

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

SERBIA: OVERVIEW OF POLITICAL CORRUPTION

QUERY

Can you provide an overview of and background to recent measures taken to address political corruption in Serbia? We are particularly interested in elections, political party financing, codes of conduct, asset declaration, immunity, conflict of interest and lobbying.

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SUMMARY

The fight against corruption has been on the political agenda in Serbia since 2002 and an important pre-condition for accession to the European Union. In recent years, Serbia has strengthened the legislative and institutional framework for fighting corruption and, in the last two years, has launched an anti-corruption campaign resulting in an increased number of corruption related prosecutions and highly publicised arrests of prominent political figures and former government officials.

The laws adopted in recent years bring greater control in the area of public procurement, conflict of interest, financing of political parties, as well as increased capacity among the agencies responsible for investigating and prosecuting corruption. However, effective enforcement of the existing anti-corruption legislation and oversight exercised by the relevant public bodies is still weak. Corruption remains a serious problem affecting public and economic life, and further reforms, with sustained efforts, are needed to effectively detect, prevent and sanction corruption acts.

This answer analyses Serbia's efforts in the fight against political corruption by identifying challenges and progress in the areas of elections, party financing, immunities, codes of conduct, conflicts of interest, asset declaration and lobbying.

1 OVERVIEW OF POLITICAL CORRUPTION IN SERBIA

Extent of corruption

Corruption is a serious problem in Serbia, affecting the everyday lives of its citizens and hampering economic development. According to Transparency International's Global Corruption Barometer, 26 per cent of people accessing services have reported paying a bribe in 2013 (TI 2013). Corruption is ranked as the most important problem identified by businesses in making a decision for starting economic activities in the country in the period of 2013-2014, according to the findings of the Global Competitiveness Report (WEF 2013).

Serbia scores 42 points on a scale from 0 (highly corrupt) to 100 (very clean) in the Corruption Perception Index published by Transparency International (TI 2013). Serbia tops the Balkan states (and ranks 16th out of 143 countries) for illegal financial flows with an estimated US\$5 billion¹ disappearing every year through illicit flows, including the proceeds of crime, corruption and tax evasion (GFI 2012).

The fight against corruption is an important precondition for accession into the European Union, of which Serbia is a candidate country. Since its formation in the summer of 2012, the government of Serbia has declared a "no tolerance" policy towards corruption, approach which has been reaffirmed by the new government (with the same political party in power) that was elected in Spring 2014. This policy resulted in a number of highly publicised arrests of prominent political figures and businessmen, and the initiation of 24 investigations into allegedly suspicious privatisation transactions, as recommended by the EU (US Department of State 2013). Subsequently, public opinion surveys published since 2012 indicate an overall trend of increased optimism among citizens in the government's efforts to fight corruption (UNDP 2014).

However, the government-led clampdown has been criticised by opponents as being selective and politically motivated (Financial Times 2013), while

commentators from civil society have pointed out that anti-corruption measures have not always been implemented through the established institutional channels (prEUUnup 2013) and have been dependent on the political will of the government, pointing to the need for a more systemic approach in the fight against corruption (B92 2013).

Political corruption in Serbia

In the last few years, Serbia has made a number of positive steps in establishing legal and institutional framework for the fight against corruption. The legislation adopted in recent years brings greater control in the area of public procurement, conflict of interest, financing of political parties and increased capacity among the agencies responsible for investigating and prosecuting corruption (US Department of State 2013). The Anti-Corruption Agency has initiated a public anti-corruption awareness campaign, the authorities' integrity plans, increased training and education activities, and is applying corruption risk analysis to draft legislation (EC 2013).

Following a broad stakeholder consultation, the new Anti-Corruption Strategy for the period 2013-2018 was adopted in 2013 together with a related action plan. The strategy aims at both a structural approach to dealing with issues such as good governance, independent institutions, internal and external audit and control, and protection of whistle-blowers, together with a sectoral approach addressing corruption in the most sensitive sectors such as public procurement, the judiciary, police, spatial planning, education and health (Anti-Corruption Strategy 2013). However, a civil society coalition monitoring EU accession has pointed out that the strategy falls short of effectively addressing some significant corruption related problems (including the further definition of the status and powers of anti-corruption institutions, political influence on state owned enterprises, cross checks on asset declarations) and it lacks ambition in its goals related to the prosecution of corruption cases (prEUUnup 2013).

Despite the positive developments, effective enforcement of the existing anti-corruption legislation and the functioning oversight mechanisms within the public sector are still missing (TI 2014). Of the

¹ Transparency International takes "billion" to refer to one thousand million (1,000,000,000).

citizens surveyed in 2013, 70 per cent said corruption is a serious problem in the public sector, while political parties, public officials and civil servants top the list of institutions perceived to be the most corrupt in Serbian society (TI 2013). Political parties continue to exercise control over numerous public enterprises and exert significant influence over the media (TI 2013; OSCE/ODIHR 2014).

While elections are administered efficiently and are generally in line with international standards, vote buying practices are still present and abuse of state resources for election campaigns remains a persistent problem (OSCE/ODIHR 2014). Financing of the election campaigns is perceived to be a common problem in the political sphere. There are widespread beliefs that parties are financed in order to receive benefits in return, and state funds are diverted to favour a party's own electorate (UNDP 2012).

Although the legislation regulating the financing of political parties has been significantly strengthened and the Anti-Corruption Agency is in charge of controlling it, transparency of parties' income sources remains a concern as parties are not believed to be reporting their finances accurately (TI 2013).

Despite existing laws and the Anti-Corruption Agency supervising implementation of conflicts of interests and asset declarations of public officials, the oversight is still not effective. The number of procedures related to control of asset declarations of public officials has increased and the agency has taken action in a number of cases to report procedure violations. However, the agency's staff is not sufficient for a full review of all officials subject to the asset declaration requirements. Independent supervision and capacity for early detection of wrongdoing and conflicts of interest in public enterprises, privatisation procedures and public expenditure are underdeveloped (EC 2013).

2 ELECTIONS

Overview

Elections in Serbia are administered efficiently and, in general, satisfy the international standards for free and fair elections. The campaigns are usually active and voters express their choices freely on election

day (OSCE/ODIHR 2012 2014). However, vote buying and misuse of public resources for campaign purposes continue to be problematic. In 2012, one in five voters reported to have been offered a bribe in exchange for their vote for a particular party in the 6 May 2012 general, local and presidential elections (UNDP 2012). Two years later, the problems of vote buying and use of administrative resources were still observed during the 16 March 2014 early parliamentary elections (OSCE/ODIHR 2014).

Legal framework

Elections are primarily regulated by the constitution, and the Law on Election of Representatives (LER), last amended in 2011. Provisions in other laws, including the Law on Financing of Political Activities (LFPA), the Law on Political Parties and the Broadcasting Law and Criminal Code also apply. The legal framework is supplemented by the Republic Electoral Commission (REC) Rules of Procedures, adopted in 2012, and a set of instructions issued before each election.

The legal framework defines the election system for presidential, parliamentary and local elections, registration procedures for candidates and party lists, and election day procedures and adjudication of election disputes. The legal framework provides for the duration of the election campaign and defines an "electoral silence" period starting 48 hours prior to the election day. Parliament should appoint the Supervisory Board that is in charge of monitoring and overseeing campaign activities of parties, candidates and the media. Legal provisions also cover detailed regulations on the coverage of the campaign in the broadcast media.

Violations of electoral rights are prosecuted through the standard criminal or misdemeanour procedures and can be sanctioned with fines and (up to) five-year jail sentences. These include obstruction of voter and candidate registration and bribery, among others (OSCE/ODIHR 2014).

Although the legal framework provides a sound basis for the conduct of democratic elections in line with international standards, some recommendations identified in past OSCE/ODIHR reports remain unaddressed (OSCE/ODIHR 2014). International observers have recommended reviewing, consolidating and harmonising the legal framework,

possibly by introducing a single comprehensive electoral code. It has also been noted that the two-tier election administration might be putting too much logistical burden on the REC and an intermediary level to institute a formal hierarchy of responsibility is recommended (OSCE/ODIHR 2012).

A simplification of procedures for the registration of candidates to remove administrative hurdles that might unduly influence the right to stand has also been recommended. Since the Supervisory Board has repeatedly not been established as required by law, authorities have been recommended to amend the law to clearly regulate the responsibilities of the REC and the Republic Broadcasting Agency with regard to campaign related violations and complaints during the election process (OSCE/ODIHR 2012).

Since media coverage of elections has been viewed as problematic, legislative changes on the transparency of media ownership could be very useful. Both OSCE/ODIHR and the Council of Europe have recommended that the authorities consider adopting legislation that can ensure public access to information regarding ownership of media outlets and neutral financial assistance of the state to the media (OSCE/ODIHR 2012).

Election management and oversight

Elections are administered by the two-tiered electoral administration, comprising the Republic Electoral Commission (REC) and Polling Boards (PBs). REC is appointed by Parliament for the term of four years and has 75 members, including permanent members from parliamentary groups and non-voting members. The commission also includes members nominated by electoral contestants following their registration and they have voting rights equal to the permanent members. The PBs are set up in the same manner. Election administration bodies generally meet legal deadlines and perform their duties efficiently (OSCE/ODIHR 2014). Following the recommendations of international observers, the criteria for polling board membership has been further specified (OSCE/ODIHR 2014).

The unified electronic voter register (VR) is maintained by the Ministry of Justice and Public Administration (MoJ), but the data is processed at the municipal level. Considerable efforts have been undertaken since 2012 to improve the quality of the voter register.

Electoral contestants are able to access it and voters can review personal details (OSCE/ODIHR 2014).

Election observers continue to persistently raise concerns about the misuse of administrative resources by different parties in power at the local level. Specifically, an OSCE/ODIHR observation mission for the 16 March 2014 elections received credible reports about cases of intimidation of voters and of public sector employees. Instances of pressure exerted on local government employees and practices of vote-buying, such as the delivery of food packages and other goods, as well as offers of free medical check-ups, were also observed. The Ombudsman, the Commissioner for Information of Public Importance and Personal Data Protection, and the Anti-Corruption Agency (ACA) have issued a joint statement urging contestants to respect the legislation and refrain from misusing public resources or conducting aggressive door-to-door campaigning. Despite the REC explanation that the electoral silence applies to all media, including on the internet, the OSCE/ODIHR mission's monitoring showed that campaigning continued throughout the electoral silence period, including on election day. (OSCE/ODIHR, 2014).

As in previous elections, Parliament did not appoint the Supervisory Board that, in accordance with the law, should be in charge of monitoring and overseeing campaign activities of parties, candidates and the media. In absence of this body, the RBA took up the responsibility of monitoring whether the media provided a level playing field to all electoral contestants. The RBA communicated with the public, but doubts were expressed about its immunity from political pressure. The criteria the RBA used to decide on some of the 23 complaints filed by several electoral contestants were not always clear. The REC's mandate for receiving complaints is not defined, leaving a gap in the absence of the Supervisory Board (OSCE/ODIHR 2014).

3 PARTY FINANCING

Overview

The legal and institutional oversight framework for financing of political parties has been substantially strengthened by the introduction of the Law on Financing of Political Activities (LFPA) in 2011. The

law prescribes strong reporting and transparency requirements for parties, lays out sanctions for violation of rules and places the Anti-Corruption Agency in charge of supervising party financing. However, despite significant monitoring efforts undertaken by both the Anti-Corruption Agency and civil society, appropriate enforcement of the law remains a serious problem. The lack of transparency of sources of party funding is still a concern, illustrated by the low level of credibility of the financial reports provided by the political parties (TI 2013).

Legal framework

The Law on Financing of Political Activities (LFPA) specifies that election campaigns can be financed from both public and private funds and establishes no limits for expenditures by electoral contestants. Public financing of campaign activities relies on the allocated 0.1 per cent of the state budget, 20 per cent of which is distributed in equal amounts among all electoral contestants. The remaining 80 per cent is disbursed to contestants after elections proportionally to the results obtained. Unused public funds must be returned to the state budget. The ceiling for private donations for an election campaign amounts to 20 average monthly salaries (around €7,000) for an individual, and to 200 average salaries (around €70,000) for a legal entity.

A political entity wishing to use public funds to finance its campaign must match them with an election bond of the same amount to be deposited with the Ministry of Finance. The bond must be returned to the political entity if it wins a minimum of 1 per cent of the valid votes cast. If the contestant fails to reach this threshold, public funds must be returned.

The LFPA tasks the ACA with the oversight of political financing. Political entities must submit their annual financial reports to the ACA, and, in an election year, reports on campaign financing should be submitted 30 days after the publication of the final election results. During the campaign, the ACA may request relevant information from the parties, issue warnings and initiate misdemeanour proceedings if a party fails to comply with the agency's recommendations. The ACA cannot impose sanctions but can issue warnings and initiate misdemeanour proceedings against a party or its

authorized representative.

The law envisages sanctions based on the nature of violation of financing rules. The sanctions range from partial or complete loss of remuneration for election campaign expenses (Law on Financing of Political Activities 2011).

The OSCE/ODIHR observation report of the 16 March 2014 early parliamentary elections highlights that while the LFPA provides an adequate framework for political entities' activities, the lack of transparency of financing sources remains a concern in practice (OSCE/ODIHR 2014).

Oversight and sanctions

The Anti-Corruption Agency, which is the oversight agency for the financing of political parties, has far reaching legal guarantees for independence and powers. The director of the agency is elected by the board following a process of public competition while members of the board are elected by the National Assembly and are prohibited from having any political affiliation. The agency has the right to access the records and financial reports of political parties, other state and local government bodies, banks and individual and corporate donors. However, the agency suffers from limited resources and is considered only moderately effective in analysing received reports and performing investigations proactively (TI 2013).

In 2013, the agency adopted its first ever report on the financing of electoral campaigns, for 2012. Annual financing was reported by two thirds of political groups. The agency submitted 53 requests for misdemeanour procedures on the grounds of inappropriate use of funds, untimely submission of annual financial reports and non-submission of electoral campaign financial reports. However, cases of illicit wealth will have to be addressed in line with the provisions of the action plan for the fight against corruption (EC 2013). In 2013, the ACA initiated 390 procedures for violations of the LFPA. The courts have, to date, ruled on 28 instances, imposing sanctions in 25 cases. A new Law on Misdemeanour Offences entered into force on 1 March 2014 with the aim of speeding up the adjudication of cases by the

lower-level courts (OSCE/ODIHR 2013).

For the early parliamentary elections held on 16 March 2014, the ACA deployed 151 observers to monitor campaign activities throughout the country to verify contestants' campaign finance reports.

Implementation

Although the ACA has made significant efforts to control the financing of political parties during elections, anecdotal evidence suggests that reports are far from accurate. For example, a report published by Transparency Serbia indicates that the ultimate source of funding for almost one half of the reported expenditure during the May 2012 elections is unknown. For the May 2012 parliamentary campaign, 48 per cent of total expenditures were from unknown incomes sources (22 per cent were loans and 26 per cent were uncovered expenditures). Moreover, financial reports of some parties included a large number of individual donations of identical sums, while others recorded relatively large sums donated by firms who are known to be experiencing financial difficulties, raising suspicions about the accuracy of these reports. (Transparency Serbia 2012).

According to Transparency Serbia, despite widespread suspicions of such violations, there is still no verdict in cases of vote buying or campaign finance related abuse of power in the 2012 election campaign, and only two investigations are on-going at the moment.

4 IMMUNITY

Overview

Serbian legislation offers a wide scope of immunity for its members of parliament and the government. While international organisations have recommended limiting the scope of immunity, and even though this has been discussed in public debates, no concrete steps have been taken in this direction so far. Parliamentarians have traditionally refrained from lifting their colleagues' immunity out of solidarity. However, in the last two years, two MPs – one from the opposition and another from the ruling party – have been stripped of their immunity and detained on corruption charges (Reuters 2012; B92 2014).

Legal framework

According to the Constitution, members of parliament enjoy immunity as they may not be held liable for their expressed opinion or casting a vote when performing the function of an MP. A member may not be detained nor may he/she be involved in criminal or other proceedings without the approval of Parliament. A member can be arrested without prior approval of Parliament only if found in the act of committing a criminal offence for which the envisaged prison sentence is more than five years. The immunity is limited to the duration of the parliamentarians' mandate. There is no statute of limitations stipulated for criminal or other proceedings in which immunity is established, meaning that, in practice the relevant proceedings will be continued against the person enjoying immunity upon cessation of his/her term of office (Constitution of Serbia 2006). Serbian parliamentarians are protected from criminal or other proceedings only insofar as a prison sentence may be pronounced as a result of these proceedings.

Ombudsman and the members of the Supreme Audit Institution enjoy the same immunity as MPs. Lifting their immunity is decided by a majority of MPs' votes (Constitution of Serbia 2006).

Representatives of the executive enjoy the same immunity as members of parliament, prescribed by the Constitution of Serbia and the Law on Parliament. Immunity of the prime minister and members of the government can only be lifted by the decision of the government (Constitution of Serbia 2006). The law envisages a solution that provides withholding of deadlines in criminal procedures, if immunity is called for, but it does not prolong a deadline for absolute obsolescence which means that the statute of limitations for criminal prosecution can be invoked (Transparency Serbia 2011).

Judges and public prosecutors enjoy immunity for opinions expressed in the performance of their duty, but only in relation to detention and not in regard to criminal prosecution.

Implementation

Generally, there has been an established practice of

not lifting parliamentarians' immunity as MPs from various political parties showed solidarity to grant immunity to their peers in cases when such questions arose (Transparency Serbia 2011).

The first lifting of immunity occurred only in 2012, when Parliament invoked the immunity of an opposition MP and former government minister, Oliver Dulić, at the request of the public prosecutor to charge him with abuse of office. Dulić was accused of corruption and abuse during his time serving as minister for Spatial Planning and the Environment. In May 2013, the Organised Crime Department confirmed indictment against Dulić, which would carry a prison sentence of 2 to 12 years (Reuters 2012). The most recent case of lifting an MP's immunity occurred in February 2014, when 150 MPs voted in favour of stripping immunity from Dragan Tomić, an MP from the ruling SNS party (B92 2014).

It is generally considered that parliamentarians enjoy a wide scope of immunity from criminal prosecution. The debate about reducing the scope of parliamentary immunity was initiated in 2006, with the Opinion of the Venice Commission on the Serbian Constitution, which regarded the broader immunity of deputies for any act committed "as still pertinent for new democracies where there may still be a risk of unwarranted prosecution of opposition members". At the time of the opinion, the Venice Commission determined that this risk is remote in Serbia (Venice Commission 2007). In 2011, on a recommendation from the EU as a way to fight corruption, Parliament sought to form a working group to propose the necessary changes to the concept of immunity to votes cast and opinions expressed in the performance of duties (non-liability). That would mean that Serbian parliamentarians would be immune from prosecution only for their statements and voting in the Assembly, but they could find themselves subject to criminal prosecution for their actions beyond their line of work. However, the Serbian Parliament has not yet acted upon the recommendations to limit the immunity of the parliamentarians.

Transparency Serbia has recommended to 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 Parliament (Transparency Serbia 2011).

5 CODES OF CONDUCT

Overview

Codes of conduct as a tool for preventing corruption are not widely used by the central authorities in Serbia. There is a Code of Conduct for Civil Servants that contains anti-corruption provisions, although there is no information available about its implementation. The Code of Conduct for Members of Parliament, which has been in discussion for the last two years, has not yet been adopted. Codes of conduct are more common at the local government level, where they have been in place in the majority of municipalities since 2004. Some local governments that have adopted the code have also introduced monitoring mechanisms (Westminster Foundation no date).

Legal framework

The Code of Conduct for Civil Servants contains important anti-corruption provisions. The code stipulates the incompatibility of a civil servant's public duty with pursuance of personal interests, the obligation to take into account the actual or potential conflicts of interest and the requirement to take legally prescribed measures to avoid conflicts of interest. The code regulates the receipt of gifts and services during the execution of public duties by civil servants and sets out the reporting mechanism to immediate supervisors. According to the code, 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/her duties. In the performance of personal affairs, a civil servant shall not use the officially available information in order to obtain benefits for himself/herself or related entities (Transparency Serbia 2011).

Violation of the code represents a minor violation of duty, but a repetition of the offence is treated as a serious offence for which the prescribed punishments range from fines to the loss of employment.

There is no code of conduct for members of parliament. The Rules of Procedure of the Parliament contains some provisions regarding the conduct of MPs during sessions, but not specific provisions on

integrity issues. Some rules on the integrity of MPs (as well as other public officials) are set out in the Law on the Anti-Corruption Agency. The development of the code of conduct has been discussed for the last two years. There is a working group, composed of parliamentary groups' representatives, working on the text of the code (National Assembly of Serbia 2013).

The Code of Conduct for Local Government Officials was adopted in 2004. It applies to a wide circle of officials defined as "local government officials". That means, all elected, nominated or appointed representatives in municipality or town authorities, as well as public enterprises, institutions and other organisations founded by the municipalities and towns (Jerinic 2006). The code sets out basic principles and standards of expected behaviour and provides guidance to a local official covering the period from electoral campaign throughout his/her mandate. As an act of self-regulation, the code requires its subjects to familiarise themselves with its provisions and declare in writing that he/she shall comply with it. The code also envisages establishing a monitoring body with a task to follow-up on the code's implementations (Jerinic 2006).

Implementation

There is no specific institution mandated to review the compliance to the Code of Conduct for Civil Servants. As evaluation of the implementation of the code does not take place there is no data available on compliance.

Integrity of MPs is not sufficiently insured in practice. In 2010, some MPs claimed that two other MPs were in conflict of interest due to being shareholders in companies that directly benefited from laws discussed in Parliament. However, that argument was ignored by the parliamentary leadership and treated as part of the political debate (Transparency Serbia 2011).

The Code of Conduct for Local Government Officials has been adopted in more than 90 per cent of Serbian municipalities. Introduction of the code has led to some positive results, particularly in 10 municipalities. Monitoring boards (MBs) have been put in place to deal with specific cases of violations and a system has been established to deal with

public complaints (Westminster Foundation no date). While the presence of the board could be a positive incentive for locally elected councillors to behave more responsibly, monitoring conducted by Transparency Serbia suggested that many MBs are composed of party members or even candidates for local elections, making it difficult for the boards to assess, for example, whether the articles on local election campaigning are respected (Transparency Serbia 2008). There is no systematic information available about the implementation and overall compliance to the Code of Conduct for Local Government Officials.

6 CONFLICT OF INTEREST

Overview

The constitution and a number of laws regulate conflicts of interest of elected and appointed public officials as well as civil servants. While legal provisions are relatively well developed for members of government and public officials, the law contains loopholes when it comes to members of parliament. In practice, there are few examples of conflicts of interest exposed, as the verification process is weak, and the system of supervision remains underdeveloped (EC 2013).

Legal framework

The conflict of interest legal framework in Serbia is regulated by the constitution, the National Anti-Corruption Strategy and by a number of laws regulating the status of MPs, members of government, the president, civil servants and the state administration, including codes of ethics for civil servants.

The Law on the Anti-Corruption Agency (2008) uniformly applies to elected and appointed officials and civil servants appointed to managerial functions, and contains conflict of interest restrictions and declaration requirements. The Law on Civil Servants (2005) and the Code of Conduct of Civil Servants (2008) applies to members of the civil service and also contains similar provisions on conflicts of interest. All civil servants and elected and appointed officials are required to disclose conflicts of interest, including offers of gifts.

The constitution contains incompatibility clauses on members of the government. They cannot perform other jobs or activities while in office and are not allowed to establish enterprises. Similar to public officials, members of the government are obliged to transfer managing rights within a 30 day deadline and to inform the ACA on this matter. Ministers are bound by reporting requirements on ownership of stock in a legal entity which has been founded by the state. There is a two year “cooling off” period after the termination of the function of members of the government to take employment or establish business cooperation with a legal entity, entrepreneur or international organisation engaged in activities relating to the office the official held, except under approval of the agency (Constitution of Serbia 2006; Law on the Anti-Corruption Agency 2008).

The Law on the Anti-Corruption Agency prohibits public officials from receiving gifts and hospitalities “related to the performance of a public function” (aside from protocol related and occasional gifts), requires the reporting of such gifts and forbids the official from keeping received gifts over a certain value (5 per cent of the average salary in Serbia: around €17). There are restrictions related to post-employment for public officials, but they are not applicable to members of parliament. There is no regulation of reporting on the involvement in lobbying activities unless there is some gift-giving related to the lobbying (Transparency Serbia 2011).

Members of parliament are obliged to report conflicts of interest and to recuse themselves from the decision making process. However, there is no clear definition about what should be considered a conflict of interest for MPs. Rules regarding post-employment are not developed, neither are the special regulations on conflict of interest regarding decisions on public procurements. There are no regulations on conflict of interest for local administrations.

Oversight and implementation

The Anti-Corruption Agency is in charge of overseeing the implementation of legal provisions on conflicts of interest. During the first year of the implementation of the Anti-Corruption Agency Law there were no cases of conflict of interest by members of government. Misdemeanour charges were initiated against one minister for not providing

evidence on the transfer of managerial rights in an enterprise of which he was the sole owner (Transparency Serbia 2011).

There is no systematic verification of the regulations on conflict of interest which refer to civil servants. In addition these regulations are implemented very rarely (Transparency Serbia 2011).

Detection and resolution of conflict of interest cases remains at an early stage. Although the largest number of files were filed to the ACA, there were few charges filed during the reporting period. The EC Progress Report 2013 points out that independent supervision and capacity for early detection of wrongdoing and conflicts of interest in public enterprises, privatisation procedures and public expenditure are underdeveloped (EC 2013).

The National Anti-Corruption Strategy for 2013-2015 recognises the achievements of the ACA in the field of prevention of conflict of interest regarding the incompatibility of functions, but notes that the issue of elimination of influence of private interests on the persons performing public functions has not yet been properly regulated and that inhibits the work of the ACA. The document further notes that is necessary to eliminate loopholes in the legal framework and build capacities for oversight (National Anti-Corruption Strategy 2013).

7 ASSET DECLARATION

Overview

Legal provisions related to the disclosure of personal assets, income and financial interests apply to elected and appointed officials and civil servants appointed to managerial functions. The Anti-Corruption Agency is in charge of receiving and verifying asset declarations, which it does through an electronic system. Asset declarations can be checked and compared to the data obtained from other public agencies, and sanctions can be applied in cases of violations. However, as the National Anti-Corruption Strategy points out, loosely defined powers of the ACA with regard to the control procedure, as well as inadequate cooperation with competent authorities, complicate the procedure of verification (National Anti-Corruption Strategy 2013).

Legal framework

The Law on the Anti-Corruption Agency, which states the obligation to disclose personal assets and income, applies to “elected, appointed and nominated persons” in public bodies, thus involving the category of “civil servants to positions” (for example, 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 they are not required to report their income and property.

Declarations have to be submitted at the beginning of the mandate and at the end of it, as well as during the mandate in the case of significant changes. The asset and income declaration forms also include data on all the public functions performed by the official. According to the law, an official shall, within 30 days of election, appointment or nomination, submit to the Anti-Corruption Agency a disclosure report on his/her property and income. Officials are obliged to submit this report every year, no later than 31 January, if any significant changes occurred with regard to the data from the declaration filed previously. The Anti-Corruption Agency is in charge of verification.

Public officials have to personally submit the declaration, in electronic form, and upon receiving the computer-generated code confirming electronic registration of the declaration, the official immediately and no more than eight days later needs to send the report in printed form. Afterwards, the agency checks the formal accuracy of the declaration and publishes it on its website (ReSPA 2013). According to the law, the Anti-Corruption Agency keeps two registers: the Register of Officials and the Register of (their) Property. All authorities have to notify the Anti-Corruption Agency within seven days of an official entering or leaving office.

In the process of checking asset declarations, the agency collects data from different public agencies and may also request assistance by other authorities (such as the Prosecutor’s Office) to obtain data from financial institutions other than banks, from businesses and from citizens. The Anti-Corruption Agency also uses data from foreign business registers that are publicly available. Information from abroad may be sought through international legal assistance via the Ministry of Justice. The Anti-

Corruption Agency has no authority to conduct an actual examination of the movable and immovable assets of officials (“lifestyle checks”) (ReSPA 2013).

According to the law, if the agency establishes a discrepancy, it notifies the body where the official holds office. This body shall, within three months of receiving the notice, notify the Anti-Corruption Agency of the measures taken (disciplinary measures, notification of the prosecutor, warning, etc.). The law prescribes measures for misdemeanours for public officials who violate its provisions. Moreover, in the case of a failure to report or giving false information about one's private property, the Law on the Anti-Corruption Agency stipulates up to five years imprisonment and prohibition to hold public office for a period of 10 years as a result of the conviction of an official.

Oversight and implementation

The Anti-Corruption Agency is in charge of reviewing asset declarations and publishing them for public scrutiny. Since its establishment in 2010, the agency has processed over 30,000 asset and income declarations (Reports of Property and Income) submitted to it. Due to the large number of declarations, it has been impossible for all reports to go to full review by agency staff (ReSPA 2013).

The ACA introduced the electronic online system for completing and submitting asset declarations on 1 January 2012. The agency has developed the Annual Verification Plan which determines the number and category of officials who are covered by the asset declaration requirements. The secretariat of the agency, proposes to the agency’s board which categories of officials should be subject to control, and the relevant plan is made public.

The ACA plans to improve the application for submission and verification of declarations. Processing applications would include electronic networking with other government agencies for obtaining information from third parties to improve the verification process (ReSPA 2013).

During the summer of 2012, the ACA compiled a series of reports on former members of the government who had failed to disclose all of their assets (ReSPA 2013). The number of procedures

related to control of asset declarations of public officials in 2013 increased (283), out of which the majority (182) refers to officials who had not submitted the declaration by the deadline. The agency filed seven criminal charges due to reasonable suspicion that a public official did not report property to the ACA or gave false information about the property, with an intention of concealing facts about the property, including against a member of the national assembly, two against former members of parliament, one against a member of a management board and one against a mayor (EC 2013). However, the same report points out that the track record of asset declaration checks needs to be established (EC 2013).

The National Anti-Corruption Strategy highlights that the ACA has faced difficulties in the verification of accuracy and completeness of asset declarations and in keeping a register. The main shortcomings listed in this regard include loosely defined legal terms, right and obligations of a public official, as well as the loosely defined powers of the ACA in control procedures and inadequate cooperation with other state bodies (National Anti-Corruption Strategy 2013).

8 LOBBYING

Lobbying is not legally regulated although the National Strategy for Fighting Corruption 2013-2015 indicates that adoption of a law on lobbying will be an important part of fighting corruption.

There is generally a negative public perception of lobbyists in Serbia. Lobbying is undertaken by prominent law firms, consulting firms and also some high-profile individuals who are quite often former public employees and politicians (KAS 2013), a practice that carries serious risks of creating conflicts of interest.

In 2009, the lobbyists' association was established and it developed a draft law on lobbying. This draft has not been discussed by Parliament. According to the draft, all lobbyists must acquire a special licence from the state in order to declare income and pay taxes. In return, they will receive a special "free pass" to enter the buildings of the parliament, government and other institutions, and the dignitaries of the executive will be obliged to listen to their proposals.

The draft also envisaged the definition of a lobbyist and the introduction of the Register of Lobbyists. All lobbyists would have to report once a year. The report would have to include information about clients, the grounds and the individuals with whom contacts were established.

The ministry in charge of trade considered that document as a basis for drafting the law on lobbying. The working group for drafting the law was established in 2013, however there is no information available about the progress of this work.

9 REFERENCES

- B92. 17 February 2014. "Parliament Votes to Remove MP's Immunity."
http://www.b92.net/eng/news/politics.php?yyyy=2014&mm=02&dd=17&nav_id=89342
- Blic Online*. 7 July 2013. "No Going Back in Fight against Corruption."
<http://www.blic.rs/Vesti/Politika/392218/Nenadic-Nemavise-nazad-u-borbi-protiv-korupcije>
- Constitution of the Republic of Serbia. 2006.
http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav.php?change_lang=en
- European Commission. 2013. *Serbia Progress Report 2013*.
http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf
- Financial Times*. 28 October 2013. "Vucic Emerges as Real Power in Serbian Government."
<http://www.ft.com/intl/cms/s/0/2652c2cc-3a42-11e3-9243-00144feab7de.html?siteedition=intl#axzz2yBnAHHPd>
- Global Financial Integrity. 2012. "Illicit Financial Flows from Developing Countries, 2001-2010."
http://iiff.gfintegrity.org/documents/dec2012Update/Illicit_Financial_Flows_from_Developing_Countries_2001-2010-WEB.pdf
- Jerinic, Elena. 2006. "Development of Codes of Conduct for Local Government Officials in Serbia: A Beginners' Case." *Viešoji Politika Ir Administravimas*.
- Konrad Adenauer Stiftung. 2013. "A Guidebook on Lobbying."
<http://www.kas.de/serbien/en/publications/34374/>
- National Assembly of Serbia, 2013. *Final Report on the Seminar "Mechanisms available to National Parliaments to*

Counter Corruption”.

<http://website-pace.net/documents/19895/585401/20131202-BelgradeCorruptionSeminar-EN.pdf/cd1e5db4-5f50-4024-95a9-4846f6b67cca>

OSCE/ODIHR International Election Observation Mission, Republic of Serbia Early Parliamentary Elections. 16 March 2014. *Statement on Preliminary Findings and Conclusions*. <http://www.osce.org/odihr/elections/116467?download=true>

OSCE/ODIHR Limited Election Observation Mission, Republic of Serbia Parliamentary and Early Presidential Elections. 6 and 12 May. 2012. *Final Report* <http://www.osce.org/odihr/elections/92509?download=true>

PrEUrup. 2013. *Written Contributions to the European Commission 2013 Progress Report on Serbia*: [http://bezbednost.org/upload/document/2013-10-01_eng_preunup_joint_progres_report_\(final\).pdf](http://bezbednost.org/upload/document/2013-10-01_eng_preunup_joint_progres_report_(final).pdf)

Regional School of Public Administration. 2013. “Regional Comparative Study on Income and Asset Declaration in the Western Balkans.” <http://www.rai-see.org/news/south-eastern-europe/4037-respa-launched-the-regional-comparative-study-on-income-and-asset-declaration-in-the-western-balkans.html>

Reuters. 8 October 2012. “Serb Lawmaker Accused of Corruption Stripped of Immunity.” <http://www.reuters.com/article/2012/10/08/us-serbia-corruption-idUSBRE8970RW20121008>

The National Anti-Corruption Strategy in the Republic of Serbia for the period 2013-2018. 2013. <http://www.anticorruption-serbia.org/strategy>

Transparency International. 2013. “Buying Influence: Money and Elections in the Balkans.” http://www.transparency.org/news/feature/buying_influence_balkans

Transparency International. 2013a. *Global Corruption Barometer, Serbia results*. <http://www.transparency.org/gcb2013/country?country=serbia>

Transparency International. 2013b. *Corruption Perceptions Index*. <http://www.transparency.org/cpi2013/results>

Transparency Serbia. 2011. *National Integrity System Assessment, Serbia, 2011*. http://www.transparency.org/whatwedo/pub/national_integrity_system_assessment_serbia_2011

Transparency Serbia. 2008. “Monitoring of Local Election

Campaign in the Context of the Code of Conduct for Local Councillors.”

<http://www.transparentnost.org.rs/english/ACTIVITIES/WDF/index.html>

UNDP. 2014. *Corruption Benchmarking Survey Serbia*. <http://www.rs.undp.org/content/serbia/en/home/presscenter/articles/2014/02/12/presentation-of-the-eighth-corruption-benchmarking-survey-in-serbia/>

US Department of State. 2013. *Investment Climate Statement – Serbia, April 2013*. <http://www.state.gov/e/eb/rls/othr/ics/2013/204728.htm>

Venice Commission. 2007. *Opinion on the Constitution of Serbia*. <http://www.venice.coe.int/webforms/documents/?topic=27&year=all>

Westminster Foundation. No date. *Serbian Code of Conduct*. <http://www.wfd.org/case-studies/serbian-code-of-conduct.aspx>

World Economic Forum. 2013. *Global Competitiveness Report 2013-2014*. http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

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