and reports.

Law stipulates that the Agency has to check the accuracy of information in asset declarations pursuant to the annual verification schedule “for a certain number and category of officials”<sup>1172</sup>. 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 between the increased values 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<sup>1173</sup>.

In 2014, there were 179 verifications of reports which were not completed in the previous year and 223 verifications in accordance with the annual plan of checks for 2014 and unplanned checks, done ex officio. According to the report by Department for oversight, the subject of checks in 2014 were, among others, declarations submitted by the President and members of the Government, 64 secretaries of state, as well as 130 directors and members of management and supervisory boards of state owned companies. The subjects of ex officio checks were reports of officials suspected that were not fully and accurately reported assets and income.

In 2014 the Agency filed 14 criminal charges for “doubt that the official had not reported assets or gave false information about the property with the intent to conceal information about the property”, which is a criminal act stipulated by the Law on the Anti-Corruption Agency. There were 15 charges in 2015<sup>1174</sup>. Criminal charges were filed, amongst others, against a former Minister for health, two State Secretaries, and one Vice-president of the Provincial Government. Out of these 14, one was rejected, in one case the indictment was raised, in five cases prosecution submitted the request to police to collect additional information, in three cases the prosecutorial inquiry is on-going, and four criminal charges were in the process of decision-making by the relevant Public Prosecution. In 2013, the Agency filed nine criminal charges, and in 2012 only one<sup>1175</sup>. Agency has also submitted 34 reports to prosecution or other relevant authorities because of doubt that officials, whose property was subject to the control, performed some other criminal offence (bribery, receiving bribes, money laundering, tax evasion, etc.)<sup>1176</sup>.

1171 <http://goo.gl/dWcaM4>

1172 Law on the Anti-Corruption Agency, Article 48

1173 Law on the Anti-Corruption Agency, Article 49

1174 Law on the Anti-Corruption Agency, Article 72

1175 <http://www.acas.rs/organizacija/sektor-za-kontrolu-imovine-i-prihoda/?pismo=lat>

1176 Annual report for 2014



As for control of political party financing, the Agency filed 33 misdemeanor charges for violation of the Law on Financing Political Activities. On the basis of all so far submitted charges, which is 420 since 2010, a total of 163 judgments had been brought, 91 of those final<sup>1177</sup>.

In 2014, in the area of complaints, the Agency had more than 1,000 new cases. It completed 916 cases, filed four criminal charges, one misdemeanor proceeding charge and 16 other reports to the prosecutor<sup>1178</sup>.

There are several problems with controls performed by the Agency. In some instances, its powers proved to be insufficient, since banks or other institutions failed to submit requested information. Also, the Agency rather controls collected documents, and may not perform “field control”. That is why the Agency has asked for greater powers<sup>1179</sup> in that field. Agency has raised these problems in its annual reports and in 2014 it published “Model Law” – a comprehensive proposal for a new Law on the Agency, with an explanatory note<sup>1180</sup>. That Model is the starting point for the work of a current working group. Even before that, in 2014, the Agency sent suggestions for limited amendments to the Ministry of Justice. However, not only powers, but duties as well, are not set precisely enough. For example, the Law on the Agency does not set minimum number of officials that have to be checked annually, or minimal elements of that control; the Law on Financing Political Activities does not make mandatory for the Agency to prepare control reports, and does not mention the content of the reports or deadlines. In terms of eventual criminal proceedings, based on reports initially sent to the Agency by whistle-blowers, the relation between the Agency and public prosecutor is not clearly defined in the Law, in particular when having in mind the duty of the Agency to “keep anonymity” of complaints’ submitters<sup>1181</sup>.

The work on the new Law on the Agency that should have been finalized till the end of 2014<sup>1182</sup>, according to the Anti-corruption Strategy, started in spring 2015. Strategy envisaged changes, in control powers of the Agency, but also in other areas (e.g. prevention). Working group is facing with serious problems and time of legislative changes and content of the future law is still unpredictable.

# ANTI-CORRUPTION AGENCY

## Recommendations

1. Government should amend its Rules of procedure and other relevant acts in order to oblige proponents of regulation to ask for opinion of the Agency regarding norms that might influence corruption or fight against corruption and to elaborate such risks themselves in explanatory note;
2. Parliamentary committees should take into account the Agency’s analyses of draft legislation and invite the Agency to participate in amendments drafting;
3. Through legislative changes to increase the powers of the Agency in field of control (assets declarations, party financing), as envisaged by the Anti-corruption Strategy’s Action Plan and the Model Law proposed by the Agency;

<sup>1177</sup> Annual report for 2014

<sup>1178</sup> Annual report for 2014 and information from the Agency

<sup>1179</sup> <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1843234/Zakon+o+Agenciji+za+borbu+protiv+korupcije+na+leto%3F.html>

<sup>1180</sup> <http://goo.gl/evT1Ox>

<sup>1181</sup> Law on the Anti-Corruption Agency, Article 56, Para 1.

<sup>1182</sup> <http://www.transparentnost.org.rs/images/stories/materijali/29012015/Izvestaj%20o%20sprovedjenju%20Nacionalne%20strategije%20za%20borbu%20protiv%20korupcije%202013%202018%20i%20Akcionog%20plana,%20oblasti%20politike%20aktivnosti,%20javne%20finansije%20i%20mediji,%20Transparentnost%20Srbija,%20januar%202015.pdf>

4. Through legislative changes, the Parliament should decrease level of the administrative work and formal communication with public officials (e.g. formal approvals) and to enable to the Agency to focus on resolution of actual conflict of interest and control of assets declarations;
5. Agency should publish on its website a greater number of opinions given to officials regarding performing of other functions or jobs and other matters, without revealing personal data;
6. Agency should make all its registers more user friendly (e.g. possibility to sort data from assets declarations) and to make it clear to what extent declarations are accurate. Also, to link all public registers or parts of registers managed by the Agency for easier search of data;
7. Through legislative changes, the Parliament should increase the amount of information (assets of public officials' firms such as shares in another company and real estates; information about income from allowed private resources) from assets declarations that would be published;
8. Through legislative changes, the Parliament should set in the Law minimum number of controls and minimum content of control of assets declarations that the Agency has to perform and to provide sufficient powers and resources for such controls (e.g. every official to be checked within the 4 years' period, or development of methodologies for risk assessment);
9. Through legislative changes, the Parliament should further limit number of politically based proponents of the Board of the Agency and regulate more clearly decision making process in the Board;
10. Agency should strengthen its integrity and accountability mechanisms, including promotion of whistle-blowing procedures;
11. Parliament should discuss in timely manner the Agency's reports and call for responsibility elected officials when problems identified in previous years' reports of the Agency are still unresolved.





# POLITICAL PARTIES

## National Integrity System

**Summary:** Conditions for registration of political parties are liberal, except when it comes to the minimum number of founders which is relatively high. The Government cannot directly prohibit political parties. It is the Constitutional Court who decides on the eventual ban of a political party, on a proposal which can be initiated by the Government, the Republic Public Prosecutor or the Ministry in charge of Public Administration. Only Parties with members of the Parliament and members of regional and local assemblies are entitled to state funds for their regular activities. This money can be spent also on election campaigns, which gives parliamentary parties a large advantage over non-parliamentary ones, considering the fact that only a small fraction of the money from public sources intended for financing election campaigns is distributed evenly between all election contestants.

There has been significant improvement regarding transparency of political parties' financial information since NIS 2011. That improvement is mostly a result of compliance with the new legal provisions, in force since 2012. Reports on election campaign costs and annual financial reports, including reports on donations, are delivered to the Anti-Corruption Agency, published on the Agency's web site and on web sites of all major political parties. The Anti-Corruption Agency is in charge of controlling the validity of the reports, while another independent body, the State Audit Institution, may audit them. All parties have regulated democratic internal procedures, but most follow a leader-centric political style, with decisions being made by the party's president and his/her closest associates.

The fight against corruption is one of the top issues in political campaigns, but there is no genuine commitment to suppress corruption. On the contrary, politicisation and influence of political parties in the public sector are considered to be among the main causes of corruption. According to surveys, citizens are considering that political parties are one of the most corrupt organisations in Serbia.





## POLITICAL PARTIES

Overall Pillar Score (2015): 65 / 100

Overall Pillar Score (2011): 58 / 100

| Dimension                     | Indicator                               | Law                       | Practice                |
|-------------------------------|---|---------------------------|-------------------------|
| <b>Capacity</b><br>69 / 100   | Resources                               | 75 (2015),<br>100 (2011)  | 50 (2015),<br>50 (2011) |
|                               | Independence                            | 75 (2015),<br>75 (2011)   | 75 (2015),<br>75 (2011) |
| <b>Governance</b><br>75 / 100 | Transparency                            | 100 (2015),<br>75 (2011)  | 75 (2015),<br>50 (2011) |
|                               | Accountability                          | 75 (2015),<br>75 (2011)   | 75 (2015),<br>25 (2011) |
|                               | Integrity                               | 100 (2015),<br>100 (2011) | 25 (2015),<br>25 (2011) |
| <b>Role</b><br>25 / 100       | Interest formulation and representation | /                         | 25 (2015),<br>25 (2011) |
|                               | Anti-corruption commitment              | /                         | 25 (2015),<br>25 (2011) |

**Structure** – There are 96 registered parties, out of which 57 are “parties representing political interests of the national minorities”<sup>1183</sup>. This is largely due to “positive discrimination” regarding registration of new parties (1.000 instead of 10.000 signatures<sup>1184</sup>), election threshold (“natural threshold” which is 0.4% in practice, instead of 5% which is threshold for other parties and coalitions)<sup>1185</sup> and lack of any effective mechanism to verify that a party in reality gathers national minority members or advocates a specific minority’s interests. Following the 2014 election, there are now twenty two political parties represented in the Serbian Parliament. The number of successful election lists was significantly smaller - three coalitions and one party individually have crossed the 5% threshold, and three national minorities’ parties also won seats<sup>1186</sup>. Out of 22 parliamentary parties, with a total of 250 members of the Parliament, 13 parties with total of 208 members of the Parliament support the Government. Nine parties, with 42 members of the Parliament are in opposition. Besides large national parties and national minorities’ parties, there are several regional parties, influential in the province of Vojvodina or in certain cities in Serbia. Some of them are, or used to be, represented in the Serbian Parliament, crossing the threshold in coalition with larger parties. While most of parties declare themselves to be “moderately left” or “moderately right” – wing, such ideological differences do not prevent them from forming unexpected ruling coalitions. Most of the parties have “catch all” concept (i.e. presenting themselves as a promoters of interests of all parts of society), with rather rare exceptions where some particular interests are stressed (e.g. retirees).

1183 Data from the Ministry’s registry, <http://www.mduls.gov.rs/doc/dokumenta/pstranke/IZVOD%20IZ%20REGISTRA%2019022015.pdf>

1184 The Law on Political Parties, Articles 3, 8 and 9

1185 The Law on the Election of Members of Parliament, Articles 81, 82

1186 <http://www.rik.parlament.gov.rs/cirilica/Rezultati/Izbori2014Karte.pdf> <http://www.parlament.gov.rs/narodna-skupstina/-sastav/poslanicke-grupe.901.html>





# Assessment

## Capacity

### Resources (Law)

*To what extent does the legal framework provide a conducive environment for the establishment and functioning of political parties?*

**Score: 75/2015 (100/2011)**

The legal framework guarantees freedom of political association, provides relatively liberal conditions for registration of political parties and establishes a system of relatively high levels of public financing, which gives a strong advantage to the parliamentary parties, especially large ones. The system of financing is set in favor of large political parties and parliamentary parties, making it very difficult for new parties and those that fail to reach threshold to get parliamentary status unless they have abundant private financing<sup>1187</sup>.

The Constitution of Serbia stipulates that “freedom of political union and any other form of association is guaranteed”<sup>1188</sup>, and “associations can be formed without prior approval and entered in the register kept by a state body”<sup>1189</sup>. Judges of the Constitutional Court, judges, public prosecutors, the Ombudsman, members of police force and military personnel cannot become members of political parties<sup>1190</sup>.

A party may be established by a minimum of 10,000 citizens or 1,000 when the party represents political interests of national minorities<sup>1191</sup>. After holding the constituent assembly and adopting the statute and the programme, and after the appointment of persons authorized to represent the political party, the party submits the registration application to the Ministry<sup>1192</sup>. Afterwards the Ministry is issuing the decision on registration, within 30 days from the submission of a full application<sup>1193</sup>. If certain formal requirements are not met (identical name as to already registered party, application submitted by an unauthorized person, proper documents have not been enclosed to the application), the Ministry provides a deadline of 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<sup>1194</sup>.

The Law stipulates the renewal of registration every eight years, with 10 000 certified signatures of the founders (1,000 for the minority parties), except for parties that have won at least one seat in the assembly of the Autonomous Province or the Parliament of Serbia<sup>1195</sup>.

Political parties are financed from public and from private sources<sup>1196</sup>, for regular activities and for election campaigns. The 2011 Law on Financing Political Activities provided a significant increase

<sup>1187</sup> Political analyst and professor at Faculty of Political Sciences Zoran Stojiljkovic, interview; also interviews with representatives of six political parties, from ruling coalition, opposition, large, small and minorities' parties, October and November 2014

<sup>1188</sup> The Constitution of Serbia, Article 55

<sup>1189</sup> The Constitution of Serbia, Article 55

<sup>1190</sup> The Constitution of Serbia, Article 55

<sup>1191</sup> The Law on Political Parties, Article 8, 9

<sup>1192</sup> The Law on Political Parties, Articles 22-24, Rulebook on entry and keeping the register of political parties, Articles 8-17

<sup>1193</sup> The Law on Political Parties, Article 26

<sup>1194</sup> The Law on Political Parties, Article 25

<sup>1195</sup> The Law on Political Parties, Article 30

<sup>1196</sup> The Law on Financing Political Activities, Article 3

in public funding, by setting it at the same percentage as the previous law (0.15%), but calculated on the basis of budget expenditure (not income) and on the basis of the overall budget (and not “budget after deduction of transfers” as previously).

However, this was reduced soon after the adoption of the 2012 amendments to the Law on Budget System, stipulating that all percentage-based budget allowances will be calculated based on budget income. Furthermore, 2014 amendments to the Law on Financing Political Activities set the percentage at 0.105% of tax-based budget income. This amount intended for “regular financing” is divided between parliamentary parties in proportion to the number of votes won at the last elections<sup>1197</sup>. Parties with up to 5% of votes are slightly positively discriminated, with 0%-5% votes’ count being multiplied by a quotient of 1.5<sup>1198</sup>.

Public financing for election campaigns is set at 0.07% of the tax-based budget income. This percentage was 0.1% in 2011 Law, but it was reduced in 2014. Out of this amount, 20% is allocated in equal shares to submitters of proclaimed election lists who at time of submission declared to use the funds from public sources to cover election campaign costs. The remaining 80% of funds is allocated to submitters of election lists on the basis of the number of won seats. This way, large parties benefit twice - they get more money for regular activities, which can also be used for financing election campaigns and after the campaign, they get the largest part of the money intended for financing campaigns. On the other hand, parties do not know how much money they will receive from public funding until the elections are over, not just in the upcoming years, but also for campaign finance costs.

The Law prohibits parties from accepting 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 communities<sup>1199</sup>.

## Resources (Practice)

*To what extent do the financial resources available to political parties allow effective political competition?*

**Score: 50/2015 (50/2011)**

Parliamentary parties and especially large political parties have abundant resources available. New parties and those that fail to reach threshold are facing problems with insufficient resources for functioning unless they have abundant private financing<sup>1200</sup>.

In 2015, RSD 802 million (USD 7.16 million) is envisaged from the national budget for regular party financing. The largest political party, ruling Serbian Progressive Party, having 136 out of 250 members of the Parliament receives about USD 320.000 per month. The largest opposition party, Democratic Party, with its 16 members of the Parliament, gets about USD 38.000 per month. National minority party with 6 members of the Parliament gets about USD 20.000.

<sup>1197</sup> The Law on Financing Political Activities, Article 17

<sup>1198</sup> The Law on Financing Political Activities, Article 17, For example, if the list A won 95% votes and the list B 5%, the ratio of funds division between those two wouldn't be 19:1, but 97.5:7.5.

<sup>1199</sup> The Law on Financing Political Activities, Article 12

<sup>1200</sup> Political analyst and professor at Faculty of Political Sciences Zoran Stojiljkovic, interview; also interviews with representatives of six political parties, from ruling coalition, opposition, large, small and minorities' parties, October and November 2014

According to parties' representatives<sup>1201</sup>, former parliamentary parties which did not get over the 5% threshold in 2014 elections were forced to close some local branches, and to sell some of the properties to pay their debts, since they are not financed from public sources any more.

It should be noted that the amount of money from public sources for financing political parties was reduced in 2014 by 35% at the proposition of the largest ruling party. It was done at the same time when some other austerity measures had been adopted, and it was considered to be a populist move. Opposition parties however did not oppose the proposition, in order to avoid public condemnation, but their representatives claim that public funding will be insufficient for normal functioning<sup>1202</sup>. Even some smaller members of the ruling coalition were severely hit by this move, forcing them to reduce financing and activities of some local branches<sup>1203</sup>.

This reduction of public financing is particularly important because parties had been mostly relying on public funding in the past. A report by the Anti-Corruption Agency<sup>1204</sup>, shows that between 55% and 94% of parties' financing for general purposes comes from public sources. The same stands for election campaign funding – the main sources are public funding and loans<sup>1205</sup>.

Parties do not know how much money they will receive from public funding until the elections are over. This forces them to get bank loans. However, political parties who are struggling in the campaign to pass over the 5% threshold are at huge risk when taking such financial commitments.

Private financing, apart from membership and parties' official's donations is difficult to obtain for opposition parties, because there are very few donors who would give donations on the basis of ideological or programme orientation of the parties. They mostly rely on keeping good relationships with ruling parties<sup>1206</sup>. On the other hand, a representative of the largest ruling party claims, that public funding is not decisive for party to function. Zoran Babic of the Serbian Progressive Party says that his party managed to survive from 2008 till 2012 without state funding (after splitting from the parliamentary Serbian Radical Party, all public funding was given to latter, which won seats in the election, no matter that the majority of members of the Parliament moved to other party) and according to him this, proves that money is not important<sup>1207</sup>.

All parties have access to public radio and TV for free during campaigns, and all parties are guaranteed equal rights to advertise on commercial TV and radio stations. There is a widespread, but not universal, practice of providing political parties with municipal premises under favorable conditions as well. Ruling parties use advantages in election campaigns - public officials' activities are presented as regular activities, not as campaign advertising, although very often those activities are merely promotional. Research by Transparency Serbia in 2012 and 2014 proved such mechanisms were used by all parties having public officials at the time. The most convincing example of such practices came in 2014 elections for Belgrade City Hall, when the ruling Serbian Progressive Parties potential candidates for City Mayor undertook 53 promotional activities within six weeks, covered by the media in regular news, not in election campaign advertising. At the same time, the party did not spend a single penny on advertising at this level of the election<sup>1208</sup>.

1201 Interviews with representatives of six political parties, from ruling coalition, opposition, large, small and minorities' parties, October and November 2014

1202 Interviews with representatives of six political parties, from ruling coalition, opposition, large, small and minorities' parties, October and November 2014

1203 Interviews with representatives of six political parties, from ruling coalition, opposition, large, small and minorities' parties, October and November 2014

1204 [http://www.acas.rs/wp-content/uploads/2011/05/kontrola\\_finansiranja\\_politickih\\_subjekata.pdf](http://www.acas.rs/wp-content/uploads/2011/05/kontrola_finansiranja_politickih_subjekata.pdf) and Report on Financing Political Activities in first half of 2014

1205 [http://www.acas.rs/wp-content/uploads/2011/05/kontrola\\_finansiranja\\_politickih\\_subjekata.pdf](http://www.acas.rs/wp-content/uploads/2011/05/kontrola_finansiranja_politickih_subjekata.pdf) and Report on Financing Political Activities in first half of 2014

1206 Interviews with representatives of six political parties, from ruling coalition, opposition, large, small and minorities' parties, October and November 2014

1207 Interview, October 2014

1208 <http://transparentnost.org.rs/images/stories/materijali/13062014/Aktivnosti%20javnih%20funkcionera%20tokom%20kampanje%20za%20izbore%202014,%202013.06.2014.pdf>  
[http://transparentnost.org.rs/images/stories/materijali/13062014/Nalazi%20monitoringa%20izborne%20kampanje%202014%20grad%20Beograd%20sa%20osvrtom%20na%20parlamentarne%20izbore,%202013.06.2014\\_1\\_2.pdf](http://transparentnost.org.rs/images/stories/materijali/13062014/Nalazi%20monitoringa%20izborne%20kampanje%202014%20grad%20Beograd%20sa%20osvrtom%20na%20parlamentarne%20izbore,%202013.06.2014_1_2.pdf)

## Independence (Law)

*To what extent are there legal safeguards to prevent interference in the activities of political parties?*

**Score: 75/2015 (75/2011)**

There have not been significant changes since NIS 2011. Legal safeguards to prevent unwarranted interventions in the activities of political parties are sufficient.

According to the Constitution, only the Constitutional Court decides on banning a political party<sup>1209</sup>. Only a party whose activity aims to violently overthrow the constitutional order, violate guaranteed human and minority rights or to incite racial, national and religious hatred may be banned<sup>1210</sup>. The procedure before the Constitutional Court, to prohibit activities of a political party, can be initiated by the Government, the Republic Public Prosecutor and the Ministry of State Administration (and Local Government)<sup>1211</sup>.

The Law on Political Parties stipulates that a party will be deleted from the registry if the body established by the statute adopts the decision on the cessation of its activities, if the political party merges with another political party, if the Constitutional Court prohibits its activities and if it does not submit the application for the renewal of registration<sup>1212</sup>.

Relevant authorities may control the work of political parties through various mechanisms applicable to all legal entities (tax control, inspections etc.). The Law on Financing Political Activities provides that political parties' income and expenditure are subject to the control of "relevant authorities" every year, but without specification of authorities in charge for such control<sup>1213</sup>. The 2014 draft amendments to the Law on Financing Political Activities envisage annual control by the Tax Authority. There are no clearly defined criteria for eventual control conducted by inspections and selection of parties to be controlled by the Government bodies. The newly adopted Law on Inspection Control (2015) includes provisions on inspection plans, risk assessment, and other provisions which decrease discreet power of inspection and increase transparency, thus reducing the possibility of abuse of inspection as a mechanism of pressure against political parties<sup>1214</sup>.

The Law on Financing Political Activities provides protection for party donors from violence, threats, pressure and discrimination. Anyone who commits violence or threatens violence, places in a disadvantageous position or denies a right or interest based on the Law to a person or legal entity, based on giving a donation to a political party, can be punished by imprisonment of three months to three years<sup>1215</sup>.

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1209 The Constitution of Serbia, Article 167

1210 The Constitution of Serbia, Article 55

1211 The Law on Political Parties, Article 38

1212 The Law on Political Parties, Articles 35, 36

1213 The Law on Financing Political Activities, Article 27 Para 3.

1214 [http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi\\_zakona/500-15.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/500-15.pdf)

1215 The Law on Financing Political Activities, Article 38

## Independence (Practice)

*To what extent are political parties protected from unwarranted external interference in practice?*

**Score: 75/2015 (75/2011)**

Opposition parties are under constant pressure for abuse of public funds or abuses of office allegedly committed by their officials in the period when they were in power. Although authorities investigate alleged abuses by officials who belong to different political parties, the focus of the media is merely on those coming from opposition parties. Some scandals presented in public by police, and by ruling parties' officials do not have legal epilogue - there were no indictments or trials – they are rather a form of pressure aimed to harm the image of involved parties in the public's eye<sup>1216</sup>. President of the New Party and member of the Parliament Zoran Zivkovic claims that the Government “abuses its influence on police, prosecution and judiciary, as well as media”, and “opposition parties are under constant pressure”<sup>1217</sup>.

Occasionally, attempts to present action of authorities as politically neutral and unbiased seem absurd, as in the case when the Minister of Interior, (official of ruling Serbian Progressive Party), said at the press conference that police had arrested several persons, members of different political parties, including his own. All arrests were the product of separate police actions, with different charges mutually unrelated and not connected in any way with their political affiliation or work of their political parties<sup>1218</sup>.

There were no cases of detention or arrest of political party's members for their political activities. Also, there were no examples of banning political parties, nor examples of authorities submitting a proposal to ban political party.

Parties' representatives claim that the practice of putting pressure on a party's donors, by frequent financial and tax check-ups, noted in NIS 2011, has ceased. However, they claim that one of the reasons for this is the fact that very few donors finance opposition parties and some insist it is done in cash, anonymously, thus breaking the Law<sup>1219</sup>.

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. In March 2015, a member of the Parliament from the opposition party reported he had been beaten by three men. Three weeks later there was no official reaction from police, but media published “unofficial” source from the police, claiming a member of the Parliament “was drunk and he fell down the stairs”<sup>1220</sup>.

There are numerous examples of attacks on representatives of the parties in election campaigns. In most cases opposition parties accuse activists of the ruling party of carrying out the attacks, and occasionally vice versa<sup>1221</sup>. Police did not solve these attacks. Representative of Serbian Progressive Party claims that these accusations are “part of folklore”<sup>1222</sup>. However, Political analyst Djordje Vukadinovic claims that attacks on the opposition are organised by the ruling party “squadrons of fear” in order to increase pressure and to win elections in each local municipality, just to prove that the Prime Minister's rating is not falling, despite recent “painful reforms”<sup>1223</sup>.

1216 Political analyst and professor at Faculty of Political Sciences Zoran Stojiljkovic, interview, October 2014 <http://www.tanjug.rs/novo-sti/170612/ds--proces-protiv-lepojevica-bio-politicki-motivisan.htm>

1217 Interview, October 2014

1218 <http://www.politika.rs/rubrike/Hronika/Uhapsen-direktor-Resavice.lt.html><http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7307-podaci-o-hapsenjima-po-strankama>

1219 Interviews with representatives of political parties, October and November 2014

1220 <http://www.blic.rs/Vesti/Politika/544523/Pretucen-poslanik-na-Vulinovoj-zurki>

1221 <http://www.time.rs/c/958aeab69e/sns-kandidat-ds-za-predsednika-opstine-napao-aktiviste-sns.html><http://www.naslovi.net/tema/712953http://rs.n1info.com/a23508/Vesti/Incidenti-u-Mionici-policiji-prijavljeni-napadi.html>[http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=06&dd=13&nav\\_id=722515http://www.blic.rs/Vesti/Politika/412214/Aktivista-DS-Naprednjaci-me-oteli-pa-tukli-u-Vrbasu](http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=06&dd=13&nav_id=722515http://www.blic.rs/Vesti/Politika/412214/Aktivista-DS-Naprednjaci-me-oteli-pa-tukli-u-Vrbasu)

1222 Zoran Babic, Serbian Progressive Party, interview, October 2014

1223 <http://www.vreme.com/cms/view.php?id=1259191>

# Governance

## Transparency (Law)

*To what extent are there regulations that require from parties to make their financial information publicly available?*

**Score: 100/2015 (75/2011)**

The 2011 Law on Financing Political Activities, which is in force since 2012, has improved framework regarding transparency of political parties' financial flows.

The legal framework obliges political parties to make their financial information publicly available. Parties are required to keep bookkeeping records of all revenues and expenditures, by origin, amount and structure. These records are subject to annual control by the Anti-Corruption Agency and/or the State Audit Institution<sup>1224</sup>. Parties are also required to keep separate records of donations, gifts and services given without compensation, or under conditions deviating from market conditions.

Parties are obliged by the Law to submit to the Anti-Corruption Agency an annual financial statement, report on donations and assets, along with the opinion of a certified auditor, until April 15<sup>th</sup> for the preceding year. Parties are also required to publish annual financial statement, within eight days of submission to the Agency, on their web site and in the "Official Gazette of the Republic of Serbia"<sup>1225</sup>.

Besides reporting annually on donations, parties are required to publish each donation exceeding one average monthly salary on their web sites within eight days from the date of receiving it. This also applies to several smaller donations from the same person, when their value exceeds one monthly average salary (around USD 400)<sup>1226</sup>.

A report on election campaign costs must be submitted to the Anti-Corruption Agency within 30 days from the date of publication of the final election results. This report must contain information on the origin, amount and structure of raised and spent funds from public and private sources. The report is published on the web site of the Anti-Corruption Agency. The content of the report on election campaign costs is specified by the director of the Agency<sup>1227</sup>. The only provision diminishing the transparency of the report is the fact that information about persons and legal entities who paid for services provided for political parties in the campaign (i.e. TV station to which political party paid for advertising) is not published although it is included in the report and provided to the Anti-Corruption Agency<sup>1228</sup>.

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1224 The Law on Financing Political Activities, Article 27

1225 The Law on Financing Political Activities, Article 28

1226 The Law on Financing Political Activities, Article 10

1227 The Law on Financing Political Activities, Article 29

1228 Rules on the records of donations and property, the annual financial report and statement of expenditure in election campaign [http://demo.paragraf.rs/combined/Old/t/t2013\\_04/t04\\_0134.htm](http://demo.paragraf.rs/combined/Old/t/t2013_04/t04_0134.htm)



## Transparency (Practice)

*To what extent do political parties make their financial information publicly available?*

**Score: 75/2015 (50/2011)**

There has been significant improvement regarding transparency of political parties' financial information since NIS 2011. That improvement is mostly a result of compliance with the new legal provisions, in force since 2012. Reports on election campaign costs and annual financial reports, including reports on donations, are delivered to the Anti-Corruption Agency, published on the Agency's web site and on web sites of all major political parties. The duty to also publish annual financial reports in the "Official Gazette" has only partly been respected (no party published such reports for 2013 and some published it in previous years) and has been removed from the Law through November 2014 amendments.

Annual financial reports in 2014 were delivered by 69 out of 97 political parties and 25 out of 89 independent lists ("groups of citizens") which were represented in the Parliament or local and regional assemblies or took part in elections held that year. Out of those 94, the Agency verified 92 reports and published them on its web site<sup>1229</sup>. Verification is based on comparison of electronic and paper forms of reports and does not indicate checking of data veracity. As for 2014 election campaign costs reports, Agency the received 105 reports, verified 101 and published them on its web site<sup>1230</sup>.

Considering the fact that all parties with representatives in the national parliament submitted reports, it can be concluded that the flow of the public money intended for financing parties is transparent, and that there has even been a slight improvement regarding small parties and independent lists.

All reports can be accessed on the Anti-Corruption Agency's web site soon after being submitted<sup>1231</sup>. Reports are comprehensive due to extensive reporting forms. However, on-line reports are not very user-friendly and search options could be significantly improved. All major parties also publish reports on their web sites, as well as information on donations, including information about donors<sup>1232</sup>.

## Accountability (Law)

*To what extent are there provisions governing financial oversight of political parties?*

**Score: 75/2015 (75/2011)**

There has not been any significant change regarding the legal framework for accountability of the political parties. There are provisions on oversight of political parties - regulating the duties of parties and control bodies, primarily the Anti-Corruption Agency.

The Anti-Corruption Agency has the right of direct and free access to bookkeeping records and documentation and financial reports of a political entity and the right to engage relevant experts and institutions. The Agency is also entitled to direct and free access to bookkeeping records and documents of an endowment or foundation founded by a political party<sup>1233</sup>. Political parties are obliged to deliver within 15 days to the Agency all documents and information necessary for control. In the course of election campaigns, the deadline for delivering necessary information is

<sup>1229</sup> ACA' 2014 annual report

<sup>1230</sup> ACA' 2014 annual report

<sup>1231</sup> <http://www.acas.rs/pretraga-registra/>

<sup>1232</sup> Research by Transparency Serbia of web sites SNS, DS, SPS, JS, SDS, SDPS, SVM.

<sup>1233</sup> The Law on Financing Political Activities, Article 32

three days<sup>1234</sup>. The Law also obliges all state authorities, banks, as well as natural persons and legal entities financing political parties and/or performing services for parties, to forward to the Agency all data required for control<sup>1235</sup>.

The Agency has powers for checking accuracy of reports on election campaign costs. The Law stipulates that the Agency is entitled to funds for control of election campaign costs - not less than 1% funds intended for elections for the president of the Republic and members of the Parliament, 0.5% for elections for members of city councils and/or 0.25% for elections for members of municipal councils, out of the aggregate amount of funds allocated in the Republic of Serbia budget for election campaign for the election of members of the Parliament<sup>1236</sup>. Through November 2014 amendments, the amount of budget funding decreased (30%) and consequently, funds for the Agency's control. The purpose of these funds is not regulated in more detail, so the Agency may use them for monitoring of election campaigns, in order to compare data delivered by political parties, with data gathered by the Agency's monitors, for hiring of additional staff in the analysis phase or for other specialised services. These funds should be part of the Agency's overall budget, adopted in the overall budget by the Parliament or paid from budget reserves in case of extraordinary elections.

Furthermore, the State Audit Institution (SAI) is authorized to perform audit of political parties' finances. The Agency may, "after conducting control of financial reports of a political entity, forward a request to the State Audit Institution to audit these reports, in accordance with the Law governing competencies of the State Audit Institution"<sup>1237</sup>. Even if the word "request" is used, this provision does not constitute a duty for the SAI to act upon it, since SAI is independent in defining its audit plan.

The Law on the State Audit Institution does not stipulate the audit of political parties' finances as mandatory for the SAI. The National Anti-corruption Strategy, adopted in 2013, envisaged that the Law on SAI would be amended by December 2014 and determine audit of political parties' financing as one of the mandatory audits. The Law has not been amended by the time this report was concluded (December 2015).

The Law envisages sanctions for not submitting financial reports to the Agency in full and in a timely manner. Political parties can be fined up to RSD 2 million RSD (18.000 USD) and they can lose between 10 and 100 % of their financial support from public sources next year<sup>1238</sup>.

All the money intended for financing election campaigns has to go through bank account<sup>1239</sup>. Thirty days after an announcement of the official election results, political parties are obliged to submit to the Anti-Corruption Agency a report on the origin, amount and structure of funds used for the election campaign<sup>1240</sup>. The form, determined by the Agency, shows in details data about public funds and funds collected from private sources and detailed data on expenditures<sup>1241</sup>.

The only possible legal loophole, noted in NIS 2011, has not been removed. It is the fact that the timeframe, goals and scope of control are not defined in the Law on Financing Political Activities.

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1234 The Law on Financing Political Activities, Article 32  
 1235 The Law on Financing Political Activities, Article 32  
 1236 The Law on Financing Political Activities, Article 33  
 1237 The Law on Financing Political Activities, Article 34  
 1238 The Law on Financing Political Activities, Articles 39 and 42  
 1239 The Law on Financing Political Activities, Article 24  
 1240 The Law on Financing Political Activities, Article 32  
 1241 [http://demo.paragraf.rs/combined/Old/t/t2013\\_04/t04\\_0134.htm](http://demo.paragraf.rs/combined/Old/t/t2013_04/t04_0134.htm)

## Accountability (Practice)

*To what extent is there effective financial oversight of political parties in practice?*

**Score: 75/2015 (25/2011)**

There has been a notable improvement in financial oversight of political parties in practice. All major parties are delivering to the Anti-Corruption Agency their annual financial reports, reports on donations and reports on election campaign costs. The Agency monitors election campaigns, and checks the accuracy of reports, and cross-checks reports with data from monitoring and data collected from other institutions and legal entities (such as marketing agencies, media, transportation companies).

In 2012, when elections were held at all levels, 63 out of 91 political parties and 13 out of 149 independent lists ("groups of citizens") delivered reports to the Agency. However, these parties and lists accounted for 91.2% of public funds intended for financing political activities – both regular and campaign costs, in 2012<sup>1242</sup>. After 2014 parliamentary elections, 18 out of 19 subjects delivered reports to the Agency, including all parties which had won seats in the Parliament<sup>1243</sup>.

Since 2012, the Anti-Corruption Agency has been regularly publishing reports on control of annual financial reports and election campaign costs.

Until March 2015, the Agency had initiated 420 misdemeanor procedures against political subjects which had not delivered reports or had other deficiencies in their reports<sup>1244</sup>. Courts brought 163 sentences, 91 of them final. The majority of these sentences, 125, were brought in 2014. In 2014 the Agency initiated 33 misdemeanor procedures against political subjects: 15 for not delivering reports on election campaign costs, four for delivering reports with mistakes, 12 for not publishing documents on parties' web sites and two for not delivering information at the Agency's requests<sup>1245</sup>. The Agency brought 31 decisions on depriving political parties between 10 and 100 % of their financial support from public sources for the following year<sup>1246</sup>. In 2015 the SAI has started an audit of three biggest political parties' 2014 financial reports.

The control performed by the Anti-Corruption Agency is focused on bigger parties, coalitions and citizens' groups. For example, in 2014, Agency performed more detailed control of seven political parties, claiming that their reporting on income covered 85% of the public funds for the last elections and more than 90% of total reported income of all political subjects.

Reliability of reports might be questioned from the aspect of non-reported services provided for free, which should be treated as donations. There is also a strong belief that state owned enterprises, controlled by political parties, employ party members and activists who are paid by state owned enterprises, but they do the work for parties<sup>1247</sup>.

Although information required by the Law is published, there are still those who believe that a substantial part of parties' financing is done out of sight of public and some activities are financed by dirty money, in cash<sup>1248</sup>. However, there has not been any evidence or investigation of such allegations. In each election campaign there are accusations between parties of buying votes for cash, but there has been just one investigation against an official of a small local party. After

1242 Control of Financing of Political Subjects, the Anti-Corruption Agency, [http://www.acas.rs/wpcontent/uploads/2011/05/kontrola\\_finansiranja\\_politickih\\_subjekata.pdf](http://www.acas.rs/wpcontent/uploads/2011/05/kontrola_finansiranja_politickih_subjekata.pdf)

1243 ACA 2014 annual report

1244 ACA 2014 annual report

1245 ACA 2014 annual report

1246 The Law on Financing Political Activities, Articles 39 and 42

1247 Interview with political analyst, professor at Faculty of Political Sciences and member of Anti-Corruption Agency's Board Zoran Stojiljkovic, October 2014

1248 Interview with parties representatives, October and November 2014

one party official was arrested in 2008 and charged for corruption, he claimed in court that EUR 200.000 found in his safe belonged to his party, not him. He was acquitted and there has not been an investigation about illegal party financing<sup>1249</sup>.

Even though the control performed by the Agency has raised some suspicions about illegal or unreported income (e.g. very poor citizens and not successful firms being declared as party donors<sup>1250</sup>) there has been no criminal investigation.

## Integrity mechanisms (Law)

*To what extent is there the principle of democratic governance of the major political parties?*

**Score: 100/2015 (100/2011)**

The statutes of all major parties envisage democratic procedures for election of party's organs, including party's president, with the possibility to nominate several candidates. Wide powers are given to the main boards and/or the presidency, but the president has the highest responsibility and authority. The President of the largest ruling party (Serbian Progressive Party) is president of the main board and chairman of the presidency at the same time. President of Socialist Party of Serbia is given the right to represent the party "without limitation". The largest opposition party's (Democratic Party) presidency has authority to initiate dismissal of almost all party officials<sup>1251</sup>.

Candidates for president of the party are usually proposed by municipal councils. In the majority of political parties the method of nomination and election is stipulated by the Statute. The president is elected by the party's assembly or congress. One party (Social Democratic Party) organised direct elections of the president in 2014, but there was only one candidate<sup>1252</sup>. Another party (Democratic Party) has the possibility in its Statute to organise direct elections of presidents of local branches, but not of the party's president<sup>1253</sup>.

In most cases, candidates for members of the Parliament are determined by the main board, based on the proposal of the municipal board (or based on recommendation of the Executive Board confirmed by the presidency) or by the party's presidency.

## Integrity mechanisms (Practice)

*To what extent the principle of democratic governance of political parties is implementing in practice?*

**Score: 25/2015 (25/2011)**

Internal procedures in political parties are formally implementing, but in most cases party organs are confirming party leader's attitude. Decision making is practically done by a party's president and, in some parties, by the president and a very narrow circle of his associates, often narrower than the presidency itself. More than one candidate for party president usually means a split in the party – with the defeated candidate forming a new party<sup>1254</sup>.

1249 <http://www.politika.rs/rubrike/Politika/Ciji-su-evri-iz-Knezevicevih-sefova.lt.html>

1250 <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7650-cudni-donatori-politickih-partija>

1251 Research by Transparency Serbia, also Jelena Milunovic Anti-corruption Mechanisms and Measures in Programmes and Statutes of Political Parties, Alternative Report on Fight Against Corruption, Birodi 2013 and "(Non)democratic redesigning of political parties in Serbia", Konrad-Adenauer-Stiftung 2013

1252 <http://www.pressonline.rs/info/politika/329769/tadic-izabran-za-predsednika-stranke.html>

1253 Statute, Article 88 <http://www.ds.org.rs/dokumenti/Statut-DS.pdf> <http://www.ds.org.rs/medija-centar/saopstenja/18691-demokrate-beograda-danas-na-neposrednim-izborima-biraju-rukovodstvo>

1254 Interviews with parties representatives and political analyst Zoran Stojiljkovic, also "Integrity of Political Parties in Serbia", Birodi, Konrad

According to the representative of one of the parties interviewed for this research, “all parties in Serbia are, more or less, organised around the leader. Whenever there has been too much democracy in the party that party has split or disintegrated. There have been no free elections between two candidates which did not end in forming a new party”.

In Serbia most of the parties are functioning in practice in an undemocratic way. The party leadership hides from the public and its own membership the internal anatomy of the party. Democratic, statutory procedures are used just for the public display. Although the majority of parties’ internal relations are democratically governed by statutes and other organizational rules, and the membership may participate in the establishment of party strategy and tactics and the election of the party organs, there is a tendency for decision-making power to be reduced to the narrowest management circuit and the leaders. There are various reasons for this, such as efficiency or party discipline<sup>1255</sup>.

In practice, it is unrealistic to have on the list any candidate for member of the parliament with whom the party’s president disagrees<sup>1256</sup>. That implies that members of the Parliament depend on the president’s will and it results in the inability of the Parliament to control the executive power because the president of the ruling party is usually the Prime Minister<sup>1257</sup>. As noted by one of the party’s official, “political parties in Serbia are the segment of society the least touched by reforms and democratization”<sup>1258</sup>.

According to surveys, political parties are considered by the citizens as the most corrupt organisations in Serbia. According to the Global Corruption Barometer, more than half of the citizens consider parties “extremely corrupt”, with average score 4.3 on a scale from 1 (free of corruption) to 5 (extremely corrupt). In other research, parties are perceived as corrupt by 74% of citizens<sup>1259</sup>.

# Role

## Interest formulation and representation (Practice)

*To what extent do political parties formulate and represent relevant social interests in the political sphere?*

**Score: 25/2015 (25/2011)**

Most of the political parties do not represent specific social interests in the political sphere. Large parties are hybrids of clientelistic treaties. Therefore, they do not offer specific platforms because they are aware that promises to voters will be broken in order to fulfill wishes of the “clients”<sup>1260</sup>.

Parties might be perceived as representing party officials, the party oligarchy and certain business and financial circles<sup>1261</sup>. According to political analyst Djordje Vukadinovic, in the past there were several parties which represented specific segments, such as URS (not in the Parliament any more) representing domestic capital, LDP (also not in the Parliament any more) representing

Adenauer Stiftung, 2014

1255 “(Non)democratic redesigning of political parties in Serbia”, Konrad-Adenauer-Stiftung

2013, edited by Zoran Stojiljkovic, Gordana Pilipovic, Dusan Spasojevic

1256 Interview with parties representatives, October and November 2014

1257 Interview with parties representatives, October and November 2014

1258 Interview with parties representatives, October and November 2014

1259 UNDP Serbia, “Public Perceptions of Corruption in Serbia”, Ninth Research Cycle, July 2014

1260 Political analyst and professor at Faculty of Political Sciences Zoran Stojiljkovic interview October 2014

1261 Political analyst Djordje Vukadinovic, interview October 2014



foreign capital, SPS representing “the oligarchy connected with state owned enterprises”. Now SNS (the ruling party with an absolute majority in the Parliament) has taken over all these segments.

Party representatives themselves agree that “all parties are trying to address all social layers [...] Parties have not derived from social movements and structures, they are political movements, trying to reach out as widely as possible, with a focus on ratings and political calculations instead of policies and populism, and demagoguery instead of ideology”<sup>1262</sup>.

This results in such situations that the ruling party, which claims to be “centre right”, appoints the Minister of Labor from its coalition partner, a party which claims to be on the left, and this minister defends the Law on Labor which, according to union representatives, protects the interest of big capital and tycoons<sup>1263</sup>.

The thesis that parties primarily serve themselves<sup>1264</sup> is supported by parties stand regarding some anti-corruption issues. Although some anti-corruption mechanisms and laws have been adopted, ruling parties have failed to implement them – a notable example being regarding state owned enterprises, which are divided between political parties as spoils of war.

This results in low public trust in political parties. According to the Global Corruption Barometer, more than a half of citizens consider parties “extremely corrupt”, with average score 4.3 on a scale from 1 (free of corruption) to 5 (extremely corrupt). In the UNDP research<sup>1265</sup>, parties are perceived as corrupt by 74% of citizens.

Minority parties represent specific interests of national minorities in Serbia, occasionally funding specific projects in specific minority populated municipalities or regions, or addressing specific culture or education related problems.

Just a few parties have genuine understanding of the role of CSOs in society and true dialogue with CSOs. Most of the parties form their own CSOs<sup>1266</sup> (through their activists) or support CSOs which, in return, support them or attack their political opponents<sup>1267</sup>. Occasional “cooperation”<sup>1268</sup> soon ends in brutal attacks, when political parties realise that cooperation from the point of CSOs does not mean unconditional support, without criticism<sup>1269</sup>.

## Anti-corruption commitment (Practice)

*To what extent do political parties give due attention to social accountability and the fight against corruption?*

**Score: 25/2015 (25/2011)**

Parties pay attention to public accountability and the fight against corruption as long as it can be used in election campaigns, without sacrificing interests of parties’ officials. The fight against corruption, in general, has a prominent place in parties’ manifestos or programmes. Their fight against corruption has been one of the main commitments in every election campaign and in the provisions of almost all coalition agreements. In practice, however, political parties are considered as one of the main generators of corruption<sup>1270</sup>, or the “main gear in the corruption mechanism”<sup>1271</sup>.

<sup>1262</sup> Interview with representatives of parties, October and November 2014

<sup>1263</sup> <http://www.naslovi.net/2014-07-18/slobodna-evropa/usvojen-zakon-o-radu-sindikati-traze-referendum-vlast-tvrdi-da-cuva-radnike/10884045>

<sup>1264</sup> As noted by analyst Djordje Vukadinovic

<sup>1265</sup> UNDP Serbia, “Public Perceptions of Corruption in Serbia”, Ninth Research Cycle, July 2014

<sup>1266</sup> <http://www.blic.rs/Vesti/Drustvo/514585/SIROKE-RUKE-Vulin-na-lepe-oci-podelio-226-miliona-dinara>

<sup>1267</sup> <http://www.blic.rs/Vesti/Politika/503446/Spasic-Smeniti-direktorku-Agencije-za-borbu-protiv-korupcije>

<sup>1268</sup> <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7058-nekretnine-samo-za-politicke-aktivnosti>

<sup>1269</sup> <https://www.sns.org.rs/novosti/saopstenja/odgovor-organizaciji-transparentnost-srbijahttps://www.sns.org.rs/novosti/saopstenja/ucinilo-nam-se-da-je-transparentnost-srbija-portparol-ds>

<sup>1270</sup> <http://boom93.com/info/stop-korupciji/25692/korupcija-i-kako-je-spreciti-u-javnim-nabavkama-i-finansiranju-politickih-stranaka.htmlhttp://www.anem.rs/sr/aktivnostiAnema/korupcija/vesti/story/17005/Srbija+se+vratila+korak+nazad+u+borbi+protiv+korupcije.html>

<sup>1271</sup> Political analyst Djordje Vukadinovic, interview, October 2014

Provisions about the fight against corruption can be found in basic documents of almost all relevant parties. The largest ruling party, Serbian Progressive Party, placed the fight against corruption in its Statute. It also has an internal Anti-Corruption Council (named the same as the government's Anti-Corruption Council, which has operated independently from the government for 14 years and gained a strong reputation). The Socialist Party of Serbia, in its programme, analyses vulnerability of political institutions to corruption and suggests that strong control institutions and efficient, depoliticized, public administration are barriers for corruption. The Democratic Party has "uncorrupted government" as one of its goals and it also has an Ethical board as one of party's organs.

In practice, the Democratic Party in coalition with the Socialist Party nourished the politicization of public administration from 2008-2012. The Progressive Party replaced Democrats in 2012, and occasionally complained that they could not conduct promised reforms because of the interests of their coalition partners<sup>1272</sup>. Since April 2014, the Progressive Party has had an absolute majority in the Parliament, but reforms in this area have not been introduced.

Parties representatives, interviewed for this research, disagree on this subject. Some claim that parties are not willing to prevent clientelism and nepotism, to depoliticize public administration and decrease corruption because it will jeopardize their internal structure. Then there are those who claim that parties as "a hotbed of corruption" is a myth, not based on facts<sup>1273</sup>.

One representative of the ruling Progressive Party<sup>1274</sup>, claims that the fight against corruption was one of the main goals of this party in opposition, and that this continues to be the case as the ruling party. As evidence for this he mentioned the adoption of the anticorruption laws and the Anti-corruption Strategy, as well as the functioning of party's Anti-Corruption Council and party's web page<sup>1275</sup> for reporting corruption.

On the other hand, the party (and relevant Ministry of Justice, controlled by the Progressive Party) have rejected the large majority of Transparency Serbia's suggestions for improving anti-corruption legislation. The Progressive Party eventually accused Transparency Serbia of being a "spokesperson of the (opposition) Democratic Party" after Transparency Serbia criticized legislation with potentially corruption prone provisions<sup>1276</sup>. Suggestions from the Anti-Corruption Agency, regarding the same subject were dismissed by the Minister from Progressive Party, claiming that the Agency is not authorized to give opinion on laws which are not strictly anti-corruption laws<sup>1277</sup>. According to media reports<sup>1278</sup>, the Progressive Party's Anti-Corruption Council is, organising conferences and "presenting the work of the Government members from Progressive Party in the field of suppression of corruption".

One of indications that parties' stand on corruption issue depends on the political moment was a discussion on legislation regarding the expropriation of a controversial project "Belgrade Waterfront". Similar legislation (for expropriation related to the South Stream project) had been adopted several years ago, by then ruling Democratic Party (and Socialist party). Progressive Party, which criticized the first law, while being in opposition, defended the latter one, and Democrats, after adopting the first one, criticized the second one<sup>1279</sup>.

Also, Transparency Serbia's suggestion to suppress abuse of public functions in election cam-

1272 More on this subject in pillar "State Owned Enterprises"

1273 Interviews with parties representatives, October and November 2014

1274 Interviews with Zoran Babic, October 2014

1275 <http://snsborbaprotivkorupcije.rs>

1276 <https://www.sns.org.rs/novosti/saopstenja/ucinilo-nam-se-da-je-transparentnost-srbija-portparol-ds>

1277 Minister Nikola Selakovic, discussion in the Parliament, April 9th 2015

1278 <http://evrsac.rs/index.php/vesti/item/4102-vrsacki-sns-organizovao-tribinu-borba-protiv-korupcije><http://noviput.rs/drustvo/odrzana-tribina-saveta-za-borbu-protiv-korupcije-potrebna-pomoc-gradjana-i-medija/http://www.rts.rs/page/stories/sr/story/9/Politika/1808674/%22Potrebna+pomo%C4%87+gra%C4%91ana+i+medija+u+borbi+protiv+korupcije%22.html>

1279 <http://www.istinomer.rs/stav/analize/leks-specijalis-je-neustavan-osim-kada-ga-mi-donosimo/http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7531-argumenti>



paings and abuse of office to promote parties was largely ignored by all parties. Transparency Serbia research shows that all parties used this mechanism when they were in power – in 2012 and 2014 elections<sup>1280</sup>.

Former member of the Anti-Corruption Agency's Board Zlata Djordjevic says that there is no, and there has never been, true political will to fight corruption. It all comes down to promises and statements, because this is important topic for voters<sup>1281</sup>.

# Political Parties

## Recommendations

1. Government should propose and the Parliament adopt amendments to the Law on Financing Political Activities as envisaged by the Anti-corruption Strategy and Action Plan - to clearly set out and divide responsibilities of the Anti-Corruption Agency, State Audit Institution and other authorities in the process of control of political activities and political entities, and to precisely determine obligations and mechanisms for transparent financing of political entities;
2. Government should propose and the Parliament adopt amendments to the Law on State Audit Institution in order to regulate obligation of the State Audit Institution regarding audit of political parties - so that the audit program necessarily includes audit of the parliamentary political parties at the national level.
3. Government should propose and the Parliament should adopt amendments to the laws which would regulate the abuse of public office to promote parties in election campaigns.
4. Political parties should focus more on suppression of corruption through specific systematic measures in their pre-election manifestos.
5. Political parties should refrain from influencing the public sector through electing party representatives in state owned enterprises and other parts of the public sector.
6. Political parties should introduce internal financial control.
7. Political parties (and the Anti-Corruption Agency) should initiate debate in order to determine the real needs for public funding of political parties activities and to set the percentage in the law on the basis of these needs. Part of the resources that are received from the budget based on parties' representation in the Parliament should be used to increase the quality of the parliamentary groups' work including the drafting of laws and amendments.
8. Political parties (and the Anti-Corruption Agency) should consider measures for improvement of integrity of political parties and political life (e.g. integrity plans, ethical committee of the Parliament).

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1280 <http://www.transparentnost.org.rs/images/stories/materijali/13062014/Aktivnosti%20javnih%20funkcionera%20tokom%20kampanje%20za%20izbore%202014,%202013.06.2014.pdf><http://www.transparentnost.org.rs/images/stories/materijali/Finansiranje%20kampanje%202012.pdf>

1281 Interview, October 2014



# MEDIA

## National Integrity System

**Summary:** Establishment of a media is simple and there are no legislative obstacles for work of media. New legislation from 2014 that still has to be implemented, significantly improved the legal framework for transparency of ownership and financing of media from public sources, but did not tackle transparency of other funding sources. Censorship is prohibited by law. However, in the practice, media and journalists are facing with a great pressure and self-censorship and owners and financiers are influencing editorial policy on a daily basis. Code of Ethics has been amended with corruption-related provisions, but the Code, in general, is not abided by journalists and its implementation is not systematically monitored. Investigative journalism is underdeveloped, reporting on corruption is mainly based on the Government and police press issues and “leaked” information from on-going investigations.



| MEDIA                                 |  |   |                                       |
|---------------------------------------|--|---|---------------------------------------|
| Overall Pillar Score (2014): 50 / 100 |  |   |                                       |
| Overall Pillar Score (2011): 42 / 100 |  |   |                                       |
| Dimension                             | Indicator                                  | Law                                     | Practice                              |
| <b>Capacity</b><br>56 / 100           | Resources                                  | <b>100</b> (2014),<br><b>75</b> (2011)  | <b>25</b> (2014),<br><b>25</b> (2011) |
|                                       | Independence                               | <b>100</b> (2014),<br><b>100</b> (2011) | <b>0</b> (2014),<br><b>0</b> (2011)   |
| <b>Governance</b><br>58 / 100         | Transparency                               | <b>75</b> (2014),<br><b>50</b> (2011)   | <b>50</b> (2014),<br><b>25</b> (2011) |
|                                       | Accountability                             | <b>75</b> (2014),<br><b>75</b> (2011)   | <b>50</b> (2014),<br><b>50</b> (2011) |
|                                       | Integrity                                  | <b>75</b> (2014),<br><b>50</b> (2011)   | <b>25</b> (2014),<br><b>25</b> (2011) |
| <b>Role</b><br>25 / 100               | Investigate and expose cases of corruption | <b>25</b> (2014), <b>25</b> (2011)      |                                       |
|                                       | Inform public on corruption and its impact | <b>25</b> (2014), <b>25</b> (2011)      |                                       |
|                                       | Inform public on governance issues         | <b>25</b> (2014), <b>25</b> (2011)      |                                       |

**Structure** – Serbia has 750 dailies and periodicals registered in the Registry of the Public Media, more than 240 radio stations, about 140 TV stations, 240 news web portals and 20 new agencies' services<sup>1282</sup>. This is an increase of 50% compared to 2011. That might be also the consequence of registration that had started in February 2015<sup>1283</sup>. The previous law foresees registration, but without any sanction for non-registered media. However, it is estimated that nearly half of the registered media are inactive<sup>1284</sup>.

There are eight relevant dailies with nationwide distribution, with circulation between 10.000 and 100.000 copies (total circulation of all dailies is approximated to be between 400.000 and 500.000). There are five political weeklies with circulation of up to 10,000 copies (half of what it used to be in 2011). There are two public broadcasters, Radio Television of Serbia and Radio Television Vojvodina, both funded from the budget, commercial revenues, and from subscription which is reintroduced from January 2016<sup>1285</sup> (subscription was abolished in 2014).

Local media, owned by local municipalities are privatized by October 31<sup>st</sup>, 2015 (34 out of 73 media)<sup>1286</sup>. After that date it is forbidden<sup>1287</sup> to directly finance media from public revenues, with only exception being public service broadcasters and media founded by national minority councils.

There are four commercial TV stations and four radio stations with national coverage<sup>1288</sup>.

The issuing of licenses for electronic media falls under the authority of the Regulatory Body for Electronic Media. Members of the Regulatory Council are elected by the Parliament, following the proposal of the authorized nominators, in accordance with the Law<sup>1289</sup>.

There are two national journalists' associations – the Journalists' Association of Serbia and the Independent Journalists' Association of Serbia, along with several associations of electronic, print and local media.

<sup>1282</sup> <http://www.apr.gov.rs/eng/Registers/PublicMedia.aspx>

<sup>1283</sup> The Law on Public Information and Media was adopted on August 2nd, 2014.

<sup>1284</sup> Estimation by representatives of the Independent Journalists' Association of Serbia Dragan Janjic and the Journalists' Association of Serbia Nino Brajovic, interview, February 2015

<sup>1285</sup> The Law on Public Service Broadcasting, Articles 61, 62

<sup>1286</sup> According to data from Association of Journalists of Serbia (UNS), 22 media waiting to be privatized through transfer of capital to employees free of charge, 13 to be shut down, while four of them will change the activity.

<sup>1287</sup> The Law on Public Information and Media, Article 143

<sup>1288</sup> [http://www.rra.org.rs/pages/browse\\_permits/english/national](http://www.rra.org.rs/pages/browse_permits/english/national)

<sup>1289</sup> The Law on Electronic Media, Article 9

Strategy for the Development of the Public Information System in the Republic of Serbia until 2016 was adopted by the Government in October 2011. The document stated that Serbia had an excessive number of media, that the quality of the content they offer was low and that the funds at their disposal were too small. Most of the Strategy's recommendations (the annulment of state ownership of local and regional media and aid to the local media through projects, rather than through budget subsidies) were implemented in media legislation adopted in August 2014<sup>1290</sup>.

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1290 The Law on Public Information and Media, The Law on Electronic Media and The Law on Public Service Broadcasting

# Assessment

## Capacity

### Resources (Law)

*To what extent does the legal framework provide an environment conducive to a variety independent media?*

**Score: 100/2014 (75/2011)**

The legal framework has been improved since 2011, following the adoption of the new media legislation - the Law on Public Information and Media, the Law on Electronic Media and the Law on Public Service Broadcasting. They set a legal framework<sup>1291</sup> for abolishment of state ownership of media and project-based financing of media.<sup>1292</sup> They should also improve independence of the Regulatory body by reducing number of Council's members proposed by state authorities<sup>1293</sup>.

There are no obstacles for establishing media. The Constitution envisages that everyone shall have the freedom to establish newspapers and that television and radio stations can be established in accordance with the Law on Electronic Media<sup>1294</sup>. A media publisher may be any natural or legal person, except state, autonomous province or local self-government, or institution, company or other legal person funded or founded by the state<sup>1295</sup>. Media need to be registered, in order to be treated as media, to participate in public competition for funding projects from public resources and to have advertisements of state and state funded institutions. The Law claims that the purpose of the Media Register is to provide public availability of the information about the media<sup>1296</sup>.

The Rulebook on documentation that should be provided in the process of registration of media, brought by the Ministry of Culture and Information, is regulating which documents are necessary for registration of media. Registering costs RSD 2.800 (USD 28) and these requests are neither complicated nor too demanding<sup>1297</sup>.

Electronic media need to get licence from an independent body – Regulatory body for electronic media. Licences for terrestrial broadcasting are issued in public competition and for electronic network broadcasting (cable) on demand. Licence is valid for eight years and it can be extended<sup>1298</sup>. The Law stipulates criteria for licences fees – it is determined on the basis of population in the area which media covers or the number of users of media content distribution, type of media (radio, TV), but also on programme concept (share of scientific and educational, cultural, art, children's or their own news and documentary content in the total programme output, share of programmes in minority languages)<sup>1299</sup>. The latter is supposed to enhance media diversity. Also, civil sector stations, founded by non-profit organisations, such as associations, endowments, foundations, churches and/or religious communities in order to meet specific interests of various social groups, are exempt from fees<sup>1300</sup>.

1291 <http://zslaw.rs/new-media-legislation-adopted-in-serbia/#.VPLCPnyG-Dr>

1292 Interview with state secretary in the Ministry for Culture and Information Sasa Mirkovic, February 2015

1293 Interview with representatives of the Independent Journalists' Association of Serbia Dragan Janjic and the Journalists' Association of Serbia Nino Brajovic, February 2015

1294 The Constitution of Serbia, Article 50

1295 The Law on Public Information and Media, Article 32

1296 The Law on Public Information and Media, Article 38

1297 <http://www.apr.gov.rs/eng/Registers/Associations/Fees.aspx>

1298 The Law on Electronic Media, Article 88

1299 The Law on Electronic Media, Article 36

1300 The Law on Electronic Media, Article 37

In order to protect media pluralism and ban on monopoly in the public information sector, the Law envisages “provision of the versatility of sources of information and media content” and forbids any form of monopoly<sup>1301</sup>. It is further regulated by forbidding to merge publishers in such a way that would give anyone more than 50% of the total circulation of newspaper on the territory of Serbia, or obtaining publishers that provide audio and/or audio-visual services if the ratings shares of these publishers exceed 35% of the total combined ratings of all publishers that provide services within their zone of coverage<sup>1302</sup>.

There are no restrictions or precognitions to entry into the journalistic profession. Membership in journalists associations is voluntary.

## Resources (Practice)

*To what extent is there diverse independent media are providing a variety of perspectives?*

**Score: 25/2014 (25/2011)**

Collapsed economic situation of the media, financial dependence and unsuccessfully conducted privatization have resulted in the presence of a large number of television and radio stations with low-quality production, tabloidization and self-censorship<sup>1303</sup>. Description of the media scene, taken from 2011 Media Strategy, has not changed a lot. According to 2013 Ombudsman’s report, “the (constitutional) right to be informed accurately, fully and in a timely manner about issues of public importance... is seriously violated in Serbia, in particular with regard to accurate and full information”.

The information reported by media are, as a rule, selective and one-sided, remarkably timed to coincide with ups and downs of political processes and arrangements, and systematically directed against specific individuals<sup>1304</sup>.

Number of media with independent and diverse editorial policy has been on a steady decline, while number of registered media outlets is increasing at the same time. Media, as a rule, coordinate their editorial priorities with political priorities of the authorities or centres of the power. Very few media, which have preserved their integrity and credibility, are on the verge of existence<sup>1305</sup>.

Representatives of journalists’ associations’ agree that Government’s and pro-government’s stances dominate in the media. In general, instead of dealing with issues, media present stances on issues<sup>1306</sup>. This relates particularly to economic topics – authorities’ statements, announcements and predictions are seldom challenged.

Advertising by the authorities is still not regulated. Budgets for advertisement are getting smaller (EUR 155 million in 2013 compared with EUR 175 million in 2010 and EUR 206 million in 2008, with estimates for 2014 between EUR 120 and 150 million<sup>1307</sup>), and public authorities are one of the major advertisers. Marketing agencies are playing an important role in relation between advertisers, authorities, politics and media. In 2011 major advertising agencies were owned by ruling Democratic Party’s (DS) officials – by the advisor to then president and by Belgrade mayor. After Democratic Party

1301 The Law on Public Information and Media, Article 6

1302 The Law on Public Information and Media, Article 45

1303 Strategy for the Development of the Public Information System in the Republic of Serbia until 2016

1304 Ombudsman’s annual report for 2013 <http://www.ombudsman.rs/attachments/2013%20Annual%20Report%20of%20the%20Protector%20of%20Citizens.pdf>

1305 Interview with Zoran Sekulic, owner and editor-in-chief of private news agency Fonet and head of the Managing Board of Association of Media.

1306 Representatives of the Independent Journalists’ Association of Serbia Dragan Janjic and the Journalists’ Association of Serbia Nino Brajovic, interview, February 2015

1307 Secretary general of the Association of Journalists of Serbia Nino Brajovic, interview, February 2015, also <http://www.rra.org.rs/uploads/useruploads/PDF/6529-Analiza%20medijskog%20trazista%20u%20Srbiji%20-%20final.pdf>



lost the 2012 election, one of the agencies lost some of the major advertisers, and other included in its pool agency allegedly connected to new ruling party's (Progressive Party, SNS) official<sup>1308</sup>.

The Law on Public Information and Media envisages that public funds will be allocated to media in transparent way through public competitions for realising public interest in the public information sector, and only up to 5% by way of allowances, in accordance with the principles of non-discrimination and the rules for state aid allocation and protection of competition<sup>1309</sup>. Majority of members in commissions for those public competitions should be representatives of journalists' associations and media associations<sup>1310</sup>. It turned out that numerous local self-governments intended extremely low funds for competitions and continued non-transparent financing media through advertising and public procurement of media services<sup>1311</sup>.

Education and skills of journalists are, in general, "problematic". Journalists are educated on several faculties, but graduates have none or very little knowledge about "trade and practice"<sup>1312</sup>. According to the Press Council representative, proof for this is the fact that large number of the omissions Council dealt with were caused by ignorance<sup>1313</sup>.

According to 2011 data, based on 4,000 journalists voluntarily registered in the Serbian Journalists' Data Base, around 45% had a university degree or higher education. Research conducted by the Journalists Association of Serbia in 2014, on sample of 700 journalists, showed that 27% had no faculty degree, 21% had degree in journalism, 41% degree in other social sciences, and 11% in natural sciences<sup>1314</sup>.

Most of the media have seat in Belgrade. There are only two regional dailies and several influential regional or local weeklies. Most of the local radio and TV stations were either founded by local authorities (privatized by October 2015), or highly dependent on financing by local authorities. Independent local media, commercially financed, were in many cases, dependent on financing from donors for specific media projects.

## Independence (Law)

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?*

**Score: 100/2014 (100/2011)**

Constitution of Serbia and legislation set legal basis for independence of the media. Legal framework have been even improved after the adoption of the new media laws in 2014, but basically the principles are the same as noted in NIS 2011 - regulations protect the freedom of the media, prohibit censorship and guarantee free access to information.

According to the law, public information is free and it is not subject to censorship, any direct or indirect discrimination of editors and journalists based on their political choices and beliefs or other personal characteristics is forbidden<sup>1315</sup>.

1308 Government's Anti-Corruption Council's report on media, February 2015, <http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/saopstenja/cid1011-2752/savet-objavio-izvestaj-o-vlasnickoj-strukturi-i-kontroli-medija-u-srbiji> and BIRN's report "Advertising as a private business of government" - <http://javno.rs/istrazivanje/oglasavanje-ka-privatni-posao-vlasti>

1309 The Law on Public Information and Media, Article 17

1310 The Law on Public Information and Media, Article 24

1311 <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7456-mediji-nisu-pr-sluzbe-organa-javne-vlasti>

1312 Zoran Sekulic, owner and editor-in-chief of private news agency Fonet, and head of the Managing Board of Association of Media, interview, February 2015.

1313 Secretary General of the Press Council Gordana Novakovic, interview, February 2015

1314 Report on research of professional journalists' economic situation, UNS 2014, [http://uns.org.rs/sw4i/download/files/article/Izvestaj%20UNS%20integracija%20podataka\\_FINAL%20.doc?id=371](http://uns.org.rs/sw4i/download/files/article/Izvestaj%20UNS%20integracija%20podataka_FINAL%20.doc?id=371)

1315 The Law on Public Information and Media, Article 4

The free flow of information through the media or the editorial autonomy of the media must not be jeopardized, especially not by putting pressure, threatening or blackmailing editors, journalists or sources of information<sup>1316</sup>.

According to journalists' associations, legal framework for media independence is "solid". Associations believe that additional regulation regarding financial influence on media should have been incorporated in the Law on Public Information and Media, such as registering the biggest advertisers and financiers, but media industry (owners) opposed this in law drafting process<sup>1317</sup>.

Legislation regulating licensing is reasonable and aims to ensure balanced programming. It deals with technical aspects of broadcasting, organisational, and program (type of program and the quantitative relationship between certain types of programs, the share of own production)<sup>1318</sup>. The Regulatory Body for Electronic Media was supposed to draft acts which would specify the procedure, conditions and criteria for issuing licenses till February 2015, but it still hasn't been done at the time of preparation of this report<sup>1319</sup>.

The New Law on Electronic Media redefined position of the Regulator for Electronic Media – body in charge of issuing licences. It set basis for slight improvement of its independence by reducing number of Regulator's Council members elected on proposal by political institutions (Parliament, Government, provincial Parliament and provincial Government) from 4 to 3, with majority members being elected upon proposal by expert associations (3), university (1) and religious communities (1).

A court can, on proposal made by prosecutor, prevent the spreading of information if it is "necessary in a democratic society and if the information calls for direct action to violently overthrow the constitutional order, direct acts of violence against a person or group on the basis of race, national origin, political affiliation, religion, sexual orientation, disability or other personal characteristics, and publication of information which threatens serious and irreparable consequences that cannot be prevented in any other way"<sup>1320</sup>. 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 suspended<sup>1321</sup>.

The Law on Free Access to Information of Public Importance is in place since 2004, and the Commissioner in charge of such information has been in place since 2005. There were nearly 4.000 appeals in 2015. In 67% of cases, the authorities met the demand of the person calling for information immediately upon learning that an appeal has been filed. In cases in which Commissioner has issued a decision, 83,7% of the authorities fulfilled their obligations<sup>1322</sup>.

There is no obligation for a journalist to reveal the source of information, except where the information refers to a criminal act or a perpetrator of a criminal act for which a sentence of imprisonment of at least five years is prescribed by the law and if the information cannot be obtained in any other way<sup>1323</sup>.

Any physical assault on an editor, a journalist or other persons involved in gathering and publishing information through the media is punishable by law<sup>1324</sup> and treated by the Criminal Code as a severe form of the offense with longer sentence envisaged<sup>1325</sup>.

With the adoption of the Amendments to the Criminal Code in 2012 the criminal offenses "Slander" and "Unauthorized public commentary on judicial proceedings" were decriminalized<sup>1326</sup>.

1316 The Law on Public Information and Media, Article 4

1317 Representatives of Independent Journalists' Association of Serbia Dragan Janjic and Journalists' Association of Serbia Nino Brajovic, interview, February 2015

1318 The Law on Electronic Media, Article 92

1319 The Law on Electronic Media, Article 92, 115

1320 The Law on Public Information and Media, Article 59

1321 The Constitution of Serbia, Articles 20, 200-202

1322 Commissioner's annual report for 2015, <http://www.poverenik.rs/yzvetaji-poverenika/2328-izvestaj-poverenika-za-2015-godinu.html>

1323 The Law on Public Information and Media, Article 52

1324 The Law on Public Information and Media, Article 4

1325 The Criminal Code, Articles 112, 114, 119 and 138

1326 The Criminal Code, Articles 171 and 336a (erased)

## Independence (Practice)

*To what extent is the media free from unwarranted external interference in its work in practice?*

**Score: 0/2014 (0/2011)**

There is strong political and economic influence and pressure on media, by the Government and “centres of power” related to politicians. In its 2014 Progress Report the EU noted that “there are concerns about deteriorating conditions for the full exercise of freedom of expression” and the “growing trend of self-censorship which, combined with undue influence on editorial policies and a series of cases of intervention against websites”, are detrimental to freedom of the media<sup>1327</sup>. In its 2015 Progress Report the EU again stressed “conditions for the full exercise of freedom of expression are not in place. The new media laws need to be implemented. It has yet to be seen whether media privatisation will increase transparency of ownership and funding. Threats and violence against journalists remain of concern. Criminal charges and final convictions are rare. The overall environment is not conducive to the full exercise of freedom of expression.”

Pressure mechanisms, according to political analyst Djordje Vukadinovic<sup>1328</sup>, are “traditional ones, through advertisers controlled by the Government, state controlled funds for the media, and through interconnections between media owners and top Government representatives”. The mechanisms of state media funding in Serbia are used as indirect and usually not easily visible type of “soft censorship”. Soft censorship is used to promote positive coverage of officials or their actions and to punish media outlets that criticize them<sup>1329</sup>.

For local media, income from subsidies leaves significant space for state influence, which local Governments often use to their advantage<sup>1330</sup>.

In its final report on 2014 elections, OSCE/ODHIR concluded that<sup>1331</sup> pluralism of opinion and independence of journalists were jeopardized by the influence exerted on media by the political parties in power. This was also noted by the Government’s Anti-Corruption Council: “Politicians use media in order to preserve the privileges while in power and to have a privileged position in election campaigns”<sup>1332</sup>.

Media, while “competing for readership and viewership figures”, at the same time being “under pressure from various centres of power”, “serve the citizens a mesh of accurate information, selective information, semi-information or sometimes completely inaccurate (mis)information”<sup>1333</sup>.

Regulator, in charge of issuing licences, had several controversial decisions in the past which led Government’s Anti-Corruption Council to conclude that it proves “a complete inability of the Regulator to independently make decisions”<sup>1334</sup>. One of those was when it cancelled licence for local TV station, owned by persons connected with local politician’s relatives, due to high unpaid debt for the licence. Debt was later abolished by the Regulator’s decision, and in 2014 licence was given to a new company, with a similar name, owned by the same person, including the politician’s relatives<sup>1335</sup>.

1327 Serbia Progress Report 2014

1328 Interview, February 2015

1329 2013 report of the World Association of Newspapers and News Publishers and Center for International Media assistance - “Soft Censorship: Strangling Serbia’s Media”

1330 Feasibility Study for Media Fund in Serbia, Media and Reform Center Nis, August 2014

1331 <http://www.osce.org/odihr/elections/serbia/118968?download=true>

1332 Government’s Anti-Corruption Council’s report on media, February 2015, <http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/saopstenja/cid1011-2752/savet-objavio-izvestaj-o-vlasnickoj-strukturi-i-kontroli-medija-u-srbiji>

1333 Ombudsman’s annual report for 2013 <http://www.ombudsman.rs/attachments/2013%20Annual%20Report%20of%20the%20Protector%20of%20Citizens.pdf>

1334 <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/izvestaji/izvestaj%20mediji%2026%2002.pdf>

1335 <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/izvestaji/izvestaj%20mediji%2026%2002.pdf>

The Ombudsman concluded in its 2013 annual report that “self-censorship is the order of the day”.<sup>1336</sup> “While difficult to investigate and prove, the whispering claims by media figures speak of persistent pressure by the political and Government centres of power. Those assertions are pervasive and deeply unsettling. There have been rumours of phone calls that have resulted in cancelled TV programs and articles withdrawn from the press, of talks that have silenced journalists and made editors change their editorial policies and choice of topics”<sup>1337</sup>.

Self-censorship is critically high, to the level that most media merely transmit what politicians say, without questions being asked. Editor of “Vreme” weekly Dragoljub Zarkovic noted that in Serbia “silence on certain issues becomes so loud that it deafened the public space, and some logical and concrete questions about the performance of the Government are asked in whispers and only on social networks”<sup>1338</sup>. Thus journalists (and media) do not ask questions, and if they ask, they do not insist on answers. Editor of private Beta news agency Ivan Cvejic contributed this to pressure under which journalist started to believe that in time of economic crises it is not appropriate to pose difficult questions to politicians<sup>1339</sup>. According to journalists’ associations’ representatives, another reason for this is fear caused by financial dependence. Besides direct subsidies and advertising, there are “business arrangements” of media owners with politicians, because the state has huge influence on business<sup>1340</sup>.

The result of this “arrangement”, according to journalist Olja Beckovic, was cancellation of her show on TV B92. According to TV station official version, manager in TV station decided that show (which hosted a lot of guests who opposed prime-minister) will be broadcasted on B92info, cable channel, instead on B92, a station with national coverage. Beckovic claimed that prime-minister insisted on cancellation, after numerous calls to her, when he was unsatisfied with her choice of guests or the way she or guests talked about him<sup>1341</sup>.

There is also constant pressure on media by allegations that they are enemies, they work for someone else’s interest, confronted with interest of the state and the people. This results in minimising the criticism by the media, “in order to prove they are neutral, not enemies and not opposition”<sup>1342</sup>. Investigative portal BIRN found itself under such pressure, after running stories about alleged irregularities in public procurement, insinuating also connections of prime-minister’s close friend with the wining firm. Prime minister accused BIRN of lying, paid by the EU to protect interest of one European company<sup>1343</sup>.

Independent Journalists’ Association of Serbia claimed that self-censorship resulted in dismissal of editor in Novosti newspaper Srdjan Skoro, after he criticized the Government as a guest in public broadcaster RTS Morning Program<sup>1344</sup>. Couple of hours after Skoro’s appearance, ruling party (Progressive party - SNS) issued a statement, accusing RTS of “serving as a training ground for dirty daily attacks on the president of SNS Aleksandar Vucic”. This was condemned by journalists’ associations as pressure on RTS<sup>1345</sup>.

Similar pressure occurred six months later, when a hooligan managed to get in front of the camera during the live broadcast of an interview following a football match on RTS and chanted insults at

1336 Ombudsman’s annual report for 2013 <http://www.ombudsman.rs/attachments/2013%20Annual%20Report%20of%20the%20Protector%20of%20Citizens.pdf>

1337 Ombudsman’s annual report for 2013 <http://www.ombudsman.rs/attachments/2013%20Annual%20Report%20of%20the%20Protector%20of%20Citizens.pdf>

1338 Vreme weekly, February 26th 2015 issue

1339 <http://www.juznevesti.com/15-minuta/Ivan-Cvejic.sr.html>

1340 Representatives of the Independent Journalists’ Association of Serbia Dragan Janjic and the Journalists’ Association of Serbia Nino Brajovic, interview, February 2015

1341 <http://www.istinomer.rs/bonus/olja-beckovic-vucic-ovde-da-vise-nikad-nisi-okrenula-moj-broj/>

1342 Representatives of the Independent Journalists’ Association of Serbia Dragan Janjic and the Journalists’ Association of Serbia Nino Brajovic, interview, February 2015

1343 <http://www.reuters.com/article/2015/01/11/us-serbia-media-eu-idUSKBN0KK04920150111>

1344 <http://www.novimagazin.rs/vesti/smenjen-srdjan-skoro-nuns-zabrinut-zbog-pritiska-na-medije>

1345 <http://www.nuns.rs/info/statements/21659/nuns-povodom-saopstenja-sns-o-rts.html> <http://www.rts.rs/page/stories/sr/story/9/Politika/1584626/UNS%3A+SNS+zastra%C5%A1uje+novinare+RTS-a.html>

the prime-minister. Although security at the stadium was responsible for the incident, Minister of Interior gave statement that he was stunned because RTS didn't apologise to the prime-minister<sup>1346</sup>.

In spite of numerous examples of pressure, the Government claims there is no censorship, which is true to the extent that there is no legal procedure aimed to stop distribution of some media outlet or similar direct repressive measure. However, Government's Anti-Corruption Council concluded in its Media report<sup>1347</sup>, that "perception of censorship in the public is based on indisputable facts, as some TV shows were cancelled, authors of which had insisted on getting the truth about some questions unpleasant for politicians".

Also, at the time when a web portal "Pescanik" posted allegations by two scholars that the Minister of Interior might have plagiarized his doctorate, this web site was hacked. The peak of the attack happened when suspected plagiarism was mentioned in Olja Beckovic's TV Show (the one which was abolished a month later). Government claimed it had nothing to do with this attack, police investigation concluded that attack came from several other countries, and there was no further mentioning of the result of the investigation<sup>1348</sup>. This triggered reaction from the OSCE Representative on Freedom of the Media, Dunja Mijatović, who "expressed concern over a worrying trend of online censorship in Serbia over the past week; and urged the authorities to nurture uncensored debate on issues of public interest"<sup>1349</sup>. Government's representatives claim that there was no censorship, and that they do not influence media<sup>1350</sup>.

In the meantime Serbia has dropped for 13 places on the Reporters without Borders' Freedom of the Press list, having the worst ranking since 2010<sup>1351</sup>. In the reaction to this report, European commissioner Johannes Hahn said that he was aware of censorship allegations, but those allegations need to be proven<sup>1352</sup>. Hahn's response to journalist's question about Reporters without Borders' report, was welcomed by Serbian Government<sup>1353</sup>. However, the European Federation of Journalist replied in a letter to Hahn, claiming that censorship exists and pointed out on some specific examples<sup>1354</sup>. Finally, Hahn's spokesperson made clear that media freedom "remains a key issue in accession process towards the EU" and that "this policy has not been changed". In order to "clear controversies" that have appeared after Hahn's previous statement she said that "Commissioner believes that media freedom is an issue of critical importance and that it should not be negotiated"<sup>1355</sup>.

In a survey conducted by the Journalists' Association of Serbia<sup>1356</sup> amongst 700 journalists, 6% said they were constantly exposed to censorship and 41% said they were occasionally exposed to it. Around 50% claimed they were never exposed to censorship. Asked if their colleagues were failing for a self-censorship, 49% said they did it occasionally and 29% that their colleagues did it to a large degree.

According to the Independent Journalists' Association of Serbia's report, there were 22 attacks on journalists in 2014 - 12 physical assaults and 10 verbal. The most severe attack hasn't been solved. Minister of Interior claimed that the attacked journalist Davor Pasalic couldn't recognize attackers in a line-up, while the journalist claimed he was never asked to recognize anyone in the line-up<sup>1357</sup>.

1346 <http://www.rts.rs/page/stories/sr/story/9/Politika/1723143/Stefanovi%C4%87+o%C4%8Dekuje+reagovanje+na+vre%C4%91anje+premijera.html>

1347 <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/izvestaji/izvestaj%20mediji%2026%2002.pdf>

1348 <http://www.cins.rs/srpski/news/article/lukiceva-portal-pescanik-oboren-zbog-teksta-o-stefanovicu>[http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=06&dd=10&nav\\_id=859060](http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=06&dd=10&nav_id=859060)

1349 <http://www.osce.org/fom/119173>

1350 <http://www.blic.rs/Vesti/Politika/470841/Vucic-Srbija-je-demokratska-zemlja-u-kojoj-nema-cenzure>

1351 <http://index.rsf.org/>

1352 <http://www.balkaninsight.com/en/article/hahn-calls-for-evidence-on-media-censorship-in-serbia>

1353 <http://www.blic.rs/Vesti/Politika/535569/Vucic-Han-pokazao-da-je-castan-covek>

1354 <http://europeanjournalists.org/wp-content/uploads/2015/02/Commissioner-Johannes-Hahn.pdf>

1355 <http://www.balkan.eu.com/hahns-strange-claims-media-freedom-serbia/>

1356 Report on research of professional journalists' economic situation, UNS 2014, [http://uns.org.rs/sw4i/download/files/article/Izvestaj%20UNS%20integracija%20podataka\\_FINAL%20.doc?id=371](http://uns.org.rs/sw4i/download/files/article/Izvestaj%20UNS%20integracija%20podataka_FINAL%20.doc?id=371)

1357 [http://www.rtv.rs/sr\\_ci/drustvo/pasalic-nisam-isao-na-prepoznavanje-napadaca\\_570667.html](http://www.rtv.rs/sr_ci/drustvo/pasalic-nisam-isao-na-prepoznavanje-napadaca_570667.html)



Media representatives in local communities are exposed to the arbitrariness of those in power, they often are denied information which hinders them in their work. There is no comprehensive database of court proceedings against journalists and media. However, there were 413 civil law suits filed during 2014 in relation to the publishing of information<sup>1358</sup>. Only some of them are reported to/by journalists' associations<sup>1359</sup>.

# Governance

## Transparency (Law)

*To what extent are there provisions that should ensure transparency in the activities of the media?*

**Score: 75/2014 (50/2011)**

New media laws improved framework for media ownership transparency. Three laws under the media strategy have been adopted with a view to improving the situation in the media sector particularly to enhance transparency of media ownership and funding and to align legislation and practice with the EU framework<sup>1360</sup>.

The law also focuses on the public availability of information about the media "in order (for public) to be able to identify the possible influence of the media on public opinion and in order to protect media pluralism"<sup>1361</sup>.

In the Media Register, kept by the Serbian Business Registers Agency, are supposed to be entered information about media and its founder. Amongst others, those are: name and registration number of the media, full name and personal identification number of editor-in chief, licence number for electronic media, business name/title, address and company number of the media publisher or provider of media service, document containing the information about the natural and legal persons who directly or indirectly have more than 5% share in the authorized share capital of the publisher, the information about associated persons and the information about other publishers in whose authorized share capital these persons have more than 5 % share. Part of the register is also information on the amount of funds granted to the media as state aid, on the amount of funds received from public authorities and legal persons founded or funded, fully or mostly, by a state authority<sup>1362</sup>.

Those information are sufficient to get basic picture about media and its owners, but some important data is still not envisaged to be published – information about major financiers of the media and major advertisers<sup>1363</sup>.

All media have to present basic information about itself in the form of imprint, summarized imprint or identification<sup>1364</sup>. It contains name of the media, the name and the address of the publisher, the e-mail address or website, full names of the editor-in-chief and editors responsible for specific is-

1358 [http://tpson.portal.sud.rs/libra\\_portal\\_full/default.cfm?action=1&potez=1&strana=1&pismo=CIRILICA](http://tpson.portal.sud.rs/libra_portal_full/default.cfm?action=1&potez=1&strana=1&pismo=CIRILICA)

1359 NUNS report identified six civil suits in 2014, [http://www.nuns.rs/sw4i/download/files/box/\\_id\\_185/Hronika%20napada%20i%20pritsa-ka%20na%20novinare%20u%202014.%20godini.pdf](http://www.nuns.rs/sw4i/download/files/box/_id_185/Hronika%20napada%20i%20pritsa-ka%20na%20novinare%20u%202014.%20godini.pdf)

1360 EU Progress Report 2014

1361 The Law on Public Information and Media, Article 7

1362 The Law on Public Information and Media, Article 37-39

1363 Transparency Serbia suggested that those information should be part of the registry, but this proposition wasn't accepted in public debate

1364 The Law on Public Information and Media, Article 34

sues, sections or programme units, information about the responsible regulatory and/or supervision bodies and the registration number of the media<sup>1365</sup>. Media are not obligated to present information on their editorial policy. Those provisions fulfill goal from 2013 Anti-corruption Strategy "transparent ownership, media funding and editorial policy"<sup>1366</sup>

However, the Strategy Draft, as adopted by the working group envisaged that there should also be transparent and public "information about major funders and advertisers" of the media<sup>1367</sup>. This provision is left in the English version of the Action Plan for implementation of the Strategy, but in the Serbian version it was changed to "*for public broadcasters*, it is necessary to regulate transparency in terms of the information about major funders and advertisers". This left the Law with a significant loop-hole, leaving opportunity to have a "ghost" founder of media and non-transparent financier.

## Transparency (Practice)

*To what extent is there transparency in the media in practice?*

**Score: 50/2014 (25/2011)**

As implementation of the new media legislation has begun only recently, during 2015 it is too early to assess its impact.

In 2014 the Government's Anti-Corruption Council analysed transparency of ownership of 50 media outlets<sup>1368</sup>. The research found that 23 media had completely transparent ownership and media ownership for 14 media was not transparent or partially transparent. As for the remaining 13 media, their ownership was formally transparent, but the public perceived another person as the owner. This was improvement compared with 2011 research done by the Council, when 18 out of 30 analysed media had non-transparent ownership.

Information about internal organization of the media is public and all media fulfil their legal obligation of publicizing the imprint – detailed information on the management and editors.

Information on public funding from budget and other public resources is available either on the basis of free access to information requests or pro-actively<sup>1369</sup>. Information on other major sources of media income are not published, with few exceptions (e.g. notification of donor that supported specific project).

There is no obligation of publicizing data on the editorial policy. In dailies and weeklies editorial policy can be recognized through editors' columns.

1365 The Law on Public Information and Media, Article 35

1366 <http://www.mpravde.gov.rs/tekst/38/protiv-korupcije.php>

1367 <http://www.mpravde.gov.rs/tekst/38/protiv-korupcije.php>

1368 <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/izvestaji/izvestaj%20mediji%2026%2002.pdf>

1369 <http://www.kultura.gov.rs/cyr/konkursi>



## Accountability (Law)

*To what extent are there legal provisions that should ensure that media outlets are accountable for their activities?*

**Score: 75/2014 (75/2011)**

Regulatory Body for Electronic Media<sup>1370</sup> succeeded previous Republic Broadcasting Agency. According to transitional provisions of the Law<sup>1371</sup>, adopted in August 2014, the Republic Broadcasting Agency established by the Law on Broadcasting, continued to work as a Regulatory body for the electronic media, employees were taken over and the Council members will be replaced when term of office for the previous ones expire.

Regulator's tasks, amongst others, are to define the strategy for the development of the radio and audio-visual media services, and forward it to the Government for approval, to issue bylaws stipulated by the Law, including detailed procedures, requirements and criteria for licensing, to issue licenses for TV and Radio stations, to maintain the Register of media services, to control the operation of media service providers and ensure the consistent application of the provisions of the Law, to impose measures on media service providers for violating the Law, to prescribe rules that are binding for media service providers, including rules for election campaign coverage, rules relating to the protection of human dignity and other personal rights, protecting the rights of minors, prohibition of hate speech<sup>1372</sup>.

The Regulator should also perform analysis of the relevant media market, promote the development of professionalism and high level of education of employees in the electronic media in the Republic of Serbia, as well as improvement of the editorial independence and autonomy of providers of media services<sup>1373</sup>.

Electronic media are not required to present annual reports containing information about their compliance with the license terms and their sources of funding. However, information about funding from public sources should be public, in the Media Registry. That information is to be delivered to the Registry by public authority which financed particular media, within 15 days of the day of the day the decision on the allocation of funds was made<sup>1374</sup>.

The Regulator, on the other hand, is required to monitor whether broadcasters comply with conditions under which their licenses were granted. The Law envisages that Regulator should "control the operation of media service providers" in terms of consistent implementation of the principles for regulation in the field of electronic media and in terms of meeting the requirements for the provision of media services, which providers have, according to the law<sup>1375</sup>.

The self-regulating body for press (including internet and other platforms of the press, on-line media, as well as news agencies) - the Press Council - was founded in 2010. It monitors the compliance of the Code of Serbian journalists in the press and handles petitions by individuals and institutions following concrete contents in the press. The Council is also supposed to organise mediation in order to resolve disputes between authorized applicants of complaints and media, and to deal with education for acting in accordance with the Code of ethics of Journalists of Serbia and strengthening the reputation of media<sup>1376</sup>. The Council may consider appeals against all media, including

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1370 The Law on Electronic Media

1371 The Law on Electronic Media, Articles 113, 114

1372 The Law on Electronic Media, Article 22

1373 The Law on Electronic Media, Article 22

1374 The Law on Public Information and Media, Article 39

1375 The Law on Electronic Media, Article 24

1376 Statute of the Press Council, <http://www.savetzastampu.rs/english/statute>

those which do not recognize jurisdiction of the Council and make decision whether Code was violated<sup>1377</sup>. If appeal was accepted, media which recognize jurisdiction of the Council must publish the Council's decision<sup>1378</sup>.

Media do not have specially designated person in charge of complaints. The contact between the public and the media is achieved through readers' letters and comments on web-sites.

The Law on Public Information and Media stipulates that a person (or representative of the legal person) whose interest could be violated by information, may request from the editor-in-chief to publish free of charge a reply in which he/she claims the information is incorrect, incomplete or inaccurately conveyed<sup>1379</sup>. If the response is not publicized, the damaged party can demand it through a lawsuit in which proceedings are limited only to establishing the facts determined by the law, regarding the obligation of the editor-in-chief to publish a reply<sup>1380</sup>.

If interest has been violated by published information, the damaged party has right to demand by the lawsuit from editor-in-chief to publish, free of charge, his/her correction of that information as incorrect, incomplete or inaccurately conveyed. The proceedings in this lawsuit are limited to the fact of incorrect, incomplete or inaccurately conveyed information and to whether the information violated the plaintiff's right or interest<sup>1381</sup>.

The reply or correction is supposed to be published in the same category of the media, in the same edition, the same section, on the same page, with the same layout, or in the same segment of the TV or radio programme, as the original information which the reply or correction refers to and under the same title with the qualification 'reply' or 'correction'<sup>1382</sup>.

## Accountability (Practice)

*To what extent are media outlets accountable in practice?*

**Score: 50/2014 (50/2011)**

The Council of the Republic Broadcasting Agency (now Regulatory Body for Electronic Media), an independent regulatory body in charge of broadcasters, has revoked 200 licenses from broadcasters since its inception, mostly cable TV programs<sup>1383</sup>. More than half (104) were revoked on demand by the broadcaster themselves, after they informed the Regulator they had no intention to broadcast program any more and more than 60 over debts for license fees<sup>1384</sup>. The Regulator issued total of 78 non-public warnings<sup>1385</sup> to broadcasters for violations of the law or bylaws and rules, adopted by the Regulator<sup>1386</sup>. In 2013, there were 9 non-public warnings, two public warnings and one temporary (30 days) revoking of the license<sup>1387</sup>. Regulator also filed nine criminal charges against natural and legal persons for broadcasting without license<sup>1388</sup>.

<sup>1377</sup> Rules of Procedure of the Appeals Commission, Articles 2, 3

<sup>1378</sup> Rules of Procedure of the Appeals Commission, Article 17

<sup>1379</sup> The Law on Public Information and Media, Article 83

<sup>1380</sup> The Law on Public Information and Media, Article 83

<sup>1381</sup> The Law on Public Information and Media, Article 84

<sup>1382</sup> The Law on Public Information and Media, Article 96

<sup>1383</sup> <http://www.rra.org.rs/cirilica/odluke-o-oduzimanju-dozvola-za-emitovanje-rtv-programa>

<sup>1384</sup> The Broadcasting Law, Article 61

<sup>1385</sup> There are two types of warnings – those issued to media which violated the law or other acts for the first time are not published in media.

Warning issued for repeated violation is published in the media. For those media which repeat violation, according to old law, Regulator could issue measure „temporary abolishment of the licence“. It is replaced by „temporary ban on publication of the programme content“ in the new law.

<sup>1386</sup> <http://www.rra.org.rs/cirilica/izrecene-mere>

<sup>1387</sup> RRA Annual report for 2013, [http://www.rra.org.rs/uploads/useruploads/PDF/5346-Izvestaj\\_o\\_radu\\_RRA\\_2013.godina\\_final.pdf](http://www.rra.org.rs/uploads/useruploads/PDF/5346-Izvestaj_o_radu_RRA_2013.godina_final.pdf)

<sup>1388</sup> RRA Annual report for 2013, [http://www.rra.org.rs/uploads/useruploads/PDF/5346-Izvestaj\\_o\\_radu\\_RRA\\_2013.godina\\_final.pdf](http://www.rra.org.rs/uploads/useruploads/PDF/5346-Izvestaj_o_radu_RRA_2013.godina_final.pdf)

In 2013, due to violations of the provisions of the Law on Advertising, the Regulator submitted 19 requests for initiation of misdemeanor proceedings, for a total of 1,170 violations, mostly because of the duration of advertising blocks<sup>1389</sup>.

Regulator published several analysis and reports on oversight of broadcasters – regular annual, in the election campaign and specific (Accessibility of programs for people with disabilities; Gender equality and gender stereotypes; the protection of children and youth and programs labeling)<sup>1390</sup>.

The media usually grant a right of reply, but in most cases they are not in the same format and in the same place as the news they refer to<sup>1391</sup>. In average, 10 complaints to the Press Council each year are filed because newspapers wouldn't publish reply or correction<sup>1392</sup>.

The Press Council dealt with 71 appeals in 2013, compared with 35 in 2012. In 2014 there were 80 appeals, which suggest that the public has begun to better recognize Council and its role. This is important because the Government's Anti-Corruption Council noted in its 2014 Media Report that "due to insufficient visibility in public in recent years, a small number of readers was aware of the existence, role and social significance of the Press Council"<sup>1393</sup>.

An important step, as noted by the Independent Association of Electronic Media (ANEM), was taken by President of the Republic Tomislav Nikolic when he filed two appeals to the Press Council. "It gave the Council serious political credibility and authority, because in a situation where he could seek judicial protection, the President nevertheless chose to file a complaint to a self-regulatory body. In this way, although the Press Council did not conclude that there was violation of the Code of Journalists, the President brought public attention to this body, pointed out that it is worthy of trust and gave a good example to others that should be followed"<sup>1394</sup>.

Secretary General of the Council, Gordana Novakovic says that number of the decisions on violation of the Code, which are not published in media responsible for violation, has decreased "drastically" in the past years – in 2013 and 2014 there was total of 11 decisions (out of 50) which were not published. The problem, on the other hand, is that decisions are often not published in prescribed manner<sup>1395</sup>.

Legal or natural persons are using court protection as well, seeking for compensation of non-material damage because of published information. Media publishers or journalists were sued 413 times in 2014 before the Belgrade High Court (compared to 305 such suites in 2013 and 224 in 2012)<sup>1396</sup>.

There are no media with ombudsperson in charge of audience or readers. There is almost no discussion about editorial policy with readers<sup>1397</sup> with only exception occasional reaction of editors in editorials to statements by public figures regarding their media or editor him/herself<sup>1398</sup>.

1389 RRA Annual report for 2013, [http://www.rra.org.rs/uploads/useruploads/PDF/5346-Izvestaj\\_o\\_radu\\_RRA\\_2013.godina\\_final.pdf](http://www.rra.org.rs/uploads/useruploads/PDF/5346-Izvestaj_o_radu_RRA_2013.godina_final.pdf)

1390 <http://www.rra.org.rs/cirilica/izvestaji-i-analize-o-nadzoru-emitera>

1391 Representatives of the Independent Journalists' Association of Serbia Dragan Janjic and the Journalists' Association of Serbia Nino Brajovic, interview, February 2015 and Secretary General of the Press Council Gordana Novakovic, interview, February 2015

1392 Secretary General of the Press Council Gordana Novakovic, interview, February 2015

1393 Government's Anti-Corruption Council's report on media, February 2015, <http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/saopstenja/cid1011-2752/savet-objavio-izvestaj-o-vlasnickoj-strukturi-i-kontroli-medija-u-srbiji>

1394 ANEM Media Monitoring, <http://www.anem.rs/sr/aktivnostiAnema/monitoring/story/16713/Pedeset+tre%C4%87i+monitoring+izve%C5%A1t+aj+ANEMa.html>

1395 Secretary General of the Press Council Gordana Novakovic, interview, February 2015

1396 Transparency Serbia, search in Serbian Court Portal database.

1397 Ministry of culture and information's State Secretary in charge of information Sasa Mirkovic, interview, February 2015

1398 <http://www.politika.rs/rubrike/uvodnik/Verbalni-linc.lt.html>

## Integrity mechanisms (Law)

*To what extent are there provisions that should ensure the integrity of media employees?*

**Score: 75/2014 (50/2011)**

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 2006, and amended in 2013 in order to include anti-corruption provisions - journalists' and editors' conflict of interest, gifts and hospitality rules<sup>1399</sup>.

The Code, which is voluntary, was first adopted as the basis for forming the Press Council which, relying on the Code, decides on complaints for failure to abide by journalism standards in press<sup>1400</sup>. The national journalists' associations have courts of honour, which also deal with complaints of the Code violations.

The Code covers the fields "veracity of reports," "independence from pressure," "journalists' accountability," "journalists' attention," "attitude toward sources of information," "respect of privacy," "use of honourable means for the gathering of information," "respect of authorship," and "protection of journalists"<sup>1401</sup>.

Amendments to the Code introduced a new chapter "Prevention of corruption and conflict of interest". It envisages, amongst other things, that journalist must not receive or ask for financial or other benefits for the collection, disclosure, delay or preventing the collection or disclosure of information, that journalist is obliged to refuse the gift if it can be reasonably assumed that the gift is connected with the exercise of his profession and that journalist is obliged to report the newsroom offering or receiving such gifts.

Code also foresees that in case someone else, besides his/her media, paid travel expenses for reporter it must be indicated in its report. The reporter should not report on issues in which he/she has private interests. Journalists should do everything to avoid situations that could lead to a conflict of interest, real or apparent, and that could lead him to compromise his/her reputation or the reputation of the profession<sup>1402</sup>.

With these amendments, journalists' associations implemented one of non-obligatory recommendations from the National Anti-corruption Strategy<sup>1403</sup> which suggested that Journalists' Associations should "improve the Code of Ethics of Serbian Journalists in the part referring to gifts and conflict of interest", as well as "to improve application of the Code and familiarize journalists with its provisions".

Strategy also recommended training of journalists about the corruption issues for the purposes of avoiding journalistic sensationalism and further raising of public awareness of dangers and harmful effects of corruption and regarding the need for anti-corruption actions. Finally, there is a recommendation for media to adopt internal acts that would further define handling of gifts and the issue of conflict of interest of journalists and editors<sup>1404</sup>. However, there is no cognition that any media in Serbia have such act, or individual ethical code or an ethical committee.

1399 <http://www.nuns.rs/codex/ethical-code.html>

1400 <http://www.savetzastampu.rs/latinica/statut>

1401 <http://www.nuns.rs/codex/ethical-code.html>

1402 <http://www.nuns.rs/codex/ethical-code.html>

1403 Strategy's goals and Action Plan measures are obligatory for state authority. Strategy's recommendations for media, NGOs, business associations are non-obligatory.

1404 <http://www.mpravde.gov.rs/tekst/38/protiv-korupcije.php>

Some provisions regarding (or influencing) integrity are included in the Broadcaster Code of Conduct, adopted by the Republic Broadcasting Agency (now Regulatory Body for Electronic Media). This Code (actually it is a General Binding Instruction on Conduct of Broadcasters) regulates issues regarding program content, such as – objectivity, impartiality, obligation of publishing reply and correction, reporting about criminal proceedings, prohibition of discrimination of participants of the election campaign, and prohibition of influence of sponsors on editorial policy. Breaching of this code can be sanctioned by the Regulator, with the same sanctions as for violation of the Law – non-public or public warning or temporary or permanent revoking of the licence<sup>1405</sup>.

The Ministry of Culture and Information has public competition for allocating funds for programs intended to raise ethical and professional standards in journalism<sup>1406</sup>.

## Integrity mechanisms (Practice)

*To what extent is the integrity of media employees ensured in practice?*

**Score: 25/2014 (25/2011)**

The Code of journalists is regularly violated. Media, in general, do not educate journalists about the Code and do not pay attention whether journalists are aware of the Code and whether they violate it, except when a complaint against them is filed to the Press Council. The Code is left entirely to the Press Council, journalists' associations and their Courts of Honour<sup>1407</sup>.

“Associations set high standards and media do not follow them”, said Dragan Janjic from the Independent Journalists' Association of Serbia. Rules about conflict of interest and gifts are regularly violated<sup>1408</sup>, but unlike some other Code provisions, there are no proceedings for those violations. There was not a single case before courts of honour for those offences<sup>1409</sup>.

Press Council's influence and credibility is rising steadily but slowly<sup>1410</sup>. In 2014 Council had 80 complaints filed to it, commission decided on 52, four were settled by mediation, others were dismissed on procedural grounds or applicants withdrew. The violation of the Code was concluded in 23 cases. In seven cases media refused to publish decision on violation. The most common violation was “not making distinction between facts and comments, assumptions and guesswork”, “failure to comply with the presumption of innocence”, “discrimination” and “disregard of ethics and culture of public discourse”<sup>1411</sup>.

According to Secretary General of the Press Council, there were situations in which journalists and authors of articles did not know what the Code was about, quite a number of journalists have never read the Code, but there were also situations of deliberate violations<sup>1412</sup>.

Numerous media do not report on both sides of the issue they deal with, or they do it tendentiously, misusing a statement given by side with which they disagree<sup>1413</sup>.

1405 <http://www.rra.org.rs/uploads/useruploads/PDF/3951-Opste-obavezujuca-upustva-rra.pdf>

1406 State Secretary at Ministry of Culture and Information Sasa Mirkovic, <http://kultura.gov.rs/cyr/konkursi/k-o-n-k-u-r-s-za-sufinansiranje-projekata-organizovanja-i-ucescia-na-strucnim-naucnim-i-prigodnim-skupovima-kao-i-unapredjivanje-profesionalnih-i-etickih-standarda-u-oblasti-javnog-informisanja-u-2015--godini>

1407 Representatives of the Independent Journalists' Association of Serbia Dragan Janjic and the Journalists' Association of Serbia Nino Brajovic, interview, February 2015 and Secretary General of the Press Council Gordana Novakovic, interview, February 2015

1408 Representatives of the Independent Journalists' Association of Serbia Dragan Janjic and the Journalists' Association of Serbia Nino Brajovic, interview, February 2015 and Secretary General of the Press Council Gordana Novakovic, interview, February 2015

1409 Data from NUNS' Court of Honour president Vlado Mareš, UNS Secretary General Nino Brajovic and Secretary General of the Press Council Gordana Novakovic.

1410 Owner and editor-in-chief of private Fonet news agency and head of the Managing Board of Association of Media Zoran Sekulic, interview, February 2015

1411 <http://www.nuns.rs/info/activities/23371/postujuci-kodeks-novinar-cuva-i-svoje-dostojanstvo.html>

1412 Interview, February 2015

1413 Representatives of the Independent Journalists' Association of Serbia Dragan Janjic and the Journalists' Association of Serbia Nino Brajovic, interview, February 2015 and owner and editor-in-chief of private Fonet news agency and head of the Managing Board of Association of Media Zoran Sekulic, interview, February 2015



According to owner and editor-in-chief of private “Fonet” news agency and head of the Managing Board of Association of Media Zoran Sekulic, “with journalists being poorer, the more they become corruption-prone. Usually it is small-scale corruption, cheap gifts, by which centres of power buy journalists’ favour and partiality. Trade with media owners is on a higher level”<sup>1414</sup>.

Gifts for journalists, sometimes expensive, and usually not reported to the media, are tolerated by media owners and editors, and taken as compensation for low salaries<sup>1415</sup>.

# Role

## Investigate and expose cases of corruption (Practice)

*To what extent are media active and successful in investigation and exposure of corruption cases?*

**Score: 25/2014 (25/2011)**

In media there can be found an extremely low number of corruption cases which are result of the research by media or journalists, whether they are due to documents that indicate suspicious cases, or whether they have reported allegations by persons who were witnesses of corruption, victims or participants in the corrupt chain<sup>1416</sup>.

Investigative journalism can be found on several specialized web portals, supported by donors through projects (such as CINS, BIRN, KRIK, Pištaljka<sup>1417</sup>) and extremely seldom in other “mainstream media”<sup>1418</sup>. In most of the cases when “mainstream media” deal with corruption cases, those are one-sided stories, product of spin or by “centres of power”<sup>1419</sup> or they consider leaks from investigations to be “corruption-related investigative journalism”. Results of such “investigative journalism” are political points for one side or defamation of the other side<sup>1420</sup>.

According to research<sup>1421</sup> conducted by Transparency Serbia in 2014, cases that appear in the media can be divided into several categories: 1) New cases, which present suspicion of corruption, based on documents - such examples are the rarest, most can be found in the articles or broadcasts of specialized media, such as CINS, Insajder, and portal Pištaljka. 2) New cases, which present suspicion of corruption, based on the testimony or statements of others - even these examples are not common in the media. Basically these are stories about allegations of whistle-blowers, stories based on reports of independent authorities (such as the Anti-Corruption Agency, the State Audit Institution), the Government’s Anti-Corruption Council, allegations of trade unions, non-Governmental organizations, politicians from the “opposite camp”, former “insiders” and so

1414 Interview, February 2015

1415 Representatives of the Independent Journalists’ Association of Serbia Dragan Janjic and the Journalists’ Association of Serbia Nino Brajovic, interview, February 2015 and State Secretary at Ministry of Culture and Information Sasa Mirkovic

1416 Report on the Implementation of the National Anti-corruption Strategy in the Republic of Serbia for the period from 2013 to 2018 and the Action Plan for its implementation <http://www.transparentnost.org.rs/index.php/sr/inicijative-i-analize-ts>

1417 <http://www.cins.rs/srpski>, <http://birmsrbija.rs/>, <http://pistaljka.rs/>, <https://www.krik.rs/>

1418 Representatives of the Independent Journalists’ Association of Serbia Dragan Janjic and the Journalists’ Association of Serbia Nino Brajovic, interview, February 2015, political analyst Djordje Vukadinovic, interview January 2015, Secretary General of Press Council Gordana Novakovic, interview February 2015

1419 Representatives of the Independent Journalists’ Association of Serbia Dragan Janjic and the Journalists’ Association of Serbia Nino Brajovic, interview, February 2015

1420 Owner and editor-in-chief of private Fonet news agency and head of the Managing Board of Association of Media Zoran Sekulic, interview, February 2015

1421 “Current problems and issues in the work of repressive anti-corruption bodies in the context of European integration”, Transparency Serbia November 2014, [http://www.transparentnost.org.rs/images/dokumenti\\_uz\\_vesti/Aktuelni\\_problemi\\_i\\_pitanja\\_iz\\_rada\\_represivnih\\_antikorupcijskih\\_organu\\_u\\_kontekstu\\_EU\\_integracija\\_decembar\\_2014.pdf](http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Aktuelni_problemi_i_pitanja_iz_rada_represivnih_antikorupcijskih_organu_u_kontekstu_EU_integracija_decembar_2014.pdf)

on. 3) Cases, in which suspicion of corruption is based on the findings of the investigation. This is a very common occurrence. The media know that police (or more rarely, some other authority) investigates a case, that there will be arrests, they print details from the preliminary investigation. 4) Statements of police, prosecutors- This is the most common way of reporting of the majority of the media. Statements of the competent authorities are printed or broadcasted, and media show no interest following up those cases.

## Informing the 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?*

**Score: 25/2014 (25/2011)**

Serbian media have a large number of news items related to corruption. However these usually contain only basic information about activities of law enforcement authorities and Government, without trace of analytical and investigative approach<sup>1422</sup>.

In the sample of 12 most relevant media, monitored by NGO Birodi, in the period July-December 2013, there was an average of 120 TV reports and 470 news items per month about corruption<sup>1423</sup>. Although there was a lot of information about corruption, the quality was low<sup>1424</sup>, there was no educational aspect at all<sup>1425</sup> and reports were limited to information in favor of the Government<sup>1426</sup>.

The 2013 monitoring showed that anti-corruption programs, such as the National Anti-corruption Strategy and Action plan for its implementation had not been mentioned almost at all in months following their adoption. Media were focused on reporting on the repressive part of the fight against corruption, while the topic of prevention, promotion of whistle-blowing, and the concept of good management as the mechanism in the fight against corruption were represented only marginally.

Monitoring confirmed that media in general are not proactive and do not see their own interest in disclosure of corruption and the fight against corruption - instead, in certain cases, media are used as a tool in the hands of certain political or economic interests. The result is a lack of comprehensive analysis that would provide a clearer insight into the current state when it comes to corruption and ways to prevent it<sup>1427</sup>.

Part of the media showed selectivity in choosing the cases of corruption that will be reported on. The media are either a means of promoting the Government's fight against corruption, or promotion of the ruling party as a fighter against corruption. Media do not use the reports of the anti-corruption bodies, or their databases as the source for their articles and reports. Also, the media does not carry out the promotion of successful practices that civil society or individuals make in the fight against corruption<sup>1428</sup>.

The result of such reporting can be seen in what is considered to be a major corruption related

<sup>1422</sup> Media monitoring on corruption and anti-corruption reporting conducted in 2013 by the NGO Bureau for Social Research (BIRODI) <http://www.birodi.rs/wp-content/uploads/2014/01/MM-Corruption-3rd-Report11.pdf>

<sup>1423</sup> Media monitoring on corruption and anti-corruption reporting conducted in 2013 by the NGO Bureau for Social Research (BIRODI) <http://www.birodi.rs/wp-content/uploads/2014/01/MM-Corruption-3rd-Report11.pdf>

<sup>1424</sup> Representatives of the Independent Journalists' Association of Serbia Dragan Janjic and the Journalists' Association of Serbia Nino Brajovic, interview, February 2015

<sup>1425</sup> Secretary General of the Press Council Gordana Novakovic, interview February 2015

<sup>1426</sup> Political analyst Djordje Vukadinovic, interview January 2015

<sup>1427</sup> Media monitoring on corruption and anti-corruption reporting conducted in 2013 by the NGO Bureau for Social Research (BIRODI) <http://www.birodi.rs/wp-content/uploads/2014/01/MM-Corruption-3rd-Report11.pdf>

<sup>1428</sup> Birodi analyst Zoran Gavrilovic, presentation of monitoring, January 31st 2015, <http://vesti.krstarica.com/vesti-dana/birodi-senzacionalizam-medija-o-borbi-protiv-korupcije/>



case – the trial against major tycoon Miroslav Miskovic, only 30% of respondents in the survey knew what he was charged for, but 60% believed that he was guilty<sup>1429</sup>.

## Informing the public on the functioning of the authority (Practice)

*To what extent is the media active and successful in informing the public on the activities of the Government and other authorities?*

**Score: 25/2014 (25/2011)**

Media are very active in reporting on the Government's activities, but it is questionable if the public is fully informed. There are no analyses of the Government's decisions or officials' statements, questions are seldom asked<sup>1430</sup>.

This relation between media and the Government can be illustrated by recent situation when the prime minister claimed that current Government should be credited for keeping steady exchange rate of national currency, claiming that EUR exchange rate is "on the same level as it was two years ago". All media published this as a fact, although the rate was actually 9% higher<sup>1431</sup>.

According to Zoran Sekulic<sup>1432</sup>, the picture of the Government and its activities, as presented by media, is the picture Government would like to see, not the picture supposed to present Government to citizens. Media, presenting this sort of picture have open channels of two-way communication with authorities. For those which refuse this relationship, channels are closed or communication is complicated.

It should be noted that media treat the Government and the Parliament in a totally different way. Reports on Parliamentarians are often banal – about the way they are dressed, what they eat in the Parliament's restaurant, with very little or no reporting on Parliamentary activities, besides adopted laws (such as committees' sessions, control function of the Parliament). When it comes to the Government, there are a lot of reports about promotional activities of ministers and the prime minister, official press issues and statements are carried, but without analysis of what the Government really does and how effective it is<sup>1433</sup>.

The Government's Anti-Corruption Council noted in its 2014 Media report that "media scene in Serbia was further devastated by tabloidization and relativization of serious social and political problems. In some media, which are mainly under the financial and editorial control of the Government, there are constant campaigns based on 1) fabricated information, which is generally accompanied by imaginative conspiracy theories, 2) anonymous sources, and 3) confidential information from police, prosecutorial and court cases. It is a phenomenon which, for the sake of gaining financial or political advantage, undermines all the basic values upon which a civilized society"<sup>1434</sup>.

1429 Birodi analyst Zoran Gavrilovic, presentation of monitoring, October 11th 2014, <http://www.euractiv.rs/mediji/6350-mediji-o-korupciji-informativno-bez-analiza->

1430 Representatives of the Independent Journalists' Association of Serbia Dragan Janjic and the Journalists' Association of Serbia Nino Brajovic, interview, February 2015

1431 <http://www.tanjug.rs/novosti/166529/vucic--mmf-uputio-signal-da-smo-na-dobrom-i-sigurnom-putu.htm><http://www.nbs.rs/export/sites/default/internet/cirilica/scripts/ondate.html>

1432 Owner and editor-in-chief of private Fonet news agency and head of the Managing Board of Association of Media Zoran Sekulic, interview, February 2015

1433 Secretary General of the Press Council Gordana Novakovic, interview February 2015

1434 Government's Anti-Corruption Council's report on media, February 2015, <http://www.antikorupcija-savet.gov.rs/sr-Cyrl-CS/saopstenja/cid1011-2752/savet-objavio-izvestaj-o-vlasnickoj-strukturi-i-kontroli-medija-u-srbiji>

# MEDIA

## Recommendations

1. Amending the Law on Public Information and Media in order to require media outlets to make public details on major financiers and advertisers;
2. Monitoring and sanctioning the breach of the Journalists' code of conduct's regulations on conflict of interest and preventing corruption;
3. Adopting individual media's codes on gifts, hospitality and conflict of interest;
4. Supporting investigative journalism, both within the media themselves and by donors/budget support, through media projects;
5. Training journalists in reporting on corruption, investigative journalism and about the tools, norms and institutions in charge of curbing corruption through preventive measures.



# CIVIL SOCIETY

## National Integrity System

**Summary:** There were no major changes regarding the “Civil Society” Pillar since 2011. Non-governmental organization’s registration remains simple and there are no obstacles even for the work of unregistered NGOs. Accounting for civil society organisations has been slightly simplified, but still there is no general system of tax incentives for CSOs. There are some indirect tax incentives for donors – the percentage has been increased since 2011 - but areas in which these incentives are recognized are not harmonized with the law regulating the establishment and work of CSOs.

However, there is some improvement in the area of public funding - the law stipulates that public funds are allocated solely on the basis of competition rules and the by-law that specifically regulates this area has been adopted in 2012. On the other hand, these rules are not always respected and there is no comprehensive and verified information available about the level of budget support for CSOs.

The state does not directly interfere in the work of CSOs. However, some CSO’s are exposed to threats or ungrounded criticism. CSOs have formal management and/or supervisory boards, but most of organisations operate on the principle of leadership; in many instances, board composition is not publicly disclosed, neither are financial or annual reports, while information about donor support is regularly published.

There is no improvement regarding integrity in the CSO sector – a Code of Ethics exists, but is voluntary and is not accompanied by mechanisms to monitor its compliance or punish violation. Some CSOs are active in the fight against corruption and play a watchdog role. Nevertheless, the results of CSO advocacy campaigns are limited in success, since there are not sufficient political will for cooperation with CSOs, in particular those having a critical approach towards the Government’s actions. CSOs’ contribution is also hampered by insufficient mechanisms to influence government policies, even when public consultation process is held.



| CIVIL SOCIETY                         |  |                           |                         |
|---------------------------------------|--|---------------------------|-------------------------|
| Overall Pillar Score (2015): 55 / 100 |  |                           |                         |
| Overall Pillar Score (2011): 53 / 100 |  |                           |                         |
| Dimension                             | Indicator  | Law                       | Practice                |
| Capacity<br>75 / 100                  | Resources  | 75 (2015),<br>50 (2011)   | 50 (2015),<br>50 (2011) |
|                                       | Independence                                     | 100 (2015),<br>100 (2011) | 75 (2015),<br>75 (2011) |
| Governance<br>38 / 100                | Transparency                                     | /                         | 25 (2015),<br>25 (2011) |
|                                       | Accountability                                   | /                         | 25 (2015),<br>25 (2011) |
|                                       | Integrity  | 75 (2015),<br>75 (2011)   | 25 (2015),<br>25 (2011) |
| Role<br>50 / 100                      | Hold government accountable                      | 50 (2015), 50 (2011)      |                         |
|                                       | CSO initiatives regarding Anti-Corruption Policy | 50 (2015), 50 (2011)      |                         |

**Structure** – Serbia has around 23,500 registered organizations<sup>1435</sup>, but many of them are just registered “empty shells”. There is total of 7,000 staff employed in CSOs and more than 5.000 part-time employees and volunteers<sup>1436</sup>. Civil society retains a traditional focus on social and community services and charitable activities. Advocacy for change in the government policy is mainly conducted by a small number of semi-professionally organized CSOs. The majority of the registered organizations are “non-political organizations”, which are local, humanitarian organizations that serve particular groups, like youth, and they are engaged in social work, culture, media or environmental protection. “Political organizations”, which deal with public policies, corruption, good governance, economic development, human rights, transitional justice, LGBT are fewer in number, but usually more professionally organised, mainly due to availability of foreign donor support for a work in these areas.

<sup>1435</sup> According to Serbian Business Register Agency, data were presented by the USAID in August 2014.

<sup>1436</sup> Civil Initiative's data, interview with the Civil Initiatives NGO Executive Director Maja Stojanovic, October 2014





# Assessment

## Capacity

### Resources (Law)

*To what extent does the legal framework provide an environment conducive to civil society?*

**Score: 75/2015 (50/2011)**

The legal framework does not pose any obstacles for establishment, registration and work of CSOs. The Serbian Constitution<sup>1437</sup> and the Law on Associations guarantee freedom of association. Associations can be run without being entered in the registry, but in this case do not have a legal status. Registration at the Business Register Agency is not complicated, it costs RSD 4.900 (USD 46), and it has remained unchanged since 2011<sup>1438</sup>.

There are no legal obstacles for CSOs 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 hatred<sup>1439</sup>.

The procedure to ban an association can be initiated upon the proposal of the Government, the Republic Public Prosecutor, the Ministry in charge of administration, the ministry in charge of the area of the association's objectives are fulfilling or the Registry. There is no appeal against the final decision of the Constitutional Court<sup>1440</sup>.

According to the Law, an association may acquire assets from membership fees, contributions, donations and gifts (in cash or goods), financial subsidies, legacies, interest on deposits, rents and dividends. The Law also stipulates that association may engage in activities necessary to obtain the profit provided that this activity is in relation to its statutory objectives, and that the activity is performed to the extent needed for achieving the objectives of the association<sup>1441</sup>.

The taxation system does not make any difference between non-profit organizations and profit organisations and provides no incentives for NGO actions. The only exceptions are organizations of people with disabilities that are exempt from customs duty on equipment for people with disabilities<sup>1442</sup>. "However, the Law on Associations stipulates that individuals and legal entities that make contributions to associations may be exempt from tax although this provision is not harmonized with the Law on Income Tax of Legal Persons regarding the fields for which exemptions are recognized. The Law on Income Tax of Legal Persons stipulates that expenditures on health, education, scientific, charity, religious, environmental and sporting activities, are recognized as an expense in the amount up to 5% of total revenue (up from 3.5% since May 2013). The National Anti-corruption Strategy and the Action Plan stipulates that fight against corruption should be included in the list by September 2015<sup>1443</sup>.

1437 Serbian Constitution, Article 55

1438 <http://www.apr.gov.rs/eng/Registers/Associations/Instructions.aspx>

1439 Serbian Constitution, Article 55

1440 Law on Associations, Article 51

1441 The Law on Associations, article 36 and 37

1442 Aleksandar Bratkovic, director of the Center for Development of Non-Profit Sector NGO, interview, October 2014

1443 <http://www.mpravde.gov.rs/tekst/38/protiv-korupcije.php>

The government's regulation on fostering or co-funding programs of public interest was adopted in 2012<sup>1444</sup>. Changes to the regulations from 2013 have simplified procedures that associations have to follow when applying for funding for such programs. It means that associations now have to submit fewer documents when applying for grants, and some of documents are obtained by authorities.

The Law on Accounting and Auditing<sup>1445</sup> and by-laws from 2014, have simplified procedures for CSO's accounting.

## Resources (Practice)

*To what extent do CSOs have adequate financial and human resources to function and operate efficiently?*

**Score: 50/2015 (50/2011)**

In general, civil society organisations lack human and financial resources<sup>1446</sup>. In particular, the lack of institutional funding is an obstacle for CSOs sustainability. Most CSOs provide funds for specific projects through calls for proposals from international donors<sup>1447</sup>, often adjusting their priorities to align with donor interests<sup>1448</sup>. Local support is still insignificant. Less than 10 percent of CSO budget come from individual or corporate donations, as CSOs lack adequate organizational structures to seek funds from individuals and companies and the economic situation in the country is tough<sup>1449</sup>.

Major funding comes from foreign or international sources, such as the EU, USAID, Norway and Sweden<sup>1450</sup>. EU support is becoming more accessible and some EU funds received through calls for proposals in 2012 were re-granted to small organizations in 2013. A new regulation enables the Government Office for Cooperation with Civil Society to provide co-financing for the EU programs. The Office provided 5.9 million dinars (\$65,000) as cost share towards the EU-funded CSO projects in 2013<sup>1451</sup>.

CSOs still lack professional full-time fundraisers who could cultivate a stable core of diverse financial support<sup>1452</sup>, as well as professional financial management systems and practices<sup>1453</sup>. Independent financial audits are too expensive and demanding for most CSOs<sup>1454</sup>. Nevertheless, CSOs are becoming more aware of the importance of financial diversification, and the EU is increasingly providing support through trainings and consultations on these issues. At the same time, the EU's Technical Assistance for CSOs (TACSO) program in Serbia organized a Training for Trainers program in 2013 to raise the quality of trainings in the sector. USAID provided financial support to continue the program at the end of 2013. Trainings offered in Serbia in 2013 covered a wide range of topics, including advocacy, strategic planning, fundraising, individual and corporate giving, and constituency building<sup>1455</sup>. Thus, the donor community is investing more in CSO capacity building and the development of CSOs partnerships.

1444 Regulation on funds for developing programs or missing parts of funds for the financing of programs of public interest implemented by associations <http://civilnodrustvo.gov.rs/en/documents/republic-of-serbia-legislation/>

1445 [http://www.paragraf.rs/propisi/zakon\\_o\\_racunovodstvu.html](http://www.paragraf.rs/propisi/zakon_o_racunovodstvu.html)

1446 Dordje Popovic, advisor at the government's Office for Cooperation with Civil Society, interview, October 2014.

1447 USAID's 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia

1448 Dordje Popovic, advisor at the government's Office for Cooperation with Civil Society, interview, October 2014.

1449 USAID's 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia

1450 Maja Stojanovic, executive director of Civil Initiatives NGO, interview, October 2014

1451 USAID's 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia

1452 Dordje Popovic, advisor at government's Office for Cooperation with Civil Society, interview, October 2014. and Vukosava Crnjanski Sabovic and Veljko Milicevic, NGO CRTA, interview, October 2014

1453 Aleksandar Bratkovic, director of Center for Development of Non-Profit Sector NGO, interview, October 2014, Vukosava Crnjanski Sabovic and Veljko Milicevic, NGO CRTA, interview, October 2014

1454 USAID's 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia

1455 USAID's 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia

Funding from local authorities often depends on the political will at the local level and local authorities are not willing to support public watchdog projects or anti-corruption projects. Likewise, the business sector is not likely to support CSOs which deal with “sensitive issues”, such as corruption, human rights, or transitional justice<sup>1456</sup>.

According to the State budget for 2014 (after the revision from October), 6,5 billion dinars (USD 77 million) (0,62% compared to 0,54% in 2009) was allocated for “donations to non-governmental organizations”<sup>1457</sup>. However this includes sports associations, political parties, religious communities and foundations, ethnic minority councils, Serbian Red Cross, with total of RSD 4,5 billion (USD 55 million). This means that the CSOs, registered in accordance with the Law on Associations, which are subject of this report, received a total of about 2 billion RSD (USD 22 million). According to some previous researches, sports organizations or religious communities and even individuals also very often could be found among these CSOs.<sup>1458</sup>

## Independence (Law)

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?*

**Score: 100/2015 (100/2011)**

Independence of CSOs is fully guaranteed by the legal framework regardless of the field of activities. There are no obstacles for registering and functioning of CSOs that focus on fight against corruption, good governance, and public policies. There were no changes in legal framework in this area since 2011.

The State can intervene in the work of civil associations only 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 hatred<sup>1459</sup>. The State can't have representatives among the boards of CSOs and State control of CSOs is limited to financial statements that organizations must submit when they receive money from public sources<sup>1460</sup>.

## Independence (Practice)

*To what extent can CSOs exist and function without undue external interference?*

**Score: 75/2015 (75/2011)**

In general CSOs are, free to operate independently of the government, but there are still attempts by the government and political parties to win over NGOs or to manipulate them for their own interests. CSOs dealing with sensitive issues, such as corruption, abuse of public funds, as well as CSOs operating at local level, are more often subject of verbal attacks, pressure, and negative campaigns in pro-government media<sup>1461</sup>. There have been cases of manipulated or captured NGOs promoting the interests of the government or launching campaigns against independent bodies or other NGOs which criticize the government. Such examples were two organisations joining the

<sup>1456</sup> USAID's 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia

<sup>1457</sup> <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2013/2524-13.pdf>

<sup>1458</sup> The State in CSO sector, Civil Initiatives research, 2011

<sup>1459</sup> Constitution of Serbia, article 55, the Law on Associations, Article 3

<sup>1460</sup> Maja Stojanovic, executive director of the Civil Initiatives NGO, interview, October 2014 and Dordje Popovic, advisor at the government's Office for Cooperation with Civil Society, interview, October 2014

<sup>1461</sup> Pavle Dimitrijevic, NGO Birodi, interview, October 2014

Ministry of Justice campaign against the Anti-Corruption Agency when it has started procedure against minister and especially when it has published recommendation for minister's dismissal<sup>1462</sup>.

Political parties or political party's officials continue to establish their own NGOs, which are used for getting money from public funds directly or indirectly<sup>1463</sup>, through education or training for party members and officials<sup>1464</sup>. NGOs established by political parties officials try to present themselves as relevant experts in certain areas<sup>1465</sup>, in order to promote government's agenda later<sup>1466</sup>. The head of one prominent NGO, dealing with elections and party financing, was also appointed as the head of the Government Office for Reconstruction and Flood Relief<sup>1467</sup>.

The influence on, and manipulation of, NGOs also comes through the offers of certain benefits (free use of space, "favorable" position in obtaining the necessary partnerships for the EU projects, donations and sponsorships from public enterprises) in return for CSOs steering clear of "sensitive" issues<sup>1468</sup>. This is often the case at the local level in Serbia. Cases of direct manipulation have been detected in Nis, Vranje, Kragujevac, Novi Sad, Zrenjanin where relatives of party functionaries or public officials, as well as the employees of the parties, have their own non-governmental organizations, competing for funding from public sources, and supporting local authorities at public events<sup>1469</sup>. In many cases, local administrations have introduced new taxes for CSOs or cancelled multiyear agreements on renting premises to CSOs<sup>1470</sup>. There is a case in Lebane where a local NGO got evicted from municipality owned premises, which it used free of charge, after publishing report on budget abuse<sup>1471</sup>.

# Governance

## Transparency (Practice)

*To what extent is there transparency in CSOs?*

**Score: 25/2015 (25/2011)**

There is limited transparency in the work of CSOs, only except when donors demand transparency in project financing or implementation reporting<sup>1472</sup>.

Most of the NGOs do not publish annual reports or financial statements. NGO web-sites usually present only lists of projects and, occasionally, an overview of the project value and the name of the donor. The law stipulates<sup>1473</sup> that associations funded from the budget have to publish a report on their work and use of these funds and to submit this report to the provider of funds. The Law also stipulates that work of the association should be open to the public, and exercising of this "publicity" should be regulated by NGOs' statutes. In general, there are provisions on transparency

- 1462 <http://www.mc.rs/zloupotrebe-i-korupcija-u-agenciji-za.4.html?eventId=9563http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1726653/%22Doktori+protiv+korupcije%22+kritikuju+Agenciju.html>
- 1463 <http://www.021.rs/Sigurnost-za-buducnost/Emisije/Stranke-preko-izmisljenih-udruzenja-izvlace-budzetski-novac.html>
- 1464 Aleksandar Bratkovic, director of the Center for Development of Non-Profit Sector NGO, interview, October 2014
- 1465 <http://serbia.seesdi.org/index.php/vesti/132-izjava-konferencija-korupcija>
- 1466 <http://serbia.seesdi.org/index.php/vesti/135-izvestaj-1-10-2014>
- 1467 <http://www.kurir-info.rs/vucic-marko-bлагоjevic-ce-kontrolisati-novac-za-obnovu-zemlje-clanak-1394477>
- 1468 Pavle Dimitrijevic, NGO Birodi, interview, October 2014
- 1469 Pavle Dimitrijevic, NGO Birodi, interview, October 2014
- 1470 USAID's 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia
- 1471 [http://www.danas.rs/danasrs/drustvo/rasipaju\\_budzet\\_na\\_votku\\_viski\\_i\\_benzin.55.html?news\\_id=286630](http://www.danas.rs/danasrs/drustvo/rasipaju_budzet_na_votku_viski_i_benzin.55.html?news_id=286630)
- 1472 Joint conclusion of interviewed NGO representatives
- 1473 Law on Associations, Article 38

in major NGOs' statutes<sup>1474</sup>. The fine for breaching this provision, as well as provision regarding reporting on use of public funds, is envisaged, but there is still no record that any NGO has ever been fined<sup>1475</sup>.

Data on members of the board is seldom available on the websites of CSOs<sup>1476</sup>. Information about persons representing CSOs can be found on the Business Register Agency' web-site<sup>1477</sup>.

## Accountability (Practice)

*To what extent are CSOs accountable to their constituencies?*

**Score: 25/2015 (25/2011)**

In general, CSOs are mostly leader-centric - the leader is both the board's key decision maker and responsible for program implementation. CSO governance structures are considered to be weak and CSOs, according to the USAID report<sup>1478</sup>, find it difficult to establish stable boards of directors - many CSO boards are ineffective or exist only on paper.

"CSOs typically lack clear job classifications and divisions of responsibilities and do not understand the need to separate governance and managerial structures. Larger CSOs try to improve governance, while smaller ones are especially challenged because they chronically lack human resources"<sup>1479</sup>.

This situation may be caused partly by legal framework which requires only three founders to establish a CSO. Thus, the idea of assembly, as well as other CSO bodies is made pointless, since founders are, in practice, major decision makers<sup>1480</sup>.

As far as relation of CSOs with general public is concerned, CSOs are much more actively engaged in constituency building in recent years, compared to period covered by NIS 2011. CSOs use social networks, smartphones, and other resources to improve communication with potential constituents<sup>1481</sup>.

Although in 2011 survey<sup>1482</sup>, organisations have ranked governance very low on the list of priorities for capacity building, when have been faced with a lack of funding they had to deal with organizational issues, strategic positions, to consider separating governance and executive functions, to initiate leadership transitions, and to operate in a more transparent and publicly accountable manner<sup>1483</sup>. At the same time, more donors now either provide support for or require grantees to submit three to five year strategic plans, as well as overviews of their internal systems and procedures<sup>1484</sup>.

1474 Research for NIS by Transparency Serbia

1475 Fine is between 50.000 and 500.000 RSD (415-4.150 EUR), Law on Civic Associations, Article 74

1476 Research by Transparency Serbia

1477 <http://www.apr.gov.rs/eng/Registers/Associations.aspx>

1478 USAID's 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia

1479 USAID's 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia

1480 Aleksandar Bratkovic, director of Center for Development of Non-Profit Sector NGO, interview, October 2014

1481 USAID's 2012 CSO Sustainability Index For Central And Eastern Europe And Eurasia

1482 USAID 2011 Civil Society Assessment Report

1483 USAID's 2012 CSO Sustainability Index For Central And Eastern Europe And Eurasia

1484 USAID's 2012 CSO Sustainability Index For Central And Eastern Europe And Eurasia

## Integrity (Law)

*To what extent are there mechanisms in place to ensure the integrity of CSOs?*

**Score: 75/2015 (75/2011)**

There has not been any improvement regarding the Code of Ethics for civil society which has been presented in the first half of 2011 by the NGO Civic Initiatives as an attempt to introduce self-regulation within the sector. The Code provides common values and principles on which their actions should be based<sup>1485</sup>. All organisations that sign the Code accept the accountability for their 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 resources. The Code also 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.<sup>1486</sup>

The Strategy for Fight against Corruption, adopted in 2013, envisages that state support will be provided to CSOs which, in their applications for obtaining funds from public sources, submit a statement on the absence of conflict of interest and an internal anti-corruption act or resolution (e.g. the Code of Ethics). Although the action plan for implementation of the Strategy stated that "Regulation on funds for developing programs or missing parts of funds for the financing of programs of public interest implemented by associations" should be amended within 12 months (September 2014), in order to introduce this obligation regarding the statement on absence of conflict of interest and internal act on the anti-corruption policy, it hasn't been done yet.

Furthermore, the Anti-Corruption Agency rules regarding participation on competitions for grants encourage CSOs to adopt ethical rules. Namely, project proposals in which the applicant proves to have adopted ethical rules, either its own, or as part of a group or networks of organizations are scored with additional points<sup>1487</sup>.

## Integrity (Practice)

*To what extent is the integrity of CSOs ensured in practice?*

**Score: 25/2015 (25/2011)**

Since the Anti-Corruption Agency raised the question of ethical rules in competitions for CSOs more organizations have expressed an interest in signing the Code of Ethics<sup>1488</sup>. However, there are neither mechanisms nor a dedicated body to monitor implementation of the Code of Ethics for civil society and thus no guarantees that Code is being implemented.

According to one interviewee, some CSOs have their own ethical codes, rules and procedures, but these procedures exist merely on paper and there is no evidence that they are implemented in practice<sup>1489</sup>.

Since 2011, there have been no criminal cases involving civil society representatives because of possible abuses.

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1485 <http://bs.scribd.com/doc/214400487/Eticki-Kodeks-Organizacija-Civilnog-Drustva>

1486 The Code of Ethics for civil society

1487 ACAS' instructions for applying for grants: <http://goo.gl/AXbKIX>

1488 Maja Stojanovic, executive director of the Civil Initiatives NGO, interview, October 2014

1489 Pavle Dimitrijevic, NGO Birodi, interview, October 2014



# Role

## Holding government accountable (practice)

*To what extent is civil society active and successful in holding government accountable for its actions?*

**Score: 50/2015 (50/2011)**

The capacity of CSOs to act as public watchdogs is low, especially at the local level. As was the case in 2011, CSOs are experiencing inconveniences, such as pressure from local authorities<sup>1490</sup>, during the implementation of the monitoring activities and therefore, they are avoiding working in this field. Furthermore, there are not many CSOs with the analytical capacities, knowledge, resources and will to engage in these activities<sup>1491</sup>. Notable exceptions include organisations such as “Otvoreni parlament”<sup>1492</sup>, Local anti-corruption forum Niš<sup>1493</sup>, public procurement monitoring projects by Coalition for Oversight of Public Finances<sup>1494</sup> and Transparency Serbia<sup>1495</sup>.

As far as advocacy is concerned, there have been some initiatives, with limited success – mainly in cases where such initiatives were addressing problems of wider interest (maternity benefits) or where the government needed to prove to the EU the will to include CSOs in its agenda (for example changes of some rules for financial support and accounting, including CSOs in monitoring negotiation process with the EU)<sup>1496</sup>. There are also cases of successful advocacy at the local level, but very few of them in the field of anti-corruption or good governance<sup>1497</sup>. Overall, there is more understanding of CSOs positive role and its possible contribution amongst employees at ministries and other government’s bodies than at the highest political level<sup>1498</sup>.

## CSO initiatives regarding Anti-Corruption Policy (practice)

*To what extent is civil society actively engaged in the anti-corruption policy reform initiatives?*

**Score: 50/2015 (50/2011)**

The government declares itself as an open for CSOs initiatives but true will for cooperation with CSOs is questionable. Since 2011 CSOs are increasingly engaged in the anti-corruption policy reform initiatives. Numerous suggestions, primarily in the field of drafting laws or strategies and improvement of legal framework have come from CSOs. CSOs, for example, were either included or engaged “from the outside”, in the development of suggestions or amendments, in the process of drafting or adopting laws or changes of laws on the Anti-Corruption Agency, of financing political activities, whistleblowers, public procurements. Transparency Serbia representative was member of the working group for drafting the National Anti-corruption Strategy and several anti-corruption laws.

<sup>1490</sup> Maja Stojanovic, executive director of the Civil Initiatives NGO, interview, October 2014

<sup>1491</sup> Pavle Dimitrijevic, NGO Birodi, interview, October 2014

<sup>1492</sup> <http://www.otvoreniparlament.rs/o-nama/>

<sup>1493</sup> <http://www.birodi.rs/borba-protiv-korupcije-u-nisu-izmedu-nade-i-strepnje/>

<sup>1494</sup> <http://www.nadzor.org.rs/>

<sup>1495</sup> [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=category&id=37&Itemid=49&lang=en](http://www.transparentnost.org.rs/index.php?option=com_content&view=category&id=37&Itemid=49&lang=en)

<sup>1496</sup> Aleksandar Bratkovic, director of the Center for Development of Non-Profit Sector NGO, interview, October 2014

<sup>1497</sup> USAID’s 2012 and 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia

<sup>1498</sup> Aleksandar Bratkovic, director of Center for Development of Non-Profit Sector NGO, interview, October 2014



Indeed, the Anti-Corruption Agency is open to cooperation with CSOs – not only through projects funded by the Agency, but also, by accepting suggestions from CSOs and initializing law changes with ministries and the government<sup>1499</sup>.

Beyond that however, members of the Parliament accepted very few amendments Initiated by CSOs and CSOs proposals in working groups are seldom accepted by government or ministries' representatives, while public officials in their public appearances diminish the significance of CSOs contribution to anticorruption<sup>1500</sup>. Moreover, this engagement is still limited to few organizations<sup>1501</sup>. Furthermore, the final products of working groups (laws, strategies) are often changed in the further process of adoption (in ministries, government and parliament) often to the extent that they are considered unacceptable by CSOs, while authorities still claim they are the product of the cooperation with CSOs.

It is very difficult for CSOs to engage in anti-corruption activities at the local level. Such CSOs face enormous pressure from local authorities and have no access to local public funds.

The National Anti-corruption Strategy envisages, as one of the goals to "Create conditions for more active participation of civil society in anti-corruption". It states that it is "necessary to improve the institutional and legal framework for support to civil society organizations". However the Action plan for implementation of the Strategy has limited activities and measures for reaching this goal to those aiming at improving CSOs' funding transparency, establishing (by the Anti-Corruption Agency) a system for continuous coordination and training for CSOs and organizing (also by the Anti-Corruption Agency) public competitions for the allocation of funds to CSOs for projects in the field of anti-corruption at the national and local level as well as for media initiatives in the field of anti-corruption.

Positive examples of CSO engagement include the inclusion of a CSO representative as a non-voting member in the Committee for Protection of the Environment in the national parliament through the Green Chair initiative, as well as the Memorandum of Cooperation on transparency between the National Assembly of Serbia and the CSO Coalition Open Parliament<sup>1502</sup>.

In August 2013 the government adopted Directive for Inclusion of Civil Society in the Regulations Adoption Process. The Directive is not binding and it sets out the obligations for ministries and government that already exists in other legislation, but it also provides a recommendation for the publication of responses to all proposals received in public debates on proposed laws.

In 2014 the government, through its Office for Cooperation with Civil Society, launched consultations with CSOs for developing "The National Strategy for an Enabling Environment for Development of Civil Society". This document should define and establish principles and forms of cooperation and partnership between public administration and CSOs.

In practice, in the process of adopting legislation often are included organizations whose leaders or founders are close to the ruling parties<sup>1503</sup>.

1499 [http://www.acas.rs/sr\\_lat/component/content/article/41-ostali-tekstovi/1103-rizici-od-korupcije-u-zakonu-o-javnim-preduzecima.html](http://www.acas.rs/sr_lat/component/content/article/41-ostali-tekstovi/1103-rizici-od-korupcije-u-zakonu-o-javnim-preduzecima.html)  
[http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=838%3Aprimjena-predlog&catid=34%3Afacebook-naslovi&Itemid=27&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=838%3Aprimjena-predlog&catid=34%3Afacebook-naslovi&Itemid=27&lang=sr)

1500 [http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=07&dd=31&nav\\_category=11&nav\\_id=883105](http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=07&dd=31&nav_category=11&nav_id=883105)  
<http://www.rts.rs/page/stories/sr/story/9/Politika/1500334/Vesti%20C4%87%3A+%22Beograd+na+vodi%22+u+skladu+sa+zakonom.html>

1501 Vukosava Crnjanski Sabovic and Veljko Milicevic, NGO CRTA, interview, October 2014

1502 USAID's 2013 CSO Sustainability Index For Central And Eastern Europe And Eurasia

1503 Aleksandar Bratkovic, director of the Center for Development of Non-Profit Sector NGO

# CIVIL SOCIETY

## Recommendations

1. CSOs should enhance transparency by publishing transparent annual financial reports and reports on projects supported by state bodies;
2. CSOs should establish or strengthen their own internal control mechanisms (through boards or assemblies), and CSO sector should establish such mechanism in order to enhance CSO's integrity;
3. Ministry of Finance should separate, in budget classification, funds for CSOs from the funds allocated for political parties, religion and sport organizations;
4. Government and Parliament should amend tax regulations, as envisaged by the Anti-corruption Strategy and Action Plan, in order to enable greater resources for CSOs for policy making advocacy and oversight of public authorities and to stimulate corporative philanthropy for CSOs dealing with these issues.





# BUSINESS

## National Integrity System

**Summary:** There were no major changes since NIS 2011. There is a huge discrepancy in the business sector between legislation and practice. Establishment of business is simple, but functioning isn't, due to problems with slow contract enforcement. State presence in the economy is significant. Legal unpredictability and uneven implementation of laws, as well as unpredictable policy of charging various taxes and levies are forms of unwarranted interference of the State in the business sector. General data on registered companies are available to the public. It is, however, questionable, how reliable financial reports and auditing reports are.

Solid legal framework regarding accountability is not effective in practice - good corporate governance is not ensured in most of the companies, and supervisory bodies are not effective enough in practice. Most of the mechanisms and legal framework for ensuring the integrity in the business sector exist but they are not fully applied. Business sector is not active enough in initiating the authority on anti-corruption actions and provide practically no support to anti-corruption efforts of the civil societies.





| BUSINESS                              |   |                           |                         |
|---------------------------------------|---|---------------------------|-------------------------|
| Overall Pillar Score (2015): 50 / 100 |   |                           |                         |
| Overall Pillar Score (2011): 50 / 100 |   |                           |                         |
| Dimension                             | Indicator                                 | Law                       | Practice                |
| <b>Capacity</b><br>56 / 100           | Resources                                 | 75 (2015),<br>75 (2011)   | 50 (2015),<br>50 (2011) |
|                                       | Independence                              | 75 (2015),<br>75 (2011)   | 25 (2015),<br>25 (2011) |
| <b>Governance</b><br>58 / 100         | Transparency                              | 75 (2015),<br>75 (2011)   | 25 (2015),<br>25 (2011) |
|                                       | Accountability                            | 100 (2015),<br>100 (2011) | 25 (2015),<br>25 (2011) |
|                                       | Integrity                                 | 75 (2015),<br>75 (2011)   | 50 (2015),<br>50 (2011) |
| <b>Role</b><br>13 / 100               | AC policy engagement                      | 25 (2015), 25 (2011)      |                         |
|                                       | Support for/engagement with civil society | 0 (2015), 0 (2011)        |                         |

**Structure** – Companies in Serbia are private or state-owned<sup>1504</sup>. Private companies, including entrepreneurs, employ around one million people. According to data of the Serbian Business Registers' Agency, there are 116.000 business companies registered (6.000 more than in 2011) and approximately 215.000 entrepreneurs (10.000 less than in 2011). Micro (up to 10 employees and annual income up to EUR 700.000 – USD 755.000), small (up to 50 employees and annual income up to EUR 8.8 million – USD 9.4) and medium-sized enterprises (up to 250 employees and annual income up to EUR 35 million – USD 37 million) make up 99.8 percent of the total number of companies<sup>1505</sup>.

Law on Chamber of Commerce stipulates that 100 companies could organize a chamber. Most of the companies are organized through the system of Chambers of Commerce – the Chamber of Commerce of Serbia, with around 100.000 members, and 19 regional chambers of commerce. There are also eight other smaller chambers registered. Membership in the Chamber of Commerce of Serbia used to be obligatory until January 1<sup>st</sup> 2013. Beside the chamber system, there are associations and clubs of enterprises, like the Employers' Union of Serbia with approximately 3.000 individual members and 115 collective members that have 230.000 employees<sup>1506</sup>. Serbian Business Club "Privrednik" gathers 45 top people from some of the largest private companies<sup>1507</sup>. Foreign Investors Council has 130 members with 96.000 employees<sup>1508</sup>.

Types of enterprises or business associations are determined by the Company Law: general partnership, limited partnership, limited liability company and stock company (open and closed)<sup>1509</sup>.

1504 There is a separate pillar "State Owned Enterprises"

1505 Chamber of Commerce, <http://www.pks.rs/PrivredaSrbije.aspx?id=20&p=0&>

1506 Interview with Aleksandra Kovacevic, Serbian Association of Employers, January 2015

1507 <http://www.serbian-business-club.co.rs/en/page/2/Vision+and+Mission>

1508 <http://www.fic.org.rs/cms/item/home/en.html>

1509 Company Law, Article 8





# Assessment

## Capacity

### Resources (Law)

*To what extent does the legal framework offer an enabling environment for the foundation and functioning of individual businesses?*

**Score: 75/2015 (75/2011)**

Laws that regulate the founding, registration, insolvency and closing of companies mainly guarantee efficient establishing and closing of companies. Framework for functioning of businesses, on the other hand, presents a problem for business environment, because laws regulating taxes and levies are often changed, regulations are sometimes contradictory, and the elimination of unnecessary regulations hasn't been completed<sup>1510</sup>. Examples of such regulations include the Law on Property Tax which introduced zoning of cities on the basis of which tax is determined, or the Law on Local-self Government Financing, which allows Local Governments to introduce high levies for business<sup>1511</sup>.

Company Law regulates the establishment of companies and entrepreneurs, legal forms of establishment an enterprise and its work management, rights and obligations of founders, members and stockholders, termination of work of entrepreneurs and liquidation of enterprises<sup>1512</sup>. Process is simple and not costly: it is conducted through a one-stop registration system in the Business Registers Agency that allows business entities to receive a registration/identification number, tax identification number and the health insurance number<sup>1513</sup>.

Following steps must be taken in order to establish a company: passing a decision on establishment a founding assembly; verification of signatures of the establishers on the founding act (at the notary), verification of signatures of representatives, opening of a bank account and payment of a cash investment into this account, submitting the registration application to the Business Registers' Agency, making stamps.

Registration procedure is regulated by the Law on Registration Procedure in the Business Registers Agency. The deadlines are reasonable - Business Registers Agency determines whether legal assumptions for establishment of companies exist and issue decisions on the registration within five days<sup>1514</sup>. If there are deficiencies in the registration application, the submitter will have 30 days to remove them<sup>1515</sup>.

Law on Bankruptcy<sup>1516</sup> regulates the bankruptcy procedure of insolvent companies. In 2014, the Law was amended in order to increase the transparency of the process, preventing fraud and enhancing the rights of creditors. Those changes introduced obligation to publish quarterly reports on the progress of the bankruptcy proceedings in order to increase transparency, as well as obligation

<sup>1510</sup> Remarks by Aleksandra Kovacevic, Spokesperson of Serbian Association of Employers, Nenad Gujanicic, Analyst and Manager at Wise Broker, Mijat Lakicevic, Journalist and Economic Analyst, Sasa Radulovic, former Minister of Economy, interviews, January 2015

<sup>1511</sup> Interview with Aleksandra Kovacevic, Serbian Association of Employers, January 2015

<sup>1512</sup> Law on Business Associations, Articles 11-34, 45-50, 83-92, 93-100, 126, 141-142, 238-239, 245-247, 524-527

<sup>1513</sup> <http://www.apr.gov.rs/eng/Registers/Companies/Instructions/Registration.aspx>

<sup>1514</sup> Law on Registration Procedure in the Business Registers Agency, Article 15

<sup>1515</sup> Law on Registration Procedure in the Business Registers Agency, Article 17

<sup>1516</sup> <http://www.alsu.gov.rs/bap/upload/documents/zakoni/Law%20on%20Bankruptcy.pdf>

of the creditors' committee to propose the trustee or to agree with the appointed trustee, which prevents the direct election of the trustee by the judge.

In order to solve problems of poor debt collection and insolvency, the Law on Terms of Settlement of Financial Obligations in Commercial Transactions was adopted in 2012. According to this Law, the settlement of monetary obligations cannot be longer than 60 days.

According to the Serbian Association of Employers, para-fiscal levies, introduced by authorities at different levels (Government, Provincial Authorities and Local Authorities) are an obstacle for business environment. In 2012 and 2013 some of those were eliminated, but new ones were introduced soon after. At the moment, there are 384 non-tax levies which different businesses must pay<sup>1517</sup>. Another problem is charging for services by utility companies – prices are not related to value of service, and businesses pay three times more than citizens for the same service<sup>1518</sup>.

In the area of the protection of intellectual property, competencies are in the hands of the Intellectual Property Office, "special organization" in the system of the state administration of the Republic of Serbia. 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 right<sup>1519</sup>. Area of protection of intellectual property is regulated by the Law on Patents, Law on Trademarks, Law on Legal Protection of Industrial Design, Law on Indications of Geographical Origin, Law on Copyright and Related Acts, Law on Optical Discs, Law on Protection of Topography of Integrated Circuits<sup>1520</sup>.

According to the EU Progress Report, the 2012 amendments to the Law on Copyrights and Related Rights, that introduced levies of technical equipment which can be used for recording, are not aligned with the *Acquis* and the relevant laws in the field of industrial property rights remain to be further aligned with the *Acquis*<sup>1521</sup>. EU 2015 report concluded that amendments to the Law on Industrial Design adopted in May 2015 aligned industrial property rights further with the *acquis*, but other relevant laws on patent and trademarks still need to be further aligned<sup>1522</sup>.

## Resources (Practice)

*To what extent individual businesses can be established and operate effectively in practice?*

**Score: 50/2015 (50/2011)**

Registering business in practice is efficient. Operating, on the other hand, is a problem because the business environment affront with bureaucracy, many obstacles for investment, such as weak legal system and slow contract enforcement<sup>1523</sup>.

It takes six procedures and 12 days to start business in Serbia<sup>1524</sup>. Procedure costs RSD 5,900 (USD 52) to open a bank account and pay registration fees, RSD 1,660 - RSD 2,800 (USD 15-25) to make stamp and seal, and fee for notary (to Notarize the memorandum of association) RSD 15.000 – 22.500 (USD 132-200). In the World Bank's Doing Business 2015 ranking, Serbia is ranked 66 out of 189 economies in "starting business" category<sup>1525</sup>.

1517 Interview with Aleksandra Kovacevic, Serbian Association of Employers, January 2015

1518 Interview with Aleksandra Kovacevic, Serbian Association of Employers, January 2015

1519 <http://www.zis.gov.rs/home.59.html>

1520 <http://www.zis.gov.rs/legal-regulations/laws-and-regulations.110.html>

1521 EU Progress Report for Serbia 2014

1522 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2015/20151110\\_report\\_serbia.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf)

1523 EU Progress Report on Serbia 2014

1524 Doing Business 2015, World Bank, <http://www.doingbusiness.org/data/exploreeconomies/serbia#starting-a-business>

1525 <http://www.doingbusiness.org/data/exploreeconomies/serbia#starting-a-business>

In 2014, the number of companies newly established (8 209) was more than three times the number of companies closed (2 601)<sup>1526</sup>. In 2014 there were 6.4 percent less companies and 6.2 percent fewer entrepreneurs registered than in 2013<sup>1527</sup>.

Long periods of debt collection and poor efficiency of the enforcement procedure, resulting in insolvency of companies, remained one of the major problems, as identified in NIS 2011. In 2011 the new Law on Enforcement was adopted which introduced bailiffs (conduct enforcements for utility companies) in order to reduce the burden of the courts. According to analysts and business representatives, there was no major change in practice regarding enforcement of debts collection by companies<sup>1528</sup>. Insolvency remains one of the biggest problems of Serbian business community. Main causes of insolvency are breaking the payment deadlines, weak debt and inefficient bankruptcy proceedings<sup>1529</sup>.

Law on Terms of Settlement of Financial Obligations in Commercial Transactions is not implemented in practice. In 2014 a total of 140.358 companies and entrepreneurs could not operate normally due to a blocked account for at least one day, with more than 70.000 being insolvent for longer than six months. Largest generator of insolvency is a closed circle of debts between the State and the business. According to an expert a large number of companies cannot collect their receivables from the State (or the State owned enterprises) but do not want to initiate legal proceedings, hoping to collect “sooner or later” and fearing they would lose the possibility for future deals if they initiate court proceedings. On the other hand, they need to pay taxes without delay<sup>1530</sup>.

It does not appear either that the Law on Bankruptcy has ensured faster implementation of the settlement of bankruptcy creditors. There are about 4.800 bankruptcy proceedings, with nearly half of them (2.280) lasting between 2-10 years. New Law on Bankruptcy is not enforced on 2,000 companies because it cannot be applied retroactively<sup>1531</sup>.

According to data of the World Bank’s Doing Business report<sup>1532</sup> Serbia is ranked 96 (out of 189 economies) in the “enforcing contracts” category, with 635 days required to enforce contracts – 495 for trials and judgment and 110 for enforcement of judgment<sup>1533</sup>.

As for intellectual property protection, the Intellectual Property Office has not yet obtained the administrative capacity corresponding to the responsibilities of the Commission for Copyright that were transferred to it when the latter was abolished in 2013<sup>1534</sup>.

## Independence (Law)

*To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?*

**Score: 75/2015 (75/2011)**

There have not been any major changes in regulations related to prevention of the State interference in activities of private businesses. According to the Constitution<sup>1535</sup> the economy in Serbia is based on an open and free market, freedom of entrepreneurs, independence of businesses and equality of private property and of other forms of property.

<sup>1526</sup> EU Progress Report on Serbia 2015

<sup>1527</sup> Data from Serbian Association of Employers

<sup>1528</sup> Based on interviews with Aleksandra Kovacevic, Spokesperson of Serbian Association of Employers, Nenad Gujanic, Analyst and Manager at Wise Broker, Sasa Radulovic, former Minister of Economy, interviews, January 2015

<sup>1529</sup> Interview with Aleksandra Kovacevic, Serbian Association of Employers, January 2015

<sup>1530</sup> Interview with Aleksandra Kovacevic, Serbian Association of Employers, January 2015

<sup>1531</sup> Data from Serbian Association of Employers

<sup>1532</sup> World Bank ranking Doing Business 2015

<sup>1533</sup> <http://www.doingbusiness.org/data/exploreeconomies/serbia#enforcing-contracts>

<sup>1534</sup> EU Progress Report for Serbia, 2014

<sup>1535</sup> Constitution of Serbia, Article 82

Constitution states that everybody has equal legal positions on the market and acts that limit free competition create or abuse monopoly or dominant positions, contrary to the law, are forbidden. Rights claimed by investing capital on the basis of the law, cannot be diminished by any other law<sup>1536</sup>.

Bankruptcy process is run by the court. It is initiated by the bankruptcy judge<sup>1537</sup>. Judge appoints the bankruptcy trustee. Complaints to decisions made in bankruptcy proceedings can be filed to the higher court<sup>1538</sup>.

As for inappropriate external interference in business operations, it is possible to request compensation through regular court procedures. Those procedures are regulated by the Law on Contracts and Torts, Criminal Code and Civil Procedure Law.

## Independence (Practice)

*To what extent is the business sector free from unwarranted external interference in its work in practice?*

**Score: 25/2015 (25/2011)**

Legal unpredictability and uneven implementation of laws, as well as unpredictable policy of charging various taxes and levies are forms of unwarranted interference of the state into the business sector<sup>1539</sup>.

According to 2014 EU Report on Serbia, “state presence in the economy remains significant. The private sector is weak and unprotected as the rule of law is not systematically observed”<sup>1540</sup>. Also, legal predictability and enforcement of court decisions remain weak<sup>1541</sup>.

Political relations allow business owners to have priority in collection of receivables from government and state authorities. Besides that, political relations enable certain business owners to obtain favorable loans from banks or development funds, with inadequate collateral, and often these loans remain unrecovered<sup>1542</sup>.

Discretion regarding inspection procedures are often abused, and inspections are sent to companies which represent competition to companies with political connections<sup>1543</sup>. Some private companies are forced to employ members of political parties in order to get contracts with the State (or local authorities) or the State owned companies<sup>1544</sup>.

Privileged position of companies that are close to the authorities is most visible in the area of public procurement. Media reported on numerous occasions about cases such as “Juzna Backa”, related to ruling SNS winning contracts with the Government or state owned companies, or “Toncevi gradnja”, related to SPS ruling parties, winning dozens of contracts<sup>1545</sup>. According to Serbian Association of Employers, different treatment of companies is also visible in the area of tax debts – some companies were allowed to operate without any problem in spite of having huge debts, while others had their accounts blocked for minor debts or irregularities. As an example, private

1536 Constitution of Serbia, Article 84

1537 Bankruptcy Law, Articles 6, 15.18

1538 Law on Bankruptcy, Article 46

1539 Joint estimation from separate interviews with Sasa Radulovic, Mijat Lakicevic, Aleksandra Kovacevic and Nenad Gujanicic, January 2015

1540 EU Progress Report for Serbia 2014

1541 EU Progress Report for Serbia 2014

1542 Interview with Aleksandra Kovacevic, Serbian Association of Employers

1543 Interview with Mijat Lakicevic, Journalist and Economic Analyst, January 2015

1544 Interview with Sasa Radulovic, former Minister of Economy, January 2015

1545 <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:445681-Montirani-i-tenderi><http://www.politika.rs/rubrike/Ekonomija/Uticaj-Tamnave-na-vladajucu-koaliciju.sr.html><http://www.kurir.rs/vesti/biznis/ekonomsko-ili-politicko-cudo-kompanija-juzna-backa-dobila-50-miliona-evra-drzavnih-poslova-clanak-1636038><http://www.vreme.rs/cms/view.php?id=1248301>

station TV Pink had RSD 759 million (EUR 6,5 million) tax debt in July 2014, with two agreements signed with tax administration on reprogramming debt payment, in spite of not complying with first agreement. Tax administration, at the same time, in 2013 and 2014 refused to sign agreement on debt reprogramming with 14.000 companies (out of 21,000 which applied for it)<sup>1546</sup>.

Non-privileged companies avoid using available mechanisms for the protection of state influence to private sector businesses, such as the possibility of appeal in public procurement processes because of the fear they might lose possibility to work with the public sector in future or the possibility to be a subcontractor<sup>1547</sup>.

According to the estimation of business sector, the State is also selective in curbing the grey economy<sup>1548</sup>. One example of such selectivity is a political decision to start control of compliance with the law of Chinese owned businesses in Serbia. As confirmed by the Tax Administration, action of controlling whether several thousand Chinese owned companies issue fiscal bills, pay taxes and register their workers was coordinated with the Chinese Embassy, with the plan to “explain to them (owners of companies already operating) our laws, what are their duties, if necessary, in the Chinese language”. Problem is, however, that the Law breaching has been ignored for years, and that those companies received “special treatment” - warnings and explanations, while other companies are punished straight away<sup>1549</sup>.

# Governance

## Transparency (Law)

*To what extent are there provisions to ensure transparency in the activities of the business sector?*

**Score: 75/2015 (75/2011)**

Companies are obligated to deliver financial reports to the Business Registers Agency. Agency keeps Records of financial reports and data on the solvency of legal entities and entrepreneurs<sup>1550</sup>.

According to the Law<sup>1551</sup>, companies and entrepreneurs are obligated to draw up regular annual financial statements. Balance sheet, income statement and statistical report for the previous year must be delivered to the Business Registers Agency by the end of February. Complete financial statements for previous year must be delivered to the Agency, for public release, by the end of June. Agency is obligated to publish reports on the website within 60 days of receipt<sup>1552</sup>.

Recent decision of the Business Registers Agency to register information on any person who seeks for data on companies, brought soon after an affair with companies registration in the name of the Prime Minister’s brother, was considered as an attempt to limit public access to data<sup>1553</sup>. Decision has led to the reaction of the Commissioner for free access to information of public importance and journalists associations<sup>1554</sup>.

<sup>1546</sup> Gouvernement’s Anti-Corruption Council’s Report on Media, 2015

<sup>1547</sup> Interview with Sasa Radulovic, former Minister of Economy, January 2015

<sup>1548</sup> Interview with Sasa Radulovic, former Minister of Economy, January 2015

<sup>1549</sup> [http://www.b92.net/biz/vesti/srbija.php?yyyy=2015&mm=02&dd=24&nav\\_id=961417](http://www.b92.net/biz/vesti/srbija.php?yyyy=2015&mm=02&dd=24&nav_id=961417)

<sup>1550</sup> Law on Accounting, Articles 37, 38

<sup>1551</sup> Law on Accounting, Articles 26, 29

<sup>1552</sup> Law on Accounting, Article 36

<sup>1553</sup> Interview with Sasa Radulovic, former Minister of Economy, January 2015

<sup>1554</sup> <http://rs.n1info.com/a14358/Vesti/Sabic-od-APR-a-trazi-da-ne-otezava-rad-novinara-istrzivaca.html><http://www.b92.net/info/vesti/index>.



Large companies (more than 250 employees, more than EUR 35 million annual turnover and more than EUR 17,5 million property value) and stock companies are obligated to draw up annual business reports which include information enough to consider their business transparent<sup>1555</sup>. Additional information must be published by enterprises that are listed on stock exchange. Those information should be prepared, inspected by an auditor and published according to high quality standards of accounting, financial and nonfinancial disclosing and audit<sup>1556</sup>.

According to the new 2013 Law on Auditing, the audit is required for regular annual financial statements of large and medium-sized legal entities (more than 50 employees, more than EUR 8.8 million annual turnover and more than EUR 4.4 million property value), public companies in accordance with the Law governing the capital market regardless of their size, as well as all legal entities and entrepreneurs whose business income achieved in the previous financial year exceeds EUR 4.4 million euros<sup>1557</sup>.

Law on Accounting envisages penalties for “economic offences” for legal entities (in the range from RSD 100.000 (USD 900) to RSD 3 million (USD 26.000) if they don’t deliver a report to the Agency.

Rulebook on the content, form and manner of publication of annual, semi-annual and quarterly reports of public companies applies to stock companies and it envisages obligations of publishing the report on company’s web sites and delivering them to the Commission for Securities and the Stock Exchange<sup>1558</sup>.

Principles of the Corporate Management, issued by the Commission for Securities, envisage timely and accurate publishing of information on all material facts regarding business conduct of the enterprises are necessary to provide, including matters related to the financial situation, successfulness of the business, ownership structure and managing the enterprise<sup>1559</sup>.

## Transparency (Practice)

*To what extent is there transparency in the business sector in practice?*

**Score: 25/2015 (25/2011)**

General data on registered companies are available to the public on the Business Registers Agency’s web site<sup>1560</sup>. It is, however, questionable, how reliable financial reports and auditing reports are<sup>1561</sup>. For example, in 2012 a large bank, which was listed in the stock market, went bankrupt. It turned out that its financial reports and audit reports were false<sup>1562</sup>. Until 2014 this happened in three more banks. None of the companies which audited their report did not bear any consequences<sup>1563</sup>.

Basic data can be found on the web-site of the Business Registers Agency (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, basic data from financial reports)<sup>1564</sup> and each person has the authority to ask from the archive of the Business Registers Agency insight into cases of each enterprise.

php?yyyy=2014&mm=11&dd=04&nav\_id=919793

1555 Law on Accounting, Article 30

1556 [http://www.sec.gov.rs/index.php?option=com\\_content&task=view&id=92&Itemid=91](http://www.sec.gov.rs/index.php?option=com_content&task=view&id=92&Itemid=91)

1557 Law on Auditing, Article 21, Law on Accounting, Article 6

1558 [http://www.sec.gov.rs/index.php?option=com\\_content&task=view&id=1409&Itemid=224](http://www.sec.gov.rs/index.php?option=com_content&task=view&id=1409&Itemid=224)

1559 [http://www.sec.gov.rs/index.php?option=com\\_content&task=view&id=92&Itemid=91](http://www.sec.gov.rs/index.php?option=com_content&task=view&id=92&Itemid=91)

1560 <http://www.apr.gov.rs/eng/Registers/Companies.aspx>

1561 Joint estimation from separate interviews with Sasa Radulovic and Nenad Gujanicic, January 2015

1562 Interview with Nenad Gujanicic, Analyst and Manager at Wise Broker, January 2015

1563 Miroslava Milenovic, forensic accountant, <http://www.politika.rs/rubrike/Razgovor-nedelje/Novac-uvek-ostavlja-trag.sr.html>

1564 <http://www.apr.gov.rs/eng/Registers/Companies/Search.aspx>

According to the Serbian Association of Employers, investors complain about the inaccuracy of the financial statements of the purchased companies. Information about companies' property, its book value, and receivables from customers and clients are sometimes false and debts to suppliers are often much higher in real terms than those shown. "No one trusts any balance of our companies, especially those in the majority state ownership"<sup>1565</sup>.

Companies that participate in public tenders have an interest to show the profit in the financial statements, in order to meet the stringent requirements of the tender. Others commonly show small or no losses to avoid taxes<sup>1566</sup>.

More transparent are considered companies listed in the stock market, especially those listed in the prime listing<sup>1567</sup>. Those companies are considered to have certain level of corporate responsibility. Once the Belgrade airport, owned by the State, went public and had been listed, the public learned, through the information provided to the stock market, that national airline doesn't pay for the airport's services<sup>1568</sup>.

## Accountability (Law)

*To what extent are there regulations and rules governing supervisory of the business sector and governing corporate governance of individual companies?*

**Score: 100/2015 (100/2011)**

According to the Company Law, joint-stock companies must have the General Assembly and the Director or the Board of Directors, but in the case they are listed in the stock market they must have at least three Executive Directors (and the Executive Board), the Supervisory Board with at least one independent Supervisory Board member and an internal auditor who complies with the eligibility requirements for internal auditors laid down by the laws on accounting and auditing<sup>1569</sup>.

Internal auditor may only be engaged in internal audit activities and may not serve as a director or a member of the Supervisory Board. Internal auditor is appointed by the Board of Directors, or the Supervisory Board<sup>1570</sup>.

Independent member of the Supervisory Board are elected by the Assembly of shareholders and they must fulfill the condition 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 20% of their annual income and that they do not own more than 20% of shares or stocks, directly or indirectly.

Supervisory Board determines a company's business strategy and business objectives and oversees their execution, supervises the work of Executive Directors, performs internal control of a company's operations and establishes a company's accounting and risk management policies<sup>1571</sup>. Supervisory Board reports to the Assembly of shareholders on the accounting practice, qualifications and independence of the company's auditors and compliance of the company's operations with the Law.

Internal audit duties include control of compliance of operations with relevant laws, supervision of implementation of accounting policies and financial reporting, review of implementation of risk

<sup>1565</sup> Interview with Aleksandra Kovacevic, Serbian Association of Employers

<sup>1566</sup> Interview with Aleksandra Kovacevic, Serbian Association of Employers

<sup>1567</sup> Interview with Nenad Gujanicic, Analyst and Manager at Wise Broker, [http://www.belex.rs/trzista\\_i\\_hartije/trzista/prime/akcije](http://www.belex.rs/trzista_i_hartije/trzista/prime/akcije)

<sup>1568</sup> Interview with Nenad Gujanicic, analyst and manager at Wise Broker, January 2015

<sup>1569</sup> Company Laws, Articles 326, 437, 451

<sup>1570</sup> Company Law, Article 451

<sup>1571</sup> Company Law, Article 441



management policies and monitoring of compliance of a company's organization and operations with a corporate governance code<sup>1572</sup>.

Principles of the Corporate Management were set by the Commission for Securities in 2007. These state that decisions of the Board that influence various shareholders owner of various kinds and classes should be passed with fair treatment of all shareholders<sup>1573</sup>. 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 persons<sup>1574</sup>.

Law on Accounting and the Law on Audit regulate e keeping of business records, creating, delivering, disclosing and processing of the reports, issuing and taking away licenses for work of audit companies, provisions for authorized internal auditors, establishment of the Chamber of Authorized Auditors, and control of the quality of work of the Audit Companies, auditors and authorized auditors, performed by the Chamber<sup>1575</sup>.

Commission for Securities oversees the work of the stock market, as an independent organization. Commission has five members, elected by the Parliament of Serbia<sup>1576</sup>. 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 instruments<sup>1577</sup>.

New Law on Accounting introduced new rules for financial reporting according to size and economic strength of companies. Large companies and all public joint stock companies are obligated to prepare consolidated annual financial statements, with the application of the International Financial Reporting Standards (IFRS), small and medium-sized companies are required to use IFRS for SMEs, whilst micro and other legal entities are required to use the Rulebook of the Ministry (Rulebook on the method of recognition, measurement, presentation and disclosure of positions in the individual financial statements of micro and other legal entities)<sup>1578</sup>.

Strategy and Action Plan for promoting corporative financial reporting in the Republic of Serbia, announced in 2011 as a program of measures for the harmonization of the legal framework with legal achievements and practices of the EU in order to accomplish a high quality of financial reporting, has never adopted, and the harmonization has been done regardless of Strategy.

## Accountability (Practice)

*To what extent is there effective corporate governance in companies in practice?*

**Score: 25/2015 (25/2011)**

Existing legal provisions are not effective in the practice - good corporate governance is not ensured in most of the companies, and supervisory bodies are not effective enough in practice<sup>1579</sup>. One general exception is foreign companies in Serbia which have internal standards of abiding to the rules of good corporate behavior<sup>1580</sup>.

1572 Company Law, Article 452

1573 [http://www.sec.gov.rs/index.php?option=com\\_content&task=view&id=92&Itemid=91](http://www.sec.gov.rs/index.php?option=com_content&task=view&id=92&Itemid=91)

1574 [http://www.sec.gov.rs/index.php?option=com\\_content&task=view&id=92&Itemid=91](http://www.sec.gov.rs/index.php?option=com_content&task=view&id=92&Itemid=91)

1575 Law on Auditing, Article 71-77

1576 [http://www.sec.gov.rs/index.php?option=com\\_content&task=view&id=18&Itemid=42](http://www.sec.gov.rs/index.php?option=com_content&task=view&id=18&Itemid=42)

1577 [http://www.sec.gov.rs/index.php?option=com\\_content&task=view&id=19&Itemid=43](http://www.sec.gov.rs/index.php?option=com_content&task=view&id=19&Itemid=43)

1578 <http://goo.gl/dh04eX>

1579 Joint estimate by Sasa Radulovic, Nenad Gujanicic, Mijat Lakicevic, from separate interviews, January 2015

1580 Sasa Radulovic, former Minister of Economy, interview, January 2015

Supervisory Boards do not perform their function, which was clearly visible in cases of banks which went bankrupt in the period 2012 -2014<sup>1581</sup>. Level of corporate governance in Serbian companies is, in general, very low, with exception being companies listed in the stock market. Most of the companies have dominant majority owner and therefore the Supervisory Boards and Assemblies lose their sense of existence<sup>1582</sup>.

Commission for Securities is ineffective in practice<sup>1583</sup>, considered to be a “weak institution, which is not financed independently, and does not have will to deal with irregularities in the market”<sup>1584</sup>. It does not publish any data on violations of the Law by participants that deal with securities or procedures of protection of investors’ interests and other persons for whom the Commission determined a violation of their rights related to dealing with securities. In its Information Directory there is only information that it initiated 290 misdemeanor proceedings against public companies which didn’t deliver their financial report within time frame determined by the law<sup>1585</sup>.

## Integrity mechanisms (Law)

*To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?*

**Score: 75/2015 (75/2011)**

Most of the mechanisms and legal framework for ensuring the integrity in the business sector exist. There are the Code of Business Ethics and the Code of Corporate Management, adopted as national codes by the Serbian Chamber of Commerce. Company Law envisages that public joint-stock companies must include a statement on the Code of Corporate Management they implement within the annual report.

Criminal Code’s provisions regarding bribery include bribery when doing business abroad (bribery of foreign official)<sup>1586</sup> and bribery in private business<sup>1587</sup>.

There is a law on corporate liability – Law on Criminal Liability of Legal Entities. Law on Public Procurement from 2012 brought new anti-corruption provisions. Purchaser is obligated to take all necessary measures to prevent corruption in the planning of public procurement, in the procurement process or during the execution of a public procurement contract<sup>1588</sup>. The law also envisages adoption of plan for the fight against corruption in public procurement. Public Procurement Office drafted the plan in October 2013, but the Government hasn’t adopted it yet. This is an obstacle for adoption of individual plans for prevention of corruption in public procurement by the purchasers, because the Law envisages that all purchasers, whose total estimated value of public procurement annually is more than a billion dinars (USD 8,8 million) need to adopt such plans “in accordance with the plan” adopted by the Government<sup>1589</sup>, and within three months from the date of adoption of that plan.

Law on Public Procurement also includes provisions on whistleblowers – stating that a person engaged within public procurement work or any other person who has information about the existence of corruption in public procurement is obligated to immediately notify the Public Procurement Office, a state body responsible for the fight against corruption and competent prosecution. This

1581 Sasa Radulovic, former Minister of Economy, interview, January 2015, also <http://www.politika.rs/rubrike/uvodnik/A-revizori.sr.html>

1582 Nenad Gujanic, analyst and manager at Wise Broker, Interview January 2015, Mijat Lakicevic, journalist and economic analyst, interview, January 2015

1583 Mijat Lakicevic, journalist and economic analyst, interview, January 2015

1584 Nenad Gujanic, analyst and manager at Wise Broker, Interview January 2015

1585 [http://www.sec.gov.rs/downloads/informator/Informator\\_cir.pdf](http://www.sec.gov.rs/downloads/informator/Informator_cir.pdf)

1586 Criminal Code, Articles 112 and 368

1587 Criminal Code, Article 368

1588 Law on Public Procurement, Article 21

1589 Law on Public Procurement, Article 21

person “may not get the termination of employment or other contract of work engagement and cannot be moved to another position”, because he/she reported corruption in public procurement<sup>1590</sup>.

Contracting authority is obligated to provide, as part of tender documentation, a declaration of an independent bid, stating under full financial and criminal responsibility that the bid was submitted independently, without consultation with other bidders or interested parties<sup>1591</sup>. Law on Public Procurement also includes provisions on prevention of the conflict of interest and engagement of a civil supervisor for procurements valued more than one billion dinars (USD 8,8 million)<sup>1592</sup>.

Law on Whistleblower Protection was adopted in 2014. Employers (with more than 10 employees) are obligated to regulate procedures of whistle-blowing by internal acts. Some protection for whistleblowers was provided by the Anti-Corruption Agency, but the act according to which this was done, the Constitutional Court declared unconstitutional<sup>1593</sup>.

Serbian Chamber of Commerce adopted in 2005 the Code of Business Ethics, as a national code of business ethics. It 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 Serbia<sup>1594</sup>. Violation of Code of Business Ethics is sanctioned by courts of honor of chambers of commerce, by a warning, a public warning of the Board of Directors of the Chamber or a public warning by publication in one or more of the print or electronic media. Possible sanctions are also: a ban on participation in the work of the organs and bodies of the Chamber; prohibition of participation in trade fairs and exhibitions; deletion of a timetable or departure for company who performs public transport activity and prohibition of performing activity for a specified time in accordance with the Law.

New Code of Corporate Governance was adopted by the Serbian Chamber of Commerce in 2012. Provisions also apply to family companies, small and medium-sized enterprises and state owned enterprises in order to help them prepare for external investors before they reach a critical size and/or choose to go public, on stock exchange. Principles and recommendations contained in the Code of Corporate Governance are not binding for the members of the Chamber, but are recommended as the best practice of the corporate governance<sup>1595</sup>.

Association of pharmaceutical companies adopted recently the new Code on the promotion of prescription-only medicines to, and interactions with healthcare professionals<sup>1596</sup>. According to this code, association will publish annual report on all gifts provided to healthcare professionals - registration fees, travel and accommodation costs for conferences and all gifts that are worth more than 30 euro. First report will be published in 2016.

## Integrity mechanisms (Practice)

*To what extent is the integrity of those working in the business sector ensured in practice?*

**Score: 50/2015 (50/2011)**

Existing framework for ensuring integrity in the business sector is not fully applied.

Government has not yet adopted a plan to combat corruption in public procurement and therefore some of the anti-corruption provisions of the Law on Public Procurement are not implemented more than two years after adoption of the Law. Furthermore, August 2015 amendments to the Law, fully abandoned paragraph envisaging adoption of such plan in favor of internal anti-corruption plan of purchasing entities.

<sup>1590</sup> Law on Public Procurement, Article 24

<sup>1591</sup> Law on Public Procurement, Article 26

<sup>1592</sup> Law on Public Procurement, Article 29-30

<sup>1593</sup> <http://www.politika.rs/rubrike/Politika/Da-li-uzbunjivaci-ostaju-bez-pravne-zastite.lt.html>

<sup>1594</sup> <http://www.pks.rs/PoslovnoOkruzenje.aspx?id=1411&p=3>

<sup>1595</sup> Information from Mila Bodrozic, Court of Honour, Serbian Chamber of Commerce

<sup>1596</sup> <http://www.inovia.rs/index.php/sr/kodeksi>

There has been certain improvement in the field of adoption and implementation of internal codes, but this is “sporadic and mostly in large or foreign companies doing business in Serbia”<sup>1597</sup>.

Law on Whistleblowers Protection was adopted in November 2014 and has been implemented since June 2015. Most of the whistleblowers in the previous period experienced difficulties, some of them being victims of repression, no matter they were given status of whistleblowers by the Anti-Corruption Agency<sup>1598</sup>.

As for violation of the Code of Business Ethics, there were no corruption related cases. In 2014 there were 16 proceedings before the Court of Honor of the Serbian Chamber of Commerce. In most of the cases warnings and public warnings before the Board of Directors in the Chambers were passed, and in one case public warning published in daily newspapers. According to the estimation of the prosecutor of the Court of Honor, companies take very seriously proceedings before that institution and regularly turn up at trials, with their lawyers<sup>1599</sup>.

Since 2012 and the adoption of the new Code of Corporate Governance until the end of 2014, the Chamber has received 29 notifications from companies which applied the Code or will apply it in their practices. Nine more companies informed the Chamber they had adopted and implemented their own codes. This is not only tiny fraction of total number of the Chamber’s members (100.000), but even small fraction of number of large enterprises in Serbia (around 250).

Regarding corruption and business environment, 2013 research by the UNODC and the Statistical Office of Serbia, claimed that “a significant percentage (17%) of businesses pay bribes to public officials repeatedly over the course of the year”. Business representatives in Serbia rank corruption as the fifth most significant obstacle to doing business. The prevalence of business-to-business bribery in Serbia amounts to 6.6 per cent<sup>1600</sup>.

According to 2014 research done by the European Bank for Reconstruction and Development, corruption is among major obstacles for business in Serbia, behind political instability and tax rates<sup>1601</sup>.

# Role

## Anti-corruption policy engagement (law & practice)

*To what extent is the business sector active in engaging the domestic government on anti-corruption?*

**Score: 25/2015 (25/2011)**

Fight against corruption doesn’t seem to be on the top of the agenda when business associations and chamber of commerce have meetings with the Government. At the meeting of club “Pirivrednik”, which gathers 45 top people from some of the largest private companies, with the Prime Minister and ministers, topics were state’s assistance in production and exports, change of economic policy and creation of predictable and stable operating conditions<sup>1602</sup>.

1597 Interview with Mijat Lakicevic, Journalist and Economic Analyst, January 2015

1598 <http://pistaljka.rs/public/banners/svedocenja-uzbunjivaca-cir.pdf>

1599 Information from Mila Bodrozic, Court of Honour, Serbian Chamber of Commerce

1600 <http://webzrzs.stat.gov.rs/WebSite/userFiles/file/uFokusu/Serbia%20Business%20corruption%20report.pdf>

1601 <http://www.ebrd.com/downloads/research/economics/workingpapers/wp167.pdf>

1602 Minister of Economy Dusan Vujovic, after the meeting <http://www.naslovi.net/2014-07-04/blic/vucic-dacemo-pare-svatom-ko-hoce-da-pokrene-proizvodnju/10695439>

Serbian Chamber of Commerce and business associations, educational and scientific institutions, as well as the relevant ministries organized a dialogue between the state and business in September and October 2014 with “more than 1,200 representatives from all sectors giving contribution for identification of key barriers to successful business and proposing solutions to the problems”. Conclusion was that the Coordination Body for the fight against the gray economy has to be established, the inter-sectorial working group for the introduction of dual education in the educational system of Serbia and the working group for amending the Law on bankruptcy, Law on Enterprises and the Law on Foreign Investment should be formed<sup>1603</sup>.

Serbian Chamber of Commerce is also promoting the introduction of integrity plans in companies, as a preventive measure in the fight against corruption<sup>1604</sup>. Introduction of integrity plans is an obligation for all entities that have public authorities, while private companies can introduce them if they wish. Some 47% (2,100 out of 4,500) of entities that have public authorities complied with the obligation and have adopted integrity plans<sup>1605</sup>.

Foreign Investors Council publishes each year the White Book with recommendations, including those on prevention and curbing corruption in specific business areas, especially public procurement<sup>1606</sup>.

There are 94 members of Global Compact, including Serbian Chamber of Commerce and several other business associations. Out of this number, 29 are included in the Working Group for the fight against corruption. By the end of 2014, the Declaration on the fight against corruption, which was adopted in 2010, has been signed by 17 members only. There are only 16 reports on the implementation of the Declaration for 2012/2013 and 13 for 2014. Those few reports include anti-corruption activities, regarding the UNGC Principle 10 – “Business should act united against corruption in all areas, including extortion and bribery”<sup>1607</sup>.

Employers Union of Serbia and the Serbian Association of Bidders were active in the process of adoption of the new Law on Public Procurement in 2012, proposing changes to 25 Articles. In 2013, these associations organized the campaign “Be involved - prevent corruption!” in order to promote new anti-corruption provisions in the Law and initiate private companies to participate in tenders<sup>1608</sup>.

## Support to the civil society (law & practice)

*To what extent does the business sector cooperate with or support the civil society in the fight against corruption?*

**Score: 0/2015 (0/2011)**

There is no support of the business sector to non-governmental organizations in the fight against corruption. Legal framework is not simulative. Law on Corporate Profit Tax envisages that up to 5% of the total revenue can be recognized as an expense if it was spent for “health, educational, scientific, humanitarian, religious and sports activities, environmental protection, as well as giving for social welfare institutions”<sup>1609</sup>. Due to this provision, in practice socially responsible business comes down exclusively to support of humanitarian, sport, ecological actions<sup>1610</sup>.

<sup>1603</sup> <http://www.pks.rs/onama.aspx?id=1612>

<sup>1604</sup> <http://www.pks.rs/Dogadjaji.aspx?IDVestiDogadjaji=1516>

<sup>1605</sup> Data from the Anti-Corruption Agency, <http://www.acas.rs/plan-integriteta/?pismo=lat>

<sup>1606</sup> <http://www.fic.org.rs/cms/item/whitebook/en.html>

<sup>1607</sup> <http://www.ungc.rs/izvestavanje-o-napretku/izvestaji-2014/>

<sup>1608</sup> Interview with Aleksandra Kovacevic, Serbian Association of Employers

<sup>1609</sup> The Law on Corporate Profit Tax, Article 15

<sup>1610</sup> <http://www.inkluzija.gov.rs/vodic/Vodic10.html#tocDFO>

Therefore, the 2013 National Anti-corruption Strategy envisages that “state will create a stimulating framework for the private sector to financially support anti-corruption projects of the civil sector”. According to the Action Plan for implementation of the Strategy, the Law on Corporate Profit Tax should be amended “so that anti-corruption is stated as one of purposes/activities for which companies providing financial support to the civil society are granted with a special tax relief”. This amendment was supposed to be adopted by the Government and submitted to the Parliament by March 6th 2015. This hasn’t been done by the end of 2015. It should be noted that the Law has been amended on several occasions in 2013, 2014 and 2015 including the provision regarding tax relief, when percentage was raised from 3,5 to 5, but support to anti-corruption activities has not been included<sup>1611</sup>.

# BUSINESS

## Recommendations

1. Business should be more active in initiating measures aimed to remove systematic causes of corruption.
2. Anti-Corruption Agency and business associations should further promote and introduce integrity plans in private business;
3. Private sector should encourage the reporting of corruption within private sector instead of covering up such cases. It should also encourage whistle-blowers;
4. Government and the Parliament should amend the Law on Corporate Profit Tax in accordance with the Anti-corruption Action Plan; Businesses should consider the support for the civil society’s projects aiming at the prevention of corruption in the public sector, especially in those areas where public and private sectors interfere, such as public procurements.
5. Promote compliance mechanisms existent in local branches of multinational companies operating in Serbia, throughout the domestic business sector.
6. Step up the track record when it comes to adjudicating cases of private sector corruption.
7. Government to review legislation regulating standards in various business sectors for compliance with EU standards, feasibility and inconsistencies.

<sup>1611</sup> <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>







# STATE OWNED ENTERPRISES

## National Integrity System

**Summary:** State Owned Enterprises (SOEs) are not exempt from any general rules and regulations which apply to private sector companies. Special rules for various types of the SOE are also in place, including special Law on Public Enterprises. Mechanisms for integrity of public officials are applying to management and supervisory bodies of the SOE as well.

According to the legal framework, it is not envisaged that the Government interfere with the day-to-day operation of the SOEs. In practice, however, the management boards of the SOE in most cases operate under the direct control of political parties standing behind the board members and the knowledge and skills of board members could be brought into question. In most public enterprises at the republic level, mechanisms which are expected to reduce political influence and to lead toward the professionalization of management, including open recruitment procedures for the appointment of Directors, which are stipulated by the law, have not been conducted. Majority of the SOE's are managed by discretionally appointed "Acting Directors" or persons appointed politically, based on previous legislation.

Regulations envisage relatively high standards of transparency for companies. Practice, however, does not match these standards - documents and information envisaged by the Law are not published on the SOEs' websites. SOEs frequently violate other rules as well (public procurement, accounting). There is no central government unit which would publish information about the SOEs or about the Government's strategic policy regarding the SOEs. Practice of supervisory boards' work proves that the system of accountability, set by the legal framework, does not function fully in practice.





| STATE OWNED ENTERPRISES                |                |           |           |
|--|----------------|-----------|-----------|
| Overall Pillar Score (2015): 41 / 100* |                |           |           |
| Dimension                              | Indicator      | Law       | Practice  |
| <b>Capacity</b><br>25 / 100            | Resources      | /         | /         |
|  | Independence   | 50 (2015) | 0 (2015)  |
| <b>Governance</b><br>46 / 100          | Transparency   | 75 (2015) | 25 (2015) |
|  | Accountability | 75 (2015) | 0 (2015)  |
|  | Integrity      | 75 (2015) | 25 (2015) |
| <b>Role</b><br>NA                      | /              | /         |           |

### State owned enterprises pillar was not considered in NIS 2011

**Structure** – There are several types of the SOEs in Serbia, according to their legal status. Public enterprises (PE), whose work is regulated through the Law on Public Enterprises (2012) may be established by the state, province, city or municipality to perform activity of public interest. In most of the cases, public enterprises are utilities (garbage management, city public transportation, electricity company, water supply company etc.), but may be active in other areas as well (e.g. “Official gazette”, “Airport”, “Direction for construction”). PEs are controlled by their “founder”, i.e. by the Government of Serbia or provincial and local assembly. Those institutions appoint the Supervisory Board members (5 or 3) and Directors (upon public competition), approve annual work plans, and receive reports. There are around 730 PEs, with 130.000 employees<sup>1612</sup>.

The state also owns a large number of former “social-owned enterprises”. Some of them now have the status of a company in restructuring. Currently, under the jurisdiction of the Privatization Agency are about 670 such companies, which are in the restructuring and privatization process. They have around 90.000 employees. Current Government has announced the sale of such enterprises and the process for some is ongoing. If there is no interest, enterprises should go in bankruptcy procedure.

In addition, there are around 40 companies, with 20.000 employees, that have the status of a joint stock company or a limited liability company with the state as the owner (this includes companies such as Telekom, Serbian Railways, Steel Works). These companies are governed by the shareholder assembly and other bodies, and the law regulating their work is Company Law (aka “Law on Business Associations, 2011”)<sup>1613</sup>, i.e. the same as for private companies. Government appoints its representatives in the management bodies of such enterprises.

SOEs made a loss of around RSD 51 billion (USD 554 million) in 2013. Fiscal Council warned that “the state-owned and public enterprises threaten to sink the public finances of Serbia”<sup>1614</sup>. There is no list of all the companies in which the state has a majority or minority ownership.

<sup>1612</sup> “Analysis of State-Owned Enterprises: Fiscal aspect”, Fiscal Council, November 2014, [http://fiskalniisavet.rs/images/izvestaji/summary-state\\_owned\\_enterprises%20.pdf](http://fiskalniisavet.rs/images/izvestaji/summary-state_owned_enterprises%20.pdf)

<sup>1613</sup> This is literal translation, the correct would be also Law on Enterprises or The Company Law

<sup>1614</sup> “Analysis of State-Owned Enterprises: Fiscal aspect”, Fiscal Council, November 2014, [http://fiskalniisavet.rs/images/izvestaji/summary-state\\_owned\\_enterprises%20.pdf](http://fiskalniisavet.rs/images/izvestaji/summary-state_owned_enterprises%20.pdf)



# Assessment

## Capacity

### Independence (Law)

*To what extent does the legal and regulatory framework for the SOEs protect the independent operation of the SOEs and ensure a level-playing field between SOEs and private sector companies?*

**Score: 50/2015**

There is no clear separation between the state's ownership function and other state functions that may influence the conditions for the SOEs, particularly with regard to market regulation and policy-making. Government is the sole direct decision maker in both cases. However some policies are regulated by state regulatory bodies, such as Regulatory Agency for Electronic Communications and Postal Services.

Former Minister of Economy Sasa Radulovic<sup>1615</sup> claims that the Ministry, at the time he was in the chair, wanted to create some sort of centralised coordinating unit for the SOEs but that idea was abandoned after he resigned<sup>1616</sup>. Establishment of such body was suggested by the Fiscal Council in its July 2014 Analysis of the SOEs which showed that "characteristics of state-owned companies are: inadequate controls, poor results, mismanagement, lack of transparency and accountability in business management". Fiscal Council proposed that coordinating body for SOE's should be established by the Government or the Ministry of Economy<sup>1617</sup>. According to information from the Ministry of Economy, such body doesn't exist yet<sup>1618</sup>.

Regarding the SOEs with public service obligations, the Law on Public Enterprises defines their obligations and responsibilities. SOEs with public service obligations are established and they operate in order to "provide a permanent performance of public services and to satisfy adequately the needs of users of products and services"<sup>1619</sup>, as well as to "develop and improve the performance of activities of general interest".

According to the provisions of the Law, the Government cannot interfere with day-to-day operation of the SOE. SOEs are not exempt from any general laws and regulations which apply to private sector companies.

Government, (or other public body, such as province or municipality) appoints members of the Supervisory Board and Director of the SOE. According to the Law on Public Enterprises, the Supervisory Board consists of four members proposed by the founder, one of them being "independent member", and one representative of employees. All members are supposed to have appropriate knowledge and skills within field of operation of public enterprise, and there are some additional requests for independent member – he or she may not be related with the PE and must not be member of a political party<sup>1620</sup>. Law envisages that members of the supervisory boards are elected for a period of four years<sup>1621</sup>. They have to be experts in one or more areas of activities of

1615 Radulovic was Minister from September 2013 to January 2014

1616 Interview with former Minister of Economy Sasa Radulovic, January 2015

1617 „Analysis of State-Owned Enterprises: Fiscal aspect", the Fiscal Council, November 2014, [http://fiskalniisavet.rs/images/izvestaji/summary-state\\_owned\\_enterprises%20.pdf](http://fiskalniisavet.rs/images/izvestaji/summary-state_owned_enterprises%20.pdf)

1618 Interview with special advisor at the Ministry Milan Todorovic and assistant minister Dubravka Drauklic, February 2015

1619 Law on Public Enterprises, Article 6

1620 Law on Public Enterprises, Articles 14-16

1621 Law on Public Enterprises, Article 13

public enterprise, to have at least three years' experience in a management position and possess expertise in finance, law and corporate governance<sup>1622</sup>.

Director is appointed by the founder (Government) after public competition, conducted by Government's Commission for Appointment. Commission makes short list with three candidates and proposes it to the Government, which can choose anyone or none from the list<sup>1623</sup>. However, there are no clear criteria on the basis of which the commission would make the final selection of the candidates who meet all prescribed requirements. Therefore, selection, removal and the method of evaluation of work of directors are still hazardous processes in terms of misuse and corruption<sup>1624</sup>. Therefore, the National Anti-corruption Strategy and Action Plan envisages "amending the Law on the PE in order to clearly determine objective criteria for the appointment, dismissal and method of evaluation of work of directors at all levels of the government, and introducing mechanisms of accountability for consistent implementation of these criteria"<sup>1625</sup>.

Fiscal Council also suggested that, by the new amendments to the Law, it should be considered the possibility that the members of the Supervisory Board are appointed on the basis of a public competition. "Also, it is necessary to more precisely define the required qualifications for directors and for the members of the Supervisory Board", says Fiscal Council<sup>1626</sup>.

Supervisory Boards and Directors have independence and responsibility for running the SOEs. Supervisory Board determines the Business Strategy and Business Objectives of the PE, and takes care of their implementation, adopts a report on the degree of implementation of the program of operations, adopts the annual business program, and supervises the work of the director. Director represents a public company, organizes and manages the work process, proposes the annual business plan, and takes measures for its implementation<sup>1627</sup>. Government gives consent for business plans, and it can dismiss the supervisory board if the PE doesn't fulfil annual business plan, or Director if he is responsible for "a significant deviation from achieving the basic goals of the business of the PE, or of the business plan of the PE"<sup>1628</sup>.

State Owned Enterprises, which are not organised as the Public Enterprises, are regulated as any private owned companies – on the bases of the Company Law. These companies are governed by shareholder assembly. Government appoints its representatives in company's shareholders assembly. The assembly elects the Supervisory Board and Board of Executive Directors, while the Supervisory Board elects a Director. If company is organised as unicameral, the assembly elects a director directly<sup>1629</sup>.

SOEs, performing services of general economic interest, are excluded from some rules regarding state aid<sup>1630</sup>. According to the Regulation on Rules for State Aid Granting, "a business entity may be granted compensation for services of general economic interest", which will not be considered as state aid<sup>1631</sup>. It should be noted, however, that this applies to all business entities performing services of general economic interest, which could include private companies granted concessions for performing such services.

An important aspect of independence is pricing. Some SOE's are free to set their prices at market levels while others are somehow regulated, either directly by the government, by municipal assembly or by an independent regulator<sup>1632</sup>.

<sup>1622</sup> Law on Public Enterprises, Article 16

<sup>1623</sup> Law on Public Enterprises, Articles 26-32

<sup>1624</sup> National Anti-Corruption Strategy, September 2013, <http://www.mpravde.gov.rs/tekst/38/protiv-korupcije.php>

<sup>1625</sup> Action Plan for Implementation of the National Anti-Corruption Strategy for 2013-2018

<sup>1626</sup> Analysis Of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalniisavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalniisavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

<sup>1627</sup> Law on Public Enterprises, Article 23

<sup>1628</sup> Law on Public Enterprises, Article 38

<sup>1629</sup> Law on Business Associations, Articles 219, 228, 329, 384, 434, 441

<sup>1630</sup> Regulation on Rules for State Aid Granting, <http://www.mfin.gov.rs/pages/issue.php?id=9838>

<sup>1631</sup> Regulation on Rules for State Aid Granting, Article 97a

<sup>1632</sup> Comment by Marko Paunovic, economist.

## Independence (Practice)

*To what extent are the day-to-day operations of the SOEs performed independently of the State interference in practice?*

**Score: 0/2015**

It has been common practice to divide public enterprises between political parties after the elections as part of the spoils. Members of the Supervisory Boards and Directors are usually representatives of parties. This is referred to by the Fiscal Council as “the party management of the State Enterprises” and claimed to be “the cause of most of problems” in the SOEs<sup>1633</sup>.

This politicization has led to the fact that losses are often accompanied by an increase in the number of employees and their salaries, funding various projects that have nothing to do with the work of the company, involving political interests in decision-making, overtaking ownership of failed companies, involvement in political-related sponsorship, and harmful contracts that are likely accompanied by corruption<sup>1634</sup>.

According to the Fiscal Council, the Government has supported some of the SOE’s bad management decisions. This is illustrated by example of Srbijagas, the SOE which tried to collect debt from another SOE, thus blocking its bank accounts. Minister of Mining and Energy has reacted promptly, ordering Srbijagas to withdraw the order for payment, saying that “obligations towards the State must be paid, but they also need to make clear criteria by which to deal with debtors<sup>1635</sup>”. This is clearly example of favoring the SOE (as a debtor) over other debtors – citizens or private companies. Government has also insisted on low prices of SOE’s services in order to buy “social peace” (with consequential losses and debts of public enterprises)<sup>1636</sup>. One may also claim that Government actually forced some SOE’s to make bad decisions, rather than just “supported” them<sup>1637</sup>.

Furthermore, provisions of the Law on Public Enterprises were breached on numerous occasions by the Government, especially regarding the election of the Supervisory Boards and Directors<sup>1638</sup>. The Law came into force on December 25<sup>th</sup> 2012, and four months later, on April 5<sup>th</sup> 2013, the Government appointed the President and members of the Managing Board of the PE ‘Posta Srbije’ based on the provisions of the invalid, previous, Law on Public Enterprises. Among the appointed members of the Managing Board were four representatives of the ruling coalition parties - a political scientist (also a member of the Parliament); an economist, an agricultural engineer and a mathematician. Similar appointments occurred after the new Law entered into force in the several other SOEs (Zavod za udzbenike, March 2013, EPS March 2013, Elektromreza Srbije March 2013, Srbijagas March 2013, Transnafta March 2013, Jugimport SDPR April 2013, Srbijavode June 2013 and Srbijasume June 2013). Only difference was that members of the Supervisory Boards (instead of the Managing Boards, as stipulated by the previous Law) were elected in a procedure stipulated by the new Law.<sup>1639</sup> Most striking example of violation of the rules was the case of the PE ‘Putevi Srbije’ (PE in charge of roads maintenance and building) in which almost all members of the Supervisory Boards were party officials, two of them being political scientists by occupation, and the “independent member” being a party official and member of the Parliament<sup>1640</sup>. According

1633 Analysis of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalnissavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnissavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

1634 Analysis of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalnissavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnissavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

1635 <http://www.novosti.rs/vesti/naslovna/ekonomija/aktuelno.239.html:479469-Mihajlovic-Blokiranjem-Zelezare-Srbijagas-nece-resiti-svoje-probleme>

1636 Analysis of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalnissavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnissavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

1637 Comment by Marko Paunovic, economist.

1638 Effects of the new Law on Public Enterprises – politicization or professionalization, publication by Transparency Serbia, 2014, <http://www.transparentnost.org.rs/index.php/en/activities/tekui-projekti/effects-of-the-new-law-on-public-enterprises-politicization-or-professionalization> and Analysis of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalnissavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnissavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

1639 Effects of the new Law on Public Enterprises – politicization or professionalization, publication by Transparency Serbia, 2014, <http://www.transparentnost.org.rs/index.php/en/activities/tekui-projekti/effects-of-the-new-law-on-public-enterprises-politicization-or-professionalization>

1640 Effects of the new Law on Public Enterprises – politicization or professionalization, publication by Transparency Serbia, 2014, <http://www.transparentnost.org.rs/index.php/en/activities/tekui-projekti/effects-of-the-new-law-on-public-enterprises-politicization-or-professionalization>



to research by Transparency Serbia, there are numerous examples of members of the Supervisory Boards' (SBs) vocations not being related in any way with the SOEs' field of work: for example, a special education teacher (party official and mayor of town of Kladovo) being a member of the SB in an SOE in charge of water systems, another special education teacher being a member of a mining SOE's SB, professor of comparative legal traditions and rhetoric at the Faculty of Law being a member of the SB in Post Serbia or a philologist of modern languages, being a member of the SB in the National park SOE. In the other SOE's, that are not regulated by the Law on Public Enterprises (joint stock company or a limited liability company with the state as the owner), without strict legal provisions on expertise of the SB members, there are such examples as two journalists and engineer of forestry being members of the SB at Telecom Serbia<sup>1641</sup>. While the level of governmental control might be the same, regardless of education and competences of board members,<sup>1642</sup> this phenomenon is additional indicator of political dependence.

The only noticeable example of the SB being replaced is in Electrical Company (EPS)<sup>1643</sup>. There was no explanation for this Government's decision. Minister of Mining and Energy said that the whole SB had been replaced because its composition was truncated already. Informally, the SB was replaced because the Head of the SB did not approve strategic plans of the Director, but political party which stood behind the Director was more powerful than one which supported the Head of the SB<sup>1644</sup>.

Economic journalist and analyst Mijat Lakicevic claims<sup>1645</sup> that, regardless of legal provisions, the Supervisory Boards are "political institutions" in which party cadres are elected, and they have "no role in practice", because "all the SOEs are run by the Prime Minister". On the other hand, representatives of the Ministry of Economy claim that introducing corporate governance in the SOEs is a top priority of the Ministry<sup>1646</sup> that "the practice of appointing party cadres has been abandoned", that the current SB members "mainly" fulfil requirements stipulated by the Law, and that the Ministry "insists" that the SB members have qualifications envisaged by the Law.

According to Milan Todorovic, Special Advisor at the Ministry, the SB's are engaged in process of business planning because "the Government doesn't run the SOEs". "Managing bodies (Directors and SBs) run the SOE's, and the Government is merely interested in performance and compliance with laws", says Todorovic<sup>1647</sup>.

One representative of the State in an SOE said in the interview for this analysis that decisions regarding interest of the State are made in ministries, and individuals, representing the State in assemblies of the shareholders or other managing bodies, merely physically implement the decision. Former Minister of Economy Sasa Radulovic claims<sup>1648</sup>, however, that the Supervisory Boards do not work independently, that even ministries which are supposed to have jurisdiction over the SOEs don't have influence and that political parties are only real decision makers. "Supervisory Board members are appointed as party cadres. They are not professionally trained but they obey political orders, rather than the requirements of the Ministry of Economy. Ruling majority makes decisions through the Government's Cadre Commission. They decide on the Government representatives in shareholders assemblies, on the Supervisory Boards and the SOEs' Directors, regardless of the Law provisions. Representatives (in shareholders assemblies or members of the SB) are merely transmitters – they are told what they need to do", says Radulovic.

The situation is the same regarding the election of the Directors in the SOEs. Although the Law requires public competition to be organized for Directors of all Public Enterprises<sup>1649</sup>, setting June

1641 Research done by Nova ekonomija magazine, <http://novaekonomija.rs/sr/artikli/reforma-javnih-preduze%C4%87a-da-li-je-ovog-puta-ozbiljno>

1642 Comment by Marko Paunovic, economist.

1643 <http://www.novosti.rs/vesti/naslovna/ekonomija/aktuelno.239.html:520463-Elektroprivreda-dobila-novi-Nadzorni-odbor-strucnjaci-da-grade-bolji-EPS>

1644 [http://www.danas.rs/danasrs/ekonomija/naprednjaci\\_istiskuju\\_sps\\_iz\\_epsa.4.html?news\\_id=292851](http://www.danas.rs/danasrs/ekonomija/naprednjaci_istiskuju_sps_iz_epsa.4.html?news_id=292851)

1645 Interview, January 2015

1646 Interview with Special Advisor at the Ministry Milan Todorovic and Assistant Minister Dubravka Drauklic, February 2015

1647 Interview with Special Advisor at the Ministry Milan Todorovic, February 2015

1648 Interview, January 2015

1649 Law on Public Enterprises, Article 66

30<sup>th</sup> 2013 as deadline for publishing announcements, in six out of 35 PEs competitions has never been announced, and it was done within the deadline in four PEs, only. Until the end of 2014, only two public competitions were closed and Directors had been elected – both of them<sup>1650</sup> were Acting Directors prior to election, appointed by the Government. In those PE-s in which public competitions were not announced, Directors are party officials, one of them President of party, member of ruling coalition, the other Vice-President of another ruling party.

Web site Pistaljka (Whistle) published<sup>1651</sup> research on the PEs' transparency, quoting the answer from the Ministry of Energy that competition for one of the PEs was not announced "because the Director was appointed on the bases of the previous Law on Public Enterprises, in accordance with the coalition agreement, as representative of Socialist Party". Research by this website also revealed examples of conflict of interest – the Government appointing, as representative of the State capital, a person which was member of the Supervisory Board in the same SOE<sup>1652</sup>. There was also example of the Government ordering its representatives in shareholders assembly to elect the former Acting Director as member of the Supervisory Board<sup>1653</sup>.

# Governance

## Transparency (Law)

*To what extent are there provisions to ensure transparency in the activities of the SOEs?*

**Score: 75/2015**

Laws envisage relatively high standards of transparency for companies, both private and state owned. This, however, also includes exceptions as well. On the other hand, there are some additional requirements for public enterprises, such as producing and publishing quarterly reports on the implementation of the annual business program<sup>1654</sup>.

Law on Public Enterprises has a section dedicated to "work transparency"<sup>1655</sup>. It stipulates the obligations of the PEs in terms of business transparency. PEs are required to publish on their website the approved annual business program and quarterly reports on the implementation of the annual business program, audited annual financial statements and the auditor's opinion on those statements, the composition and contacts of the supervisory board and director, as well as other issues of importance to the public. SOEs are not required to reveal their relations to other state-owned entities, their public service obligations and any received state grants or guarantees<sup>1656</sup>.

There is, however, no centralised coordinating unit which would be in charge of developing consistent and aggregate reporting on the SOEs and publishing annually an aggregate report on the SOEs. According to the Law on Ministries, the Ministry of Economy is in charge of all the PEs, regarding their quarterly reports and annual plans, but there is no legal requirement to publish those documents on the Ministry's web site.

1650 One of them was replaced soon after, being charged for alleged corruption. Acting Director was appointed by the Government.

1651 <http://pistaljka.rs/public/banners/javna-preduzeca.pdf>

1652 <http://pistaljka.rs/home/read/468>

1653 <http://www.hip-petrohemija.com/press/vesti/vlada-srbije-imenovala-nove-ovlascene-predstavnike-skupstine-akcionara-i-predlozila-nove-clanove-nadzornog-odbora.n-291.45.html?offset=2>

1654 Law on Public Enterprises, Article 52

1655 Law on Public Enterprises, Article 62

1656 Law on Public Enterprises, Article 62

SOEs are subject to the same accounting and auditing standards as private companies<sup>1657</sup>. Law on Accounting<sup>1658</sup> stipulates that legal entities are required to produce an annual report on operations (the annual business report) which includes description of the business and organizational structure of the legal person, fair view of development, financial position and results of operations of the legal person, including financial and non-financial indicators relevant to the specific type of business activity, as well as information on personnel matters, any significant events after the end of the financial year, planned future development, research and development activities, information on the acquisition of treasury shares or shares, the objectives and policies for managing financial risks, together with the policy of protection of each significant types of planned transactions for which protection is used, exposure to price risk, credit risk, liquidity risk and cash flow strategy for management of these risks and evaluating their effectiveness. However, the micro, small and medium-sized enterprises, including the most of SOEs which fall into this category, are not required to compile an annual report on the operations. The exceptions are micro, small and medium-sized enterprises listed in the stock market<sup>1659</sup>

Apart from obligation stipulated by the Law on PE to publish financial statements on their websites, the SOE are obliged by the Law on Accounting to submit their financial statement to the Business Registries Agency. Agency publishes this data on its website, in the Register of financial statements<sup>1660</sup>.

There is no obligation for the SOE to report on their eventual anti-corruption programmes.

## Transparency (Practice)

*To what extent is there transparency in functioning of the SOEs in practice?*

**Score: 25/2015**

There is some, but not sufficient transparency in the SOEs in practice. SOEs in most cases fail to fulfill all of their obligations regarding transparency, stipulated by the Law on Public Enterprises. SOEs also occasionally fail to fulfill obligations regarding free access to information of public interest.

Research done by Transparency Serbia, showed that none out of 25 PEs included in monitoring sample fully complied requirements set by the Law on Public Enterprises. In most cases there were no business programs on the PEs' web sites, and quarterly reports or financial statements were also often missing. In one case the PE had on its website, out of all stipulated data, only the name and contact of the Acting Director<sup>1661</sup>. Available data was simply not enough to get insight on functioning of the SOEs, its SB and Director. There are no descriptive annual business reports, which would help to identify what actions, envisaged by the annual plan, were completed. Both quarterly and annual reports consist mainly of tables with numerical data.

Fiscal Council warned in its Report on the SOEs that transparency of the SOEs must be increased<sup>1662</sup>. Reporting on business plans is limited to the annual plans, and it usually lacks clear objectives and operational performance indicators<sup>1663</sup>. Business plans are adopted with a delay, sometimes even at the end of the year<sup>1664</sup>. Little or no attention is paid to the evaluation of the achieved results. In addition, some companies ignore legal obligation to publicly present the business plans and financial

<sup>1657</sup> Law on Accounting, Article 2 and The Law on Auditing.

<sup>1658</sup> Law on Accounting, Article 29

<sup>1659</sup> They still have duty to produce annual financial statement, as any other legal entity, based on the Article 25 of Law on Accounting.

<sup>1660</sup> Law on Accounting, Article 36

<sup>1661</sup> Effects of the new Law on Public Enterprises – politicization or professionalization, publication by Transparency Serbia, 2014, <http://www.transparentnost.org.rs/index.php/en/activities/tekui-projekti/effects-of-the-new-law-on-public-enterprises-politicization-or-professionalization> Chapter 8

<sup>1662</sup> Analysis of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalnissavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnissavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

<sup>1663</sup> Analysis of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalnissavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnissavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

<sup>1664</sup> Effects of the new Law on Public Enterprises – politicization or professionalization, publication by Transparency Serbia, 2014, <http://www.transparentnost.org.rs/index.php/en/activities/tekui-projekti/effects-of-the-new-law-on-public-enterprises-politicization-or-professionalization>

statements or do it with unacceptable (multi-year) lag. Fiscal Council considers that public (in future) must be informed detailed, accurate and timely of the operations of state-owned enterprises<sup>1665</sup>.

Former Minister of Economy Sasa Radulovic, says that he tried to collect data from the SOEs to make their “personal identity cards” but had problems obtaining such data as list of assets and liabilities.

There are no plans to publish all aggregated information about performance of the SOEs on the website of the Ministry of Economy. Regarding lack of descriptive annual business reports, the Ministry points out that it insisted that annual plans for 2014 include estimation of financial and operative parameters for 2014 with explanation why performance was higher or lower than planned<sup>1666</sup>.

SOEs also lack transparency in the field of free access to information of public importance. According to the Commissioner for information of public importance’s 2013 Annual Report<sup>1667</sup>, 17% of all appeals filed to Commissioner were against SOEs (574 out of 3.300 appeals) for not providing requested documents or information. Commissioner was quoted saying that “public enterprises are amongst those which hide information from public”<sup>1668</sup>.

In addition, research of the Balkan Investigative Reporters Network (BIRN)<sup>1669</sup>, on spending of the SOEs for sponsorships and donations, published in October 2014, was hampered because some of the SOEs refused to provide requested information, and thus violating the Law. Amongst those were some of the largest SOEs or the SOE-s which had the biggest financial losses in previous years – Telekom Serbia, Srbijagas, Serbian Railroads, Srbijasume. Post Serbia delivered data for 2011 and 2012, but not for 2013 and 2014. This indicates that some SOE-s deliberately violated its obligations regarding transparency in order to hide information which could be compromising for management.

## Accountability (Law)

*To what extent are there rules and regulations governing oversight of the SEOs?*

**Score: 75/2015**

There is no strict legal framework regarding external supervisory of the SOEs’ performance. SOEs submit their quarterly reports on implementation of business program to the Ministry. On the basis of those reports, the Ministry drafts and submits to the Government information on the degree of compliance of planned and implemented activities. No further procedure is defined<sup>1670</sup>.

As for internal organization and supervisory, the law define managing models of enterprises – both private and state owned, with defined jurisdiction of the Director, Executive Board and Supervisory Board. Law on Public Enterprises also defines roles of each managing body. SOE’s (and their Supervisory Boards) are accountable to founders (Government or Local Assembly).

Company Law envisages unicameral (Assembly and Director) or bicameral (Assembly, Supervisory Board, Director) management of the limited liability company<sup>1671</sup>. In case of a joint stock company, there can be the Board of Directors instead of the Director (unicameral) and the Executive Board (bicameral)<sup>1672</sup>. Supervisory Board is authorized to appoint, oversee and dismiss the Director<sup>1673</sup>

<sup>1665</sup> Analysis of State-Owned Enterprises: Fiscal Aspect., [http://www.fiskalnisanet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnisanet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

<sup>1666</sup> Interview with Special Advisor at the Ministry Milan Todorovic and Assistant Minister Dubravka Drakulic, February 2015

<sup>1667</sup> <http://www.poverenik.rs/sr/o-nama/godisnji-izvestaji/1772-izvestaj-poverenika-za-2013-godinu.html>

<sup>1668</sup> <http://www.blic.rs/Vesti/Drustvo/469758/Sabic-Drzavna-preduzeca-najvise-kriju-informacije>

<sup>1669</sup> <http://javno.rs/istrazivanja/kraje-muzare-svake-vlasti>

<sup>1670</sup> Law on Public Enterprises, Article 52

<sup>1671</sup> Law on Business Associations, Article 198

<sup>1672</sup> Law on Business Associations, Article 326, 417

<sup>1673</sup> Law on Business Associations, Articles 219, 220, 228

and to convene the session of the Assembly<sup>1674</sup>. Powers of the Supervisory Board cannot be transferred to the Directors of the company<sup>1675</sup>.

According to the Law<sup>1676</sup>, the authority of the Supervisory Board is to determine the company's business strategy, appoint and dismiss Directors and determine Directors salary, to supervise the work of the Director (Executive Directors) and approve Director's reports, perform internal supervision of the company, supervise the legality of the company's business, establish the accounting policy of the company and the risk management policy, order the auditor to audit the annual financial statements, propose the selection of auditors, control the profit distribution and other payments to company members.

Unless otherwise specified by the founding act or decision of the Assembly, the Supervisory Board gives prior approval for the acquisition and alienation of shares and the shares that the company owns in other legal entities, the acquisition, alienation and encumbrance of real property, and taking out a loan, or taking and lending, giving sureties, guarantees and security for the obligations of third parties<sup>1677</sup>.

Law on Public Enterprises envisages similar organization as the Company Law<sup>1678</sup>. Government established the criteria by which the Public Enterprises are classified into a group of companies with an unicameral or bicameral governance<sup>1679</sup>. Bicameral are those with more than 1.000 employees and annual income over EUR 10 million.

Law on Public Enterprises also envisages accountability of the Supervisory Board: the Chairman and members of the Board will be dismissed if the Supervisory Board fails to deliver annual business program to the founder, for approval, if the founder does not accept financial statements of public enterprise and if SB fails to take the necessary action before the competent authorities in case of suspicion that the director operated to the detriment of the PE. SB "may be" dismissed if the PE does not fulfill the annual business program or does not achieve key performance indicators<sup>1680</sup>.

In its 2015 agreement with IMF<sup>1681</sup>, Government pledged it will create "a strong and stable institutional framework for monitoring SOEs". However, the most of it is varying of already existing mechanisms of reporting.

## Accountability (Practice)

*To what extent is there effective supervisory of the SEOs in practice?*

**Score: 0/2015**

Supervisory Boards formally carry out most of the duties stipulated by the Law. Effect of their work is, however, questionable. Even annual plans have been adopted in most of the SOEs with large delay. This was mostly caused by the Government, rather than SOE's Board<sup>1682</sup>. Research performed by Transparency Serbia, showed that in some cases the Government gave consent for annual plans at the end of the year, and in one case annual plan for 2013 was adopted at the beginning of 2014<sup>1683</sup>. On several occasions, when irregularities in the work of the SOEs' Direc-

1674 Law on Business Associations, Article 202

1675 Law on Business Associations, Article 232, 441

1676 Law on Business Associations, Article 232, 441

1677 Law on Business Associations, Article 232

1678 Law on Public Enterprises, Article 11, Article 18

1679 Regulation on Standards and Criteria for the Classification of Public Enterprises

1680 Law on Public Enterprises, Article 17

1681 <https://www.imf.org/external/np/loi/2015/srb/061115.pdf>

1682 Comment by Marko Paunovic, economist.

1683 Effects of the new Law on Public Enterprises – politicization or professionalization, publication by Transparency Serbia, 2014, <http://www.transparentnost.org.rs/index.php/en/activities/tekui-projekti/effects-of-the-new-law-on-public-enterprises-politicization-or-professionalization>



tors were revealed, it turned out that the Supervisory Board failed to notice any problems. Such is the example of “Lasta” transport company – whose Director had been arrested. Chairman of the SB at the time (and also the Head of ruling party’s Parliamentary Group in the Parliament), when asked if the SB noticed irregularities, replied that “the task of the SB is to cooperate with everyone in the company”. Instead of an explanation he gave a political speech about “zero tolerance for corruption” declared by the Government<sup>1684</sup>. There was a similar situation in “Resavica” Mine SOE, in which the Director was arrested and charged for corruption<sup>1685</sup>. In both SOEs there was no question raised about accountability of the Supervisory Board.

Furthermore, neither the Directors nor the SBs were held accountable for numerous irregularities discovered by the State Audit Institution. According to research performed by “Nova ekonomija” magazine<sup>1686</sup>, the SAI did an audit of 53 PEs since 2010 until the beginning of 2014 (another 45 were published until the end of 2014) and found “a long list of laws which were violated - the most common non-compliance was with the Law on Accounting and Auditing and practices contrary to international accounting standards, violation of the Law on Public Procurement and the Law on Public Enterprises”. There was no single case in which the SAI could give a positive opinion, in other words, it could not confirm what was stated in the financial statements of the PEs.

Fiscal Council pointed out in its Report<sup>1687</sup> on several other SOEs in which huge debts were made over consecutive years, without any action being taken by the SB or founder (the Government): “Galenika”, which operates in the pharmaceutical industry, one of the most profitable industries, accumulated RSD 25 billion (USD 250 million) losses. Fiscal Council concludes that “more than half of the losses (problem) are consequence of mismanagement”.

In case of Telekom Serbia, the Fiscal Council stated that “state management is probably one of the most important reasons for the decline in market share. State ownership and management is a major burden for business of Telekom.”

As far as local utility companies are concerned, the Fiscal Council concluded that “due to the lack of control and pressure for better performance, utility companies use loopholes in the employment and wage determination, do not adequately take care of the property and infrastructure, tariffs are determined selectively and arbitrarily (often significantly higher for legal persons than for the citizens), they do not publish annual business programs and the like”<sup>1688</sup>.

One of the main reasons for the SBs not being able to perform their duty is the fact that in numerous of the PEs, skills of SB members are questionable. As research performed by Transparency Serbia showed<sup>1689</sup>, some SB members do not fulfill conditions prescribed by the law – to have knowledge and expertise within the scope of operation of the PE. It was not possible to determine in which way the Government determined if the SB members have appropriate skills, since the Government did not respond to FOI request and hadn’t delivered information. Local authorities presumed by education that persons with degrees from faculties within field of work of the PEs have skills needed for the SBs<sup>1690</sup>.

Representatives of the Ministry of Economy claims that current SB members in the SOEs founded by Government have skills and knowledge, but they didn’t clarify in which way those skills were tested<sup>1691</sup>.

1684 <http://www.blic.rs/Vesti/Politika/489165/Babic-Nulta-tolerancija-za-kriminal-i-korupciju>

1685 <http://www.blic.rs/Vesti/Hronika/529616/Uhapsen-direktor-Resavice-i-bivsi-predsednik-SO-Despotovac>

1686 [http://javnapreduzeca.rs/06\\_kako\\_se\\_u\\_javnim\\_preduzecima\\_zakoni\\_krse\\_bez\\_posledica.php](http://javnapreduzeca.rs/06_kako_se_u_javnim_preduzecima_zakoni_krse_bez_posledica.php)

1687 Analysis of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalnissavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnissavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

1688 Analysis of State-Owned Enterprises: Fiscal Aspect, [http://www.fiskalnissavet.rs/images/izvestaji/analiza\\_drzavnih\\_preduzeca-fiskalni\\_aspekt.pdf](http://www.fiskalnissavet.rs/images/izvestaji/analiza_drzavnih_preduzeca-fiskalni_aspekt.pdf)

1689 Effects of the new Law on Public Enterprises – politicization or professionalization, publication by Transparency Serbia, 2014, <http://www.transparentnost.org.rs/index.php/en/activities/tekui-projekti/effects-of-the-new-law-on-public-enterprises-politicization-or-professionalization>

1690 Effects of the new Law on Public Enterprises – politicization or professionalization, publication by Transparency Serbia, 2014, <http://www.transparentnost.org.rs/index.php/en/activities/tekui-projekti/effects-of-the-new-law-on-public-enterprises-politicization-or-professionalization>

1691 Interview with Special Advisor at the Ministry Milan Todorovic and Assistant Minister Dubravka Drakulic, February 2015

According to Ministry representatives, the SBs perform their duties by adopting annual business plans, approving Director's acts, "discussing operational issues". Ministry representatives pointed out that the SBs do not need to know every detail, giving as an example that business plan of Electrical Company (EPS) has more than 4.000 pages, and the SB members "need to know only the most important parts". They claim that the SBs have 8-10 sessions per year, in average<sup>1692</sup>. This indicates that the SBs can hardly perform their supervisory function, having less than one session per month, and being considered that they only need to study summary of complex documents regarding operation of the SOE.

As far as for protection of minority shareholders in SOEs, experts agree that "minority shareholders are not asked for anything" and that their rights are not respected<sup>1693</sup>. "Nova ekonomija" magazine gave an example of unequal treatment in case Airport Belgrade, SOE in which minority shareholders control 17 percent of the shares. "Not only they do not exist when making important decisions such as the assumption of debts, but they are not equal when the dividend is paid. Dividends is paid to the State on September 25<sup>th</sup> 2014, and the small shareholders will wait by the end of 2015 'because of the high cost of processing and delivery of certificates of paid withholding tax'".

## Integrity (Law)

*To what extent are there mechanisms that should ensure the integrity of the SOEs?*

**Score: 75/2015**

There are numerous mechanisms which are supposed to ensure integrity of members of the Managing Bodies at the SOEs. Rules on conflict of interest are stipulated by the Company Law and the Law on the Anti-corruption Agency. Those rules (the ACA Law) apply to all public officials, and that includes representatives of state in shareholders assemblies, members of the Supervisory Boards, Executive Boards and Directors<sup>1694</sup>.

Law forbids the SB members and Directors to use company's assets for their own purposes, or use the information they have obtained in based on the functions they are performing, which is not otherwise publicly available, to abuse their position in company<sup>1695</sup>. They are obliged to inform the Board of Directors or the Supervisory Board of the existence of personal interests in the transaction which the company concludes all in the legal actions undertaken by the company<sup>1696</sup>.

Company Law envisages fine or imprisonment up to one year for violation of the duty to avoid conflict of interest<sup>1697</sup>, or up to five years if company suffered damage which exceeds RSD 10 million (USD 100.000). Law on the Anti-corruption Agency envisages the conflict of interest rules which include public official's duty to report such conflicts and to excuse him/herself from the decision making process<sup>1698</sup>. Conflict of interest is defined as a "situation where an official has a private interest which affects, may affect or may be perceived to affect actions of an official in discharge of office or official duty in a manner which compromises the public interest". Officials are also required to disclose their assets. Part of their assets report is public. Law also regulates matters of gifts and hospitality<sup>1699</sup>. Officials are obliged to transfer managing rights in companies they own within a 30 days' deadline after taking office, and to disclose ownership of more than 20 per cent in any

1692 Interview with Special Advisor at the Ministry Milan Todorovic and Assistant Minister Dubravka Drauklic, February 2015

1693 Interviews with former Minister Sasa Radulovic, Economic Journalist and Analyst Mijat Lakicevic and Stockbroker Expert Nenad Gujanicic, January- February 2015.

1694 Law on the Anti-Corruption Agency, Article 2, also explanation from the Anti-Corruption Agency representative, interview, February 2015

1695 Law on Business Associations, Article 69

1696 Company Law, Article 65

1697 Article 583

1698 Law on the Anti-Corruption Agency, Articles 27-42

1699 Law on the Anti-Corruption Agency, Articles 27, 28, 32, 39-46



legal entity. Two years after the termination of office, former officials must not take employment or establish business cooperation with a legal entity, entrepreneur or international organization engaged in activities relating to the office they held, unless approved by the Agency<sup>1700</sup>.

Bribery, as well as trading in influence is treated by the Criminal Code. Code envisages imprisonment up to 10 years for trading in influence<sup>1701</sup>, up to 15 years for accepting bribe<sup>1702</sup>, and up to five years for giving bribe<sup>1703</sup>. In the Criminal Code there is also a criminal act – “Abuse in connection with public procurement”, with envisaged imprisonment up to 10 years<sup>1704</sup>.

SOEs have a “double” role in public procurements. They have to implement public procurement rules, as any other public body. However, those competing on the market may effectively skip public procurement rules, when procuring for “further sale”. On the other hand, the SOE’s may compete on public procurements with private companies, as bidders. In rare situations, the PEs may be exclusive providers of some goods and services.<sup>1705</sup>

SOEs are forbidden to donate political parties, neither in money nor in services<sup>1706</sup>. Law on Financing Political Activities forbids financing of political entities, amongst other forbidden funding sources, from public institutions, public enterprises, companies and entrepreneurs who perform services of general interest; institutions and enterprises with state capital; other organizations exercising public authority.<sup>1707</sup>

## Integrity (Practice)

*To what extent is the integrity of the SOEs ensured in practice?*

**Score: 25/2015**

Integrity of the SOEs is not ensured in practice. As the SOEs are controlled by political parties, there are suspicious that they are used for drawing out money for financing of political parties and the Managing Bodies often merely transmit political will without having the possibility to make decision on business level by themselves<sup>1708</sup>.

Member of the Board of the Anti-Corruption Agency, Bozo Draskovic, claims that a major problem concerning the SOEs is pulling money out of the SOEs for the benefit of individuals or even political parties that control them. “Most often this is done in the following way: Firstly, the management of the SOE is appointed and the an executive function is in the hands of the directors who have already received a signal from the past that it does not matter how successful they are in the development of enterprises, but how successful the connections of their structures are with the political power which placed them there<sup>1709</sup>”.

There is no Corporative Code for the SOEs. Ministry of Economy claims that their top priority is introduction and improvement of the corporative governance in the SOEs<sup>1710</sup>. There are no internal acts in the SOEs regarding corruption. However, all public bodies, including the SOEs, were obliged

1700 Law on the Anti-Corruption Agency, Articles 28, 33-36, 38

1701 Criminal Code, Article 366

1702 Criminal Code, Article 367

1703 Criminal Code, Article 368

1704 Criminal Code, Article 234a

1705 Law on Public Procurement, Article 7 and others.

1706 Law on Financing Political Activities

1707 Law on Financing Political Activities, Article 12

1708 Based on interviews with Economic Analyst Mijat Lakicevic, former Minister of Economy Sasa Radulovic, interview with the Anti-Corruption Agency Board member Bozo Draskovic

1709 <http://novaekonomija.rs/sr/artikli/ko-i-kako-upravlja-javnim-preduze%C4%87ima>

1710 Interview with Special Advisor at the Ministry Milan Todorovic and Assistant Minister Dubravka Drakulic, February 2015

to draft integrity plans – to recognize risks for corruption and make plans for reduction of those risks. Around 30% of all public bodies did this within timeframe envisaged by the Anti-corruption Agency's instructions<sup>1711</sup>.

Anti-Corruption Agency keeps a registry of public officials, including state representatives in the SOEs managing bodies, and files charges for violation of the law – not reporting assets or deliberate hiding information about assets. According to data published on website of the Agency, from January 2013 till October 2014, there were 67 procedures against the Directors or the Supervisory Board members. Most of them (63) were for failing or being late to report assets at the beginning of the term or after leaving office<sup>1712</sup>. There were, however, four criminal charges for “failing to report property to the Agency or giving false information about the property, with an intention of concealing facts about property”<sup>1713</sup>. These processes are still ongoing.

According to economic analyst Mijat Lakicevic, the SOEs are treated by the State more favorably than private companies. “Only in case there is political interest to do a favor to private company, it can have equal treatment as the SOE”, says Lakicevic<sup>1714</sup>.

On the other hand, the Ministry, claims that the SOEs are not treated favorably when doing business with the State and that it was in fact the opposite – private companies were favorite in numerous occasions. Ministry representatives also say that it is impossible for the SOEs to “do favors” for political parties because all expenses, including sponsorships and donations are visible, and “under the watchful eye of public and the Ministries”<sup>1715</sup>.

# STATE OWNED ENTERPRISES

## Recommendations

1. Government and the Parliament should amend the Law on Public Enterprises in order to abolish discretionary decision of the Government, Autonomous Province, City or Municipality Assembly (founders of the PE) in selection of the Director of PE (current provision leaves the possibility to elect any one of the three best candidates without explanation, the ability not to elect any candidate and to perform elections within an unlimited period of time after the end of competition).
2. Government and the Parliament should amend the Law on Public Enterprises in order to improve procedure of the SB members' appointment, in order to ensure transparency and verification of skills and knowledge envisaged by the Law.
3. Government should decide to conduct the procedure of election of presidents and members of the Supervisory Boards in all companies where this has not been done and to review compositions of the previously elected Supervisory Boards from the standpoint of meeting the legal requirements.
4. Government should insist on an active relationship and responsibilities of the Supervisory Board, through the transparency of information and periodic inspection of the work of the PE

1711 Data from the ACA: <http://www.acas.rs/plan-integriteta/?pismo=lat>

1712 [http://www.acas.rs/images/stories/SOP/WEB\\_ODELJENJE\\_ZA\\_REGISTRE\\_1\\_10\\_2014.pdf](http://www.acas.rs/images/stories/SOP/WEB_ODELJENJE_ZA_REGISTRE_1_10_2014.pdf)[http://www.acas.rs/images/stories/SOP/web\\_ODELJENJE\\_ZA\\_KONTROLU\\_FUNKCIONERA\\_1\\_10\\_2014.pdf](http://www.acas.rs/images/stories/SOP/web_ODELJENJE_ZA_KONTROLU_FUNKCIONERA_1_10_2014.pdf)

1713 Law on the Anti-Corruption Agency, Article 72

1714 Interview, February 2015

1715 Interview with Special Advisor at the Ministry Milan Todorovic and Assistant Minister Dubravka Drauklic, February 2015

and the Directors. Government/Assemblies should implement accountability mechanisms against the SB members that failed to perform their function.

5. Government should introduce criteria for the appointment of members of the Committee for the election of the Directors of the PE and to standardize criteria for the election of the PE Directors nationwide.
6. Government and the Parliament should amend the Law on Public Enterprises to ensure the participation of all employees in the selection process of employees' representative in the Supervisory Board, and to disable the influence of those whose work is directly supervised by the SB.
7. To the extent possible, the Government should specify the criteria for determination whether a Director acted contrary to due diligence, whether he/she was incompetent or negligent in performing his/her duty, and whether there was a (significant) deviation from reaching the main goal of a public enterprise operation. Government should monitor the implementation of these criteria in determination of the liability of Directors and publish results of monitoring.
8. Government and the Parliament should amend the Law on Free Access to Information of Public Importance, so that all public companies are required to prepare and publish the Information Booklet and to be held accountable if they omit or fail to update the required information. Legislation should be changed in order to oblige SOE's to publish the list of major suppliers (contractors) as well as the most important creditors and debtors.
9. Government and the Parliament should amend the rules of work transparency in the Law on Public Enterprises and the Government should amend special by-law to ensure the availability and comparability of all necessary information regarding the work and results of public companies (e.g. mandatory contents of the website; not to remove the information from the previous period)
10. Government should specify the obligations of the competent authorities in the chain of control of work program and work reports, including the role of the line ministries, special government bodies, and the authorities from the other levels of government.
11. The Government should establish the obligation of reviewing quarterly work reports of the PEs within the specified period and mandatory parts of such review (the extent to which the program was completed or the need for any additional measures) as well as the obligation to publish these findings.
12. Government should consider possibility of establishing central coordinating unit responsible for making strategic decisions regarding the SOEs and for exercising the State's ownership function in the SOEs- That body should also be in charge of consistent and aggregate reporting on the SOEs.
13. Government should establish the obligation of making narrative reports on the work of public enterprises, which would include all relevant information on the implementation of the annual work program and the purposes for which the PE was founded, including the comparisons with the situations from previous years, so that both the founder and citizens could have a reasoned idea on the work of the PE.
14. Government should prohibit the use of the PE funds for sponsorships.
15. Government should change public policy regarding the operating conditions of the public enterprises, so that the PE are fully committed to achieving the purposes for which they were established instead of implementing social politics, as a precondition for public companies to be managed by professionals and not by persons who are attempting to gain popularity among voters for themselves or their party.
16. Founders of the PEs should take actions to verify the fulfilment of the obligations of the PEs to publish information required by the Law, including the initiation of proceedings against the responsible Directors.



# VIII CONCLUSION

## TEMPLE

| Pillars  | Score |            | Score |
|--|-------|------------|-------|
| Commissioner for Information of Public Importance and Personal Data Protection | 79    | Capacity   | 69    |
|  |       | Governance | 79    |
|  |       | Role       | 100   |
| Ombudsman  | 77    | Capacity   | 67    |
|  |       | Governance | 83    |
|  |       | Role       | 75    |
| Supreme Audit Institution  | 73    | Capacity   | 58    |
|  |       | Governance | 88    |
|  |       | Role       | 58    |
| Anti-Corruption Agency   | 67    | Capacity   | 75    |
|  |       | Governance | 63    |
|  |       | Role       | 67    |
| Judiciary  | 67    | Capacity   | 56    |
|  |       | Governance | 83    |
|  |       | Role       | 38    |
| Political Parties  | 65    | Capacity   | 69    |
|  |       | Governance | 75    |
|  |       | Role       | 25    |
| Civil Society  | 55    | Capacity   | 75    |
|  |       | Governance | 38    |
|  |       | Role       | 50    |
| Executive  | 54    | Capacity   | 58    |
|  |       | Governance | 50    |
|  |       | Role       | 38    |
| Prosecution  | 52    | Capacity   | 44    |
|  |       | Governance | 58    |
|  |       | Role       | 50    |
| Police   | 52    | Capacity   | 50    |
|  |       | Governance | 54    |
|  |       | Role       | 50    |
| Business   | 50    | Capacity   | 56    |
|  |       | Governance | 58    |
|  |       | Role       | 13    |
| Legislature  | 50    | Capacity   | 56    |
|  |       | Governance | 46    |
|  |       | Role       | 50    |
| Media  | 50    | Capacity   | 56    |
|  |       | Governance | 58    |
|  |       | Role       | 25    |

|                           |    |            |    |
|---------------------------|----|------------|----|
| Public Sector             | 49 | Capacity   | 50 |
|                           |    | Governance | 54 |
|                           |    | Role       | 44 |
| Electoral Management Body | 43 | Capacity   | 42 |
|                           |    | Governance | 46 |
|                           |    | Role       | 38 |
| State Owned Enterprises   | 41 | Capacity   | 26 |
|                           |    | Governance | 46 |
|                           |    | Role       | NA |

The preceding chapters and temple graph demonstrate the strengths and weaknesses within each NIS pillar and also highlight imbalances in Serbia's overall National Integrity System.

Serbia's National Integrity System overall is moderate (average score is 58) with a notable imbalance between the independent and non-partisan institutions on one side and Public Sector, State Owned Enterprises and Electoral Management Body on the other side.

**The Legislature** doesn't use its independence in practice and it doesn't use oversight mechanisms. Instead it mainly follows Government's policy. Reports of independent bodies are discussed but there is no monitoring of the implementation of their recommendations.

**The Executive** is much more independent then before - it has real political power and it is a genuine decision maker. The Government has declared its commitment to reforming the public sector, but the public sector is still highly politicized. The Government's publically declared commitment for fighting corruption is undisputable, but the results are limited.

**The Judiciary's** independence is jeopardized by interference from the Government and representatives of political parties in the work of judiciary. Most of the mechanisms for ensuring integrity of members of the judiciary are in place. Court procedures in some of the largest corruption cases are very long.

**The public sector** is still politicized. Access to the public sector activities is not fully ensured. New regulations on the protection of "whistleblowers" has not brought significant changes. The 2014 public administration reform, driven by budget concerns and announcements of new policies has not resulted in major changes. Institutional oversight of state owned companies is ineffective and non-transparent. Public procurement rules are not always enforced and competition level is still low.

**The police's** independence is endangered by politicization of investigations, *ad hoc* task forces for investigation of abuse cases prioritized by politicians, and political parties' interference in recruitment and promotions. Integrity of the police is severely compromised by scandals leaked to the media, without any official reaction or information on outcomes.

**The prosecution** still faces self-censorship and political influence. Legal powers for efficient prosecution of corruption exist and the number of corruption related investigations has increased. However, this is still not in line with the actual level of corruption, due to limited use of pro-active measures and lack of incentives for reporting corruption.

**The Electoral Management Body** is not an independent and professional body, as it consists of party representatives. Despite that fact and due to inter-party control, this body ensures the maintenance of fair elections.

**The Ombudsman** acts independently from the executive authority, but there are attempts to draw him into political debates or to politicize his reports. The Ombudsman's work is transparent and its results are visible.

**The State Audit Institution's** capacities and resources have improved, but the capacities are still far from satisfying. SAI seems to act independently. Overall, the transparency of SAI work has risen, but the criteria according to which are selected subjects of audit are not transparent. SAI regularly files criminal and misdemeanor charges for violations discovered during the audit.

**The Anti-Corruption Agency** does not have adequate resources and it is facing obstruction in attempt to obtain changes of the law which would give it more competences and investigation power. Prevention is one of the main Agency's jurisdictions and it is fully engaged in this field.

**Political parties'** financial transparency has improved. Most parties follow a leader-centric political style, with decisions being made by the party's president and his/her closest associates. The fight against corruption is one of the top issues in political campaigns, but there is no genuine commitment to curb corruption.

**The Media** is still strongly influenced by political and economic power centers or advertisers who are, on the other hand, linked with political power centers. Reporting on corruption is mainly based on government and police press issues and "leaked" information from on-going investigations.

**Civil Society Organizations** are numerous, but still only a few organizations have adequate capacities and are seriously and systematically engaged in the areas of policy reform and corruption. The system of CSO funding from public resources has improved. However rules on funding are not always respected and there is no comprehensive and verified information available about the level of budget support to CSOs.

**Business** faces huge discrepancy between laws and practice. Legal unpredictability and uneven implementation of laws, as well as unpredictable policy of charging various taxes and levies are forms of unwarranted interference of the state in the business sector. The business sector is not active enough in engaging the government on anti-corruption and it provide practically no support to anti-corruption efforts of CSOs.

**The Commissioner for Information of Public Importance and Personal Data Protection** is recognized as being active in the anti-corruption field, in particular through raising awareness regarding role of free access to information and pro-active transparency in the prevention of corruption. There have been no attempts to interfere with the activities of the Commissioner, apart from occasional verbal attacks against the head of the institution.

**State Owned Enterprises** are under control of political parties. SOEs frequently violate rules regarding transparency of their work, as well as provisions of other laws - on public procurement, accounting. The quality of supervisory boards' work proves that the system of accountability, set by laws, does not function fully in practice.



# Recommendations

Recommendations for each pillar of the NIS are listed below. The most important recommendations for the NIS, in general, are:

- *increasing transparency, primarily in the work of the Executive with regards to the contracting, cost-benefit analysis, oversight, lobbying and appointment decisions of state owned enterprises;*
- *depoliticizing the management in the public sector and in particular in state owned companies;*
- *further strengthening the independence and accountability of the judiciary and creating conditions for free and unselective operation of law enforcement authorities;*
- *introduction of measures aimed at increasing the number of reported cases of corruption, such as in-depth research, proactive investigations, credible protection of whistle blowers and promotion of real-life cases investigated on the basis of their reports;*
- *providing sufficient resources and legal powers to independent bodies involved in the anticorruption struggle and wider use of independent bodies' reports for parliamentary oversight of government, in particular the Anti-corruption Agency's report on implementation of key strategic documents;*
- *introducing the practice to preparing and considering anti-corruption risks in laws and regulations and assessing the impact of anti-corruption laws and strategies;*
- *fully implementing media laws, and creating conditions for media to operate without pressure and influence by political and economic centers of power.*

## 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; when ratifying inter-state agreements, this consideration should also cover risks coming from possibility to circumvent implementation of transparency and competition provisions of existing legislation.
2. The Parliament should involve to greater extent independent state bodies and civil society in regards to corruption risks and anti-corruption effects of legislation, by seeking and discussing their opinions and comments on special public hearings or committee sessions;
3. The Parliament should 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;
4. The Parliament should further improve its transparency by publishing amendments, Government's opinions on amendments, CV's of candidates to be elected by the Parliament, documents adopted on committee sessions, documents being considered and adopted by committees and budget execution documents that are currently available to MPs only;

5. The Parliament should amend 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;
6. The Parliament should 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) the way it was done in the area of ecology and Committee for Environmental Protection;
7. The Government and the Parliament should regulate lobbying (influence or attempt to influence decision-making) in connection with the adoption of laws and other decisions by the Parliament;
8. The Parliament should regulate more precisely the issue of parliamentarians' conflict of interest by the Law on the Parliament and the Rules on Procedure, and not merely through envisaged Code of Conduct;
9. The Parliament should improve the practice of monitoring of implementation of parliamentary conclusions upon reports of the independent state institutions. 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);
10. The Parliament should consider thoroughly Government's annual report and annual financial statement, in order to identify to which extent the plans were fulfilled, including achievement of non-financial indicators; To call for responsibility of ministers that fail to submit quarterly reports to the committees.
11. The Parliament should organize inquiry committees on systemic corruption related problems more frequently and to act upon conclusions of such committees.

## EXECUTIVE

1. The Government should fulfill its obligation from the Anti-corruption Strategy and Action Plan
2. The Government should fulfill obligations from the Parliament's conclusions regarding independent bodies' annual reports and to report on this issue.
3. The Government should draft, after a public hearing and approval based on wider political consensus, new Law on Ministries, which would 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;
4. The Government should align and make fully comparable its four –year program with annual work programs and reports on their execution;
5. The Government should enable the public to influence the budget process and provide explanation on the influence of the planned budget expenditures to the fulfillment of legal obligations of state bodies and implementation of defined priorities;
6. The Government and the Parliament should 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;
7. The Government should prescribe standards on conflicts of interest that would apply to special

advisers in the Government and ministries;

8. The Government and the Parliament should regulate lobbying (an attempt to influence decision making or drafting of regulations) in order to reduce inappropriate non-institutional influences on the work of the Government;
  - a. The Government should introduce an obligation to publish all its decisions, except when it is necessary to protect predominant public interest;
9. The Government should allow the media to attend its sessions and publish transcripts of sessions, except in the area when discussing issues that need to remain confidential; The Government should publish a notice of the agenda of the sessions;
10. The Government should publish data on the candidates it proposes, also data about elected, appointed and dismissed persons, along with the reasons for such decisions;
11. The Government should publish more data on budget execution and financial commitments of the state;
12. The Government should define more precisely public debates –introduce obligation to publish all received recommendations and suggestions and explanation for the possible rejection of proposals as well as public debate on legislative concept papers;
13. The Government should introduce 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 requests or 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, the Government should establish and publish 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. The Government should regulate more clearly its acting based on Government's Anti-Corruption Council's reports and recommendations, including publication of findings and conclusions related to the previously published Council's reports;
16. The Government should regulate more clearly its anti-corruption coordination mechanism, in order to make it more efficient and to exclude possible interpretations that Executive coordinates work of other government branches and independent state bodies.

## JUDICIARY

1. The parliament should improve independence and accountability of High Judicial Council, through constitutional changes
2. The parliament should amend legislation in order to remove influence of political institutions in the process of judges' and court presidents' election and removal
3. HJC should apply the rules on the independence of the judicial budget
4. HJC should 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
5. Courts should reduce the risks of corruption and to pay damages for failing to take a decision

within a reasonable time frame

6. HJC should implement procedures for appraisal of judges and conduct procedures for establishing the accountability of judges' for omissions in the work, indicating ignorance of the law or unprofessional conduct
7. Courts should ensure 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, to the extent those information can be given to third party;
8. Minister should amend 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;
9. The HJC and courts should 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. Courts should publish statistics on the number of legally adjudicated cases related to the corruption, and excerpts from the verdict
11. The police, prosecution and courts should jointly prepare and regularly publish statistical overviews containing the number of police charges filed to prosecutors (number of persons charged and number of criminal acts), prosecutorial report (number of initiated and finished criminal proceedings, number of defendants and number of criminal acts) and court reports (review of the number and types of verdicts) for acts of corruption.
12. Ministry and the government should ensure a right to compensation for victims of corruption, in accordance with the Council of Europe Civil Law Convention, ratified by Serbia
13. The HJC and courts should conduct a specialization in the courts for cases of violation of anti-corruption legislation
14. Judicial Academy should improve the quality of continuous training of judges.

## PROSECUTION

1. The Parliament should improve conditions for independent and efficient work of prosecutors, through envisaged constitutional changes and providing of necessary human and other resources, including the necessary work space and adequate working conditions;
2. The SPC should improve accountability of prosecutors through effective system of complaint resolution and evaluation of work;
3. The SPC and all prosecutors should increase the number of prosecutors 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;
4. Judicial Academy should provide intensive training in order to improve knowledge and skills of prosecutors
5. All prosecutors should provide access to information about work of public prosecutors in accordance with the Law on Free Access to Information, and to provide for certain information without request on the prosecution's web-sites;

6. All prosecution authorities should post on their web-sites and in their premises 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;
7. The police, prosecution and courts should jointly prepare and regularly publish statistical overviews containing the number of police charges filed to prosecutors (number of persons charged and number of criminal acts), prosecutorial report (number of initiated and finished criminal proceedings, number of defendants and number of criminal acts) and court reports (review of the number and types of verdicts) for acts of corruption.
8. Prosecutions should organize a targeted examination of possible corruption by the internal controls in connection with transactions that are most at risk of corruption;
9. RPP's Anti-Corruption Department should ensure the publication of decisions of public prosecutors on waiver of prosecution;
10. The Ministry of Justice, the Government and the Parliament should fulfil the measure envisaged in Anti-corruption Strategy - introduction of the "illicit enrichment" criminal offence into the legal system;
11. The Ministry of Justice, the Government and the Parliament should consider legal changes, regarding 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.).

## PUBLIC SECTOR

1. To define in the Constitution that no public body could be established before knowing clearly what type of institution it belongs to.
2. Ministry of State Administration should 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
3. Ministry of State Administration should 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
4. Anti-Corruption Agency should conduct a survey on corruption and privilege in employment in the public administration and public services (e.g. testing 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 propose further measures
5. The government should expand, through legislative changes, the range of norms on conflict of interest for civil servants in areas currently not covered by the law (assets declarations, future employment, rotation of civil servants) and to organize periodic review of the application of these standards in every body of the state administration (institution in charge to be determined by the same legislative changes)
6. The Parliament should regulate the duty of each state administration body to set up a web site, to publish a certain amount of 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
7. Ministry of Justice and Anti-Corruption Agency should monitor implementation and evaluate real effects (conduct impact assessment) of the Law on Whistleblowers Protection, and its ef-

fects on corruption reporting; based on that it should propose legislative changes and consider introducing of stimulative measures for the reporting of such irregularities by vigilant citizens and organizations that monitor the work of state bodies

8. The Government should finalize the process of appointment of “civil servants on positions” through a public recruitment process
9. The Government should introduce a public recruitment procedure for the appointment of all civil servants that are currently not covered (temporary employment)

## PUBLIC PROCUREMENT

1. The Government should not to enter into loan or cooperation agreements where the Public Procurement Law is “by-passed”
2. The Government should increase capacities of the Public Procurement Office and Commission for Protection of Rights in Public Procurement Procedures to fulfill their legal obligations
3. The Government should introducing supervision of contractual obligations
4. The Government should create a methodology for determining justification and appropriateness in public procurements, as mentioned in Strategy for Public Administration Reform
5. The Government should introduce e-procurements as an effective mechanism for curbing corruption through legislative changes and development of technical capacities
6. The Government should limit additional conditions in relation to scope or procurement object, through amendments of regulation, through recommendations of PPO or through models of tender documentation

## POLICE

1. The government and the Ministry should establish anti-corruption unit envisaged by Anti-corruption Strategy and clarify the position of SBPOK and its relation with the new unit;
2. Police should conduct proactive investigations on the basis of identified patterns of corrupt behavior and discovered cases of corruption;
3. Police and ISC should establish mechanism for reporting and checking declaration of assets and income for members of police;
4. Police and ISC should introduce and clearly define procedure of integrity test for police officers exposed to the high corruption risks;
5. Police should prevent leakage of information and react (investigate, issue denial or confirmation) in cases when integrity of police is questioned in media;
6. Minister should prescribe act which would regulate tasks and activities incompatible with the job of a police officer;
7. Police should post a clear explanation on their web-sites and in their premises, for persons who want to report corruption – what one needs to do, what to expect in further proceedings, when they can receive further notice of the proceedings;
8. The police, prosecution and courts should jointly prepare and regularly publish statistical overviews containing the number of police charges filed to prosecutors (number of persons charged and number of criminal acts), prosecutorial report (number of initiated and finished



criminal proceedings, number of defendants and number of criminal acts) and court reports (review of the number and types of verdicts) for acts of corruption.

9. The government should consider legislative and other measures that would best serve the increasing number of reported crimes of corruption;

## **ELECTORAL MANAGEMENT BODY**

1. The government should propose and the parliament should adopt the law which would establish professional, independent State Election Commission

In the meantime:

2. The parliament should provide a separate budget line for financing REC, for greater transparency of its spending and efficient control;
3. REC should submit work reports and the Parliament should review these reports.
4. REC should update information on its web-page, including Information Directory
5. REC should introduce the practice to make available material and agenda to the REC members and attending journalists before the session

## **OMBUDSMAN**

1. The Government should provide permanent and adequate premises for the work of the Ombudsman
2. After the premises are provided, The Ombudsman should envisage and parliamentary committee should approve the increase of the number of employees.
3. The Parliament should provide mechanism for monitoring implementation of the Ombudsman's recommendations as well as parliamentary committees' recommendations regarding Ombudsman's annual report. The Parliament should provide sanctions for not reporting on implementation and not implementing recommendations.
4. The Parliament should enlist the "right to good management" as a basic civil right in the Constitution of Serbia.

## **SUPREME AUDIT INSTITUTION**

1. The Government should resolve the problem of premises for the work of the State Audit Institution permanently;
2. The SAI should increase the number of auditors, so all suspicions reported to the SAI could be checked;
3. The Parliament should amend The SAI Law in order to include in mandatory audit program of the SAI financing of political parties. The Parliament should amend the Law on Financing Political Activities to determine the scope of audit so that it doesn't overlap with the control performed by the Anti-Corruption Agency;



4. The SAI should focus on strengthening its Department for Performance Audit in order to increase the scope and volume of work of this Department
5. The Government and the Parliament should adopt legal framework for strengthening internal audits and budget inspections, so that SAI could focus on matters of appropriateness of public expenditures; The Ministry of Finance and the Government should strengthen the capacity of budget inspection
6. The SAI should introduce the practice to submit misdemeanor charges even before it submits report on audit;
7. The SAI should include public procurement planning procedures in the audit program;
8. The SAI should make more transparent (through outreach program) a channel for citizens to report irregularities. Criterion on which SAI makes its auditing plan should be made public after the audit was completed. This should include explanations on whether information received from citizens or institutions (PPO, ACAS) were checked.

## ANTI-CORRUPTION AGENCY

1. Government should amend its Rules of procedure and other relevant acts in order to oblige proponents of regulation to ask for opinion of the Agency regarding norms that might influence corruption or fight against corruption and to elaborate such risks themselves in explanatory note;
2. Parliamentary committees should take into account Agency's analyses of draft legislation and invite Agency to participate in amendments drafting
3. Through legislative changes to increase the powers of Agency in field of control (assets declarations, party financing), as envisaged by Anti-corruption Strategy's Action Plan and Model Law proposed by Agency.
4. Through legislative changes to decrease level of Agency's administrative work and communication with public officials (e.g. formal approvals) and to enable focusing of resolution of actual conflict of interest and control of assets declarations
5. Agency should publish on its website a greater number of opinions given to officials regarding performing of other functions or jobs and other matters, without revealing personal data;
6. Agency should make all its registers more user friendly (e.g. possibility to sort data from assets declarations) and to make it clear to what extent declarations are accurate. Also, to link all public registers or parts of registers managed by the Agency for easier search of data;;
7. Through legislative changes, Parliament should increase the amount of information (assets of public officials' firms such as shares in another company and real estates; information about income from allowed private resources) from assets declarations that would be published;
8. Through legislative changes, Parliament should set in the Law minimum number of controls and minimum content of control of assets declarations that Agency has to perform and to provide sufficient powers and resources for such controls (e.g. every official to be checked within the 4 years' period)
9. Through legislative changes, Parliament should further limit number of politically based proponents of Board of the Agency and regulate more clearly decision making process in the Board;
10. Agency should strengthen its integrity and accountability mechanisms, including development and promotion of whistle-blowing procedures.
11. Parliament should discuss in timely manner Agency's reports and call for responsibility elected officials when problems identified in previous years' reports of the Agency are still unresolved.

## POLITICAL PARTIES

1. The Government should propose and the Parliament adopt amendments to the Law on Financing Political Activities as envisaged by the Anti-corruption Strategy and Action Plan - to clearly set out and divide responsibilities of the Agency, SAI and other authorities in the process of control of political activities and political entities, and to precisely determine obligations and mechanisms for transparent financing of political entities;
2. The Government should propose and the Parliament adopt amendments to the Law on SAI in order to regulate obligation of State Audit Institution regarding audit of political parties - so that the audit program necessarily includes audit of the parliamentary political parties at the national level.
3. The Government should propose and the Parliament should adopt amendments to the laws which would regulate the misuse of office by public officials to promote their parties in election campaigns.
4. Political parties should focus more on curbing corruption through specific systematic measures in their pre-election manifestos.
5. Political parties should refrain from influencing the public sector through electing party representatives in state owned enterprises and other parts of the public sector.
6. Political parties should introduce internal financial control.
7. Political parties (and Anti-Corruption Agency) should initiate debate in order to determine the real needs for public funding of political parties activities and to set the percentage in the law on the basis of these needs. 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 including the drafting of laws and amendments
8. Political parties (and Anti-Corruption Agency) should consider measures for improvement of integrity of political parties and political life (e.g. integrity plans, ethical committee of the parliament)

## MEDIA

1. Amending the Law on Public Information and Media in order to require media outlets to make public details on major financiers and advertisers;
2. Monitoring and sanctioning the breach of the Journalists' code of conduct's regulations on conflict of interest and preventing corruption;
3. Adopting individual media's codes on gifts, hospitality and conflict of interest;
4. Supporting investigative journalism, both within the media themselves and by donors/budget support, through media projects;
5. Training journalists in reporting on corruption, investigative journalism and about the tools, norms and institutions in charge of curbing corruption through preventive measures.

## CIVIL SOCIETY

1. CSOs should enhance transparency by publishing transparent annual financial reports and reports on projects supported by state bodies;
2. CSOs should establishing or strengthen their own internal control mechanisms (through boards or assemblies), and CSO sector should establish such mechanism in order to enhance CSO's integrity;
3. Ministry of finance should separate, in budget classification, funds for CSOs from the funds allocated for political parties, religion organizations and sport organizations;
4. Government and parliament should amend tax regulations, as envisaged by the Anti-corruption Strategy and Action Plan, in order to enable greater resources for CSOs for policy making advocacy and oversight of public authorities and to stimulate corporative philanthropy for CSOs dealing with these issues

## BUSINESS

1. Business should be more active in initiating measures aimed to remove systematic causes of corruption.
2. Anti-Corruption Agency and business associations should further promote and introduce integrity plans in private business;
3. Private sector should encourage the reporting of corruption within private sector instead of covering up such cases. It should also encourage whistle-blowers;
4. Government and the Parliament should amend the Law on Corporate Profit Tax in accordance with the Anti-corruption Action Plan; Businesses should consider the support for the civil society's projects aiming at the prevention of corruption in the public sector, especially in those areas where public and private sectors interfere, such as public procurements.
5. Promote compliance mechanisms existent in local branches of multinational companies operating in Serbia, throughout the domestic business sector.
6. Step up the track record when it comes to adjudicating cases of private sector corruption.
7. Government to review legislation regulating standards in various business sectors for compliance with EU standards, feasibility and inconsistencies.

## THE COMMISSIONER FOR INFORMATION OF PUBLIC IMPORTANCE AND PERSONAL DATA PROTECTION

1. The Parliament should, when amending the Constitution, 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. The Parliament should change the basis for dismissing the Commissioner to be less dependent on arbitrary interpretations;
3. The Government should ensure the execution of the Commissioner's decisions whenever it is necessary;

4. The Ministry, the Government and the Parliament should change the Law on Free Access to Information of Public Importance in order to 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
  - Changes should include provision that would provide access to part of the data on on-going procedures, in a way that doesn't violate personal data protection;
  - Changes should 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;

## STATE OWNED ENTERPRISES

1. Government and the Parliament should amend the Law on Public Enterprises in order to abolish discretionary decision of the Government, Autonomous Province, City or Municipality Assembly (founders of the PE) in selection of the Director of PE (current provision leaves the possibility to elect any one of the three best candidates without explanation, the ability not to elect any candidate and to perform elections within an unlimited period of time after the end of competition).
2. Government and the Parliament should amend the Law on Public Enterprises in order to improve procedure of the SB members' appointment, in order to ensure transparency and verification of skills and knowledge envisaged by the Law.
3. Government should decide to conduct the procedure of election of presidents and members of the Supervisory Boards in all companies where this has not been done and to review compositions of the previously elected Supervisory Boards from the standpoint of meeting the legal requirements.
4. Government should insist on an active relationship and responsibilities of the Supervisory Board, through the transparency of information and periodic inspection of the work of the PE and the Directors. Government/Assemblies should implement accountability mechanisms against the SB members that failed to perform their function.
5. Government should introduce criteria for the appointment of members of the Committee for the election of the Directors of the PE and to standardize criteria for the election of the PE Directors nationwide.
6. Government and the Parliament should amend the Law on Public Enterprises to ensure the participation of all employees in the selection process of employees' representative in the Supervisory Board, and to disable the influence of those whose work is directly supervised by the SB.
7. To the extent possible, the Government should specify the criteria for determination whether a Director acted contrary to due diligence, whether he/she was incompetent or negligent in performing his/her duty, and whether there was a (significant) deviation from reaching the main goal of a public enterprise operation. Government should monitor the implementation of these criteria in determination of the liability of Directors and publish results of monitoring.
8. Government and the Parliament should amend the Law on Free Access to Information of Public Importance, so that all public companies are required to prepare and publish the Information Booklet and to be held accountable if they omit or fail to update the required information. Legislation should be changed in order to oblige SOE's to publish the list of major suppliers (contractors) as well as the most important creditors and debtors.
9. Government and the Parliament should amend the rules of work transparency in the Law on

Public Enterprises and the Government should amend special by-law to ensure the availability and comparability of all necessary information regarding the work and results of public companies (e.g. mandatory contents of the website; not to remove the information from the previous period)

10. Government should specify the obligations of the competent authorities in the chain of control of work program and work reports, including the role of the line ministries, special government bodies, and the authorities from the other levels of government.
11. The Government should establish the obligation of reviewing quarterly work reports of the PEs within the specified period and mandatory parts of such review (the extent to which the program was completed or the need for any additional measures) as well as the obligation to publish these findings.
12. Government should consider possibility of establishing central coordinating unit responsible for making strategic decisions regarding the SOEs and for exercising the State's ownership function in the SOEs- That body should also be in charge of consistent and aggregate reporting on the SOEs.
13. Government should establish the obligation of making narrative reports on the work of public enterprises, which would include all relevant information on the implementation of the annual work program and the purposes for which the PE was founded, including the comparisons with the situations from previous years, so that both the founder and citizens could have a reasoned idea on the work of the PE.
14. Government should prohibit the use of the PE funds for sponsorships.
15. Government should change public policy regarding the operating conditions of the public enterprises, so that the PE are fully committed to achieving the purposes for which they were established instead of implementing social politics, as a precondition for public companies to be managed by professionals and not by persons who are attempting to gain popularity among voters for themselves or their party.
16. Founders of the PEs should take actions to verify the fulfilment of the obligations of the PEs to publish information required by the Law, including the initiation of proceedings against the responsible Directors.



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Zakon o stečaju, Službeni glasnik RS, br. 104/2009, 99/2011 - dr. zakon, 71/2012 - odluka US i 83/2014 (Bankruptcy Law)

Zakon o sudijama, Službeni glasnik RS, br 16/2008, 58/2009 - odluka US, 104/2009, 101/2010, 8/2012 - odluka US, 121/2012, 124/2012 - odluka US, 101/2013, 111/2014 - odluka US, 117/2014, 40/2015 i 63/2015 - odluka US (The Law on Judges)

Zakon o udruženjima, Službeni glasnik RS, br. 51/2009 i 99/2011 - dr. zakoni (The Law on Civic Associations)

Zakon o uređenju sudova, Službeni glasnik RS, br 16/2008, 104/2009, 101/2010, 31/2011 - dr. zakon, 78/2011 - dr. zakon, 101/2011 i 101/2013) (The Law on Courts' Organization)

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Zakon o vladi, Službeni glasnik RS, br. 55/2005, 71/2005 - ispr., 101/2007, 65/2008, 16/2011, 68/2012 - odluka US, 72/2012, 7/2014 - odluka US i 44/2014) (The Law on Government)

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