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Abbreviations

AIRE	Advice on Individual Rights in Europe Centre
AML	Anti-money laundering
AP23	Action Plan for Chapter 23
APML	Administration for the Prevention of Money Laundering
BSL	Budget System Law
CB	Coordination Body for Monitoring the Implementation of the Action Plan for Chapter 23
CC	Criminal Code
CDD	Customer due diligence
CFT	Countering the Financing of Terrorism
Commissioner	Commissioner for Information of Public Importance and Personal Data Protection
CPC	Criminal Procedure Code
CPC	Criminal Procedure Code
CSO	Civil society organization
Directorate	Directorate for the Management of Confiscated Assets
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GRECO	Group of States against Corruption
HCSC	High Civil Service Council
HJC	High Judicial Council
HPC	High Prosecutors Council
HRMS	Human Resource Management Service
LCPC	Law on the Confiscation of Proceeds of Crime
LCRBO	Law on the Central Records of Beneficial Owners
LFOI	Law on Free Access to Information of Public Importance
LFPA	Law on Financing Political Activities
LoA	Law on Accounting
LPC	Law on Prevention of Corruption
LPP	Law on Public Procurement
LPW	Law on Protection of Whistleblowers
LSBRA	Law on the Serbian Business Registers Agency
LSG	Local Self Government
MER	Mutual evaluation report
ML	Money laundering
MLA	Mutual legal assistance
MoF	Ministry of Finance
MoJ	Ministry of Justice
MPALSG	Ministry of Public Administration and Local Self Government
NACS	National Anti-Corruption Strategy
NAPA	National Academy for Public Administration
NBS	National Bank of Serbia
NCB	Non-Conviction Based
NPO	Non-Profit Organisation
NRA	National Risk Assessment

ODIHR	Office for Democratic Institutions and Human Rights
OPPC	Operational Plan for Prevention of Corruption
OSCE	Organization for Security and Co-operation in Europe
PPO	Public Procurement Office
RBE	Register of Business Entities
RCPP	Republic Commission for the Protection of Rights in Public Procurement Procedures
REM	Regulatory Body for Electronic Media
RPPO	Republic Public Prosecutors Office
SAI	State Audit Institution
SBRA	Serbian Business Register Agency
STR	Suspicious Transaction Report
TF	Terrorism financing
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime

List of Persons Consulted

Name	Job title	Organisation or institution	Date of interview
Radmila Dragičević Dičić	Retired Judge; Vice president of the International Commission of Jurists (ICJ), Geneva, Switzerland,	Ex-judge of the Supreme Court of Cassation; Ex-president of Court of Appeal in Belgrade	4 May 2023

I. Introduction

The Republic of Serbia signed the United Nations Convention against Corruption (UNCAC) on 11 December 2003 and ratified it on 20 December 2005 (both as the State Union of Serbia and Montenegro).

This report reviews Serbia's implementation of selected articles of Chapter II (Preventive measures) and Chapter V (Asset recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering these chapters. Serbia was selected by the UNCAC Implementation Review Group on 24 May 2019 by a drawing of lots for review in the fifth year of the second cycle.

1.1 Scope

The UNCAC articles and topics that receive particular attention in this report are those covering preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), political financing (Article 7.3), codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12), reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2), public procurement (Article 9.1), the management of public finances (Article 9), access to information and the participation of society (Articles 10 and 13.1), judiciary and prosecution service (Article 11), private sector transparency (Article 12), and measures to prevent money laundering (Art. 14) under Chapter II. Under Chapter V, the UNCAC articles and topics that receive particular attention in this report are those covering anti-money laundering (Articles 52 and 58), measures for direct recovery of property (Articles 53 and 56), confiscation tools (Article 54), international cooperation for the purpose of confiscation (Articles 51, 54, 55, 56 and 59) and the return and disposal of confiscated property (Article 57).

1.2 Structure

The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Serbia as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed and examples of good practices and deficiencies are provided. Then, recent developments are discussed and lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

1.3 Methodology

The report was prepared by Transparency Serbia with technical and financial support from the UNCAC Coalition. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by civil society organizations. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC)'s checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the

section on implementation, asked for examples of good practice and areas in need of improvement in articles of UNCAC Chapter II on prevention and Chapter V on asset recovery.

All links provided in this report were accessed on 5 May 2023 and were valid on that day.

II. Executive Summary

This civil society parallel report examines Serbia's implementation of Chapter II (Preventive Measures) and Chapter V (Asset Recovery) of the United Nations Convention against Corruption (UNCAC), both in legislation and practice, and is intended to contribute to the UNCAC implementation review process of the second review cycle.

2.1 Description of the Official Review Process

At the beginning of writing of this report as well as at the end, there was no published information about the UNCAC review process by the Serbian authorities. The only available information about the review process could be found on the UNCAC Coalition Review Status Tracker webpage, where the information about the focal point and the Government expert list were published.¹ Inquiries about the review process were made to the Ministry of Justice (MoJ) through an official letter, but there was no response. In March 2023, the authors of this report sent an official FOI request to the MoJ, inquiring about information on the review process and the visit of peer reviewer's countries. This request was answered, and more information about it is provided in Chapter 3.1 and the Annex of this report.

2.2 Availability of Information

This report has been written on the basis of a review and evaluation of the Serbian legal and regulatory framework, activity reports from public authorities, complemented by other documents such as civil society reports and those of international organisations. All laws, regulations and reports which were used for writing this report are available online, but some are not published in searchable form. The authors of the report sent eight requests for access to information and received answers to almost all of them (there was no response to one request, but some other requests were not fully responded to either). Other relevant sources include press articles, academic research and the first-hand experience of the authors who worked on this report. The data contained in this report were collected between June 2022 and May 2023.

2.3 Implementation in Law and in Practice

In general, Serbia has a broad and comprehensive legal and regulatory framework that covers most of the aspects addressed in Chapter II and Chapter V of the UNCAC. Although there is a need to improve regulations, a much bigger problem is ineffective implementation of existing rules, or their selective application.

Regarding **preventive anti-corruption policies and practices**, it must be stressed that there is no comprehensive national anti-corruption policy document in place. The National Anti-Corruption Strategy has not been adopted yet, although it was supposed to enter into force in January 2023 (the previous one expired in 2018). Currently, the most important anti-corruption policy document is the Revised Action Plan for Chapter 23 of Serbia / EU negotiations, which contains a subchapter related to the fight against corruption. However, in this way, the issue of fighting corruption is assessed only in the context of EU integration, and focuses on specific priorities raised by the EU, although it is of much broader significance. There is also two-track reporting on the implementation of preventive anti-corruption policies in Serbia by the MoJ and Agency for Prevention of Corruption (APC). However, these evaluations are conducted

¹ See: <https://uncaccoalition.org/uncacreviewstatustracker/>.

with different methodologies, resulting in different evaluations of the same activities. At the same time, follow-up to both institutions' reports proved to be inadequate, thus leaving identified problems unresolved.

The main **preventive anti-corruption body** in Serbia is the APC, which has a wide range of competences and powers when it comes to areas that are relevant for this report. It is mandated to implement and oversee most policies referred to in Article 5 of UNCAC, but it is not solely in charge of coordination of these policies and activities. The Law on Prevention of Corruption (LPC) provides the APC with a comparatively high level of independence, shielding it from external influence, but the selection of its management ultimately depends on parliamentary majority. The APC lacks the resources to fulfil all its tasks. Some decisions by the APC were publicly suspected to be the result of political influence. Follow-up on the Agency's reports by the Parliament and other institutions is not adequate.

When it comes to **public sector employment**, a system for recruitment, hiring, retention, promotion and retirement of civil servants has been established, mostly through the Law on Civil Servants (LCS). The LCS prescribes competitions and objective criteria for recruitment. Salaries of civil servants are regulated by a special law, and are competitive with the private sector, except for professionals in areas of high demand (e.g., IT). However, procedures for recruitment can be bypassed through hiring on fixed-term and temporary contracts, which opens the door to arbitrariness and employment based on political or other affiliations. There is also a large number of acting civil servants in top positions, in most instances appointed by the government, and contrary to the rules. A duty to prepare integrity plans for public authorities with more than 30 employees is also foreseen in legislation through the Law on the Prevention of Corruption (LPC).

There are prescribed rules for **declarations of assets and interests, codes of conduct and conflicts of interest**, as well as income and gifts, together with sanctions in case of violation of the rules. The authority in charge of supervising these rules is the APC, which also maintains registers of public officials, property and income, as well as gifts. Public officials are obliged to submit reports to the APC and to disclose their assets and incomes, as well as of their family members. However, these rules do not cover all important public officials: in particular, after the authentic interpretation² of one provision of the LPC many of them were excluded. A relatively small number of cases are subject to checks on the accuracy of reported data, and data on imposed sanctions are not sufficiently promoted among the public, so any preventive effects through their publication is not fully achieved.

Serbia has a special law dealing with **whistleblower protection**: the Law on Protection of Whistleblowers (LPW). The LPW establishes the right to legal protection of whistleblowers and regulates whistleblowing procedures and types of whistleblowing. Judicial protection of whistleblowers is being enforced, but measures to promote whistleblowing are not sufficient, and monitoring of the LPW is inadequate. Particularly problematic is protection in cases where whistleblowers have revealed some classified information directly to the public. Regarding **reporting channels**, they are prescribed in relevant laws, but there is no follow-up data on the outcomes of the reported irregularities.

The Law on Financing Political Activities (LFPA) deals with **political financing** by regulating the sources and manner of financing, records and the monitoring of financial activities of

² An authentic interpretation is an interpretation of a legal norm or other rule given by the adopter of the legal act itself. This means that in the case of a law, the National Assembly gives the authentic interpretation.

political subjects in Serbia. The LFPA prescribes the duty to publish data on sources of financing, as well as to keep records about them. Anonymous donations and donations through third parties are prohibited, and the LFPA also established an oversight system. These rules apply for both financing of regular work of political subjects as well as for financing of election campaign expenditures. Funding reports are published, but in many cases, they are not prepared in accordance with the rules, which significantly reduces the transparency of funding. Monitoring is applied, but in some cases, doubts remain about the credibility of reports. In several prominent cases, suspected or even identified violations of rules remained unpunished, due to the failure of the APC to initiate the case in a timely manner for the public prosecutor to thoroughly investigate it.

The **public procurement** system has been founded on principles which are specified in Article 9 of the UNCAC. The Law on Public Procurement (LPP) sets clear rules for types of procedures, criteria for selections of tenderers and contract award criteria that contracting authorities can use. It also provides an exhaustive list of exclusions from the application of LPP, and legal remedies that can be used. The Public Procurement Office (PPO) is a specialised organisation which performs professional activities in the public procurement field, such as monitoring of the application of the LPP and the education of stakeholders. However, the LPP has often been bypassed by the government through interstate agreements and tailor-made laws for particular projects, thus hindering transparency and seriously reducing competitiveness. The scope of oversight over the public procurement system is insufficient.

Regarding **management of public finances**, there are laws and regulations that establish procedures prescribed for the adoption of the national budget, its completeness, budget accounting, internal audit, as well as sanctions in case of violations. However, in practice, the publication of budget documents is often delayed. According to the findings of the State Audit Institution (SAI), the practice of internal audits has not been established among a large number of subjects which are obliged to establish internal monitoring. The public has no ability to influence the national budget.

Regarding **access to information**, there is a comprehensive law, the Law on Free Access to Information of Public Importance (LFOI), that applies to all public authorities. Procedures for obtaining information are simple and free, and there is also a free legal remedy system, which operates by submitting a complaint to an independent institution: the Commissioner for Information of Public Importance and Personal Data Protection. However, the appeal procedure with the Commissioner takes too long due to a large number of pending cases, while the situation is even worse when it comes to administrative disputes before the Administrative Court. The LFOI does not contain absolute exceptions on the basis of which the information seeker can be refused, but the decision must always be justified based on necessity to protect prevailing public interest. The LFOI and many other regulations mandate the proactive publication of many important data, primarily through Information Booklets: documents which are published by public authorities containing information about their work. When it comes to the **participation of civil society**, there is an obligation to organize public hearings when adopting policy documents and laws, but there are no sanctions if they are not respected. Civil society representatives and journalists are often the target of smear campaigns in pro-governmental media, because of their activities which intend to hold the government accountable.

The judiciary and prosecution services and their independence were strengthened, at least in principle, by recent amendments to the Constitution, which have been transposed into legislation through a set of laws in February 2023. Constitutional amendments reduce

possibilities for exerting direct political influence on judges and prosecutors, through electoral procedure, yet concerns remain over such influence being exerted indirectly. Judges and prosecutors are public officials, which makes them obligated to follow the provisions of the LPC. They are obliged to submit reports on their assets and incomes, as well as those of their family members. In practice, courts and prosecutors are ineffective when it comes to cases of grand corruption. The fact that the prosecutor's office does not take a proactive role, and often does not act even in cases when well-founded suspicions about corrupt acts are expressed in public, is particularly pronounced.

When it comes to **private sector transparency**, there are significant laws in this area: the Law on the Serbian Business Registers Agency, the Law on the Central Records of Beneficial Owners, the Law on Accounting, and the Law on Auditing, among others. A public registry containing data about companies and all other legal entities is available online and can be accessed by anyone for free. Companies and all other legal entities also must report their beneficial owners, and the register of beneficial owners is also available to the public. However, ultimate owners sometimes remain unknown and companies' legal representatives are listed in the register instead. Companies in Serbia are required to maintain accurate books and records that properly document all their financial transactions, as well as effective systems of internal financial monitoring. External oversight works when it comes to submitting financial statements and sanctions are imposed in case of failure to do so, but it is not strong enough when it comes to non-compliance with other provisions.

Regarding **measures to prevent money laundering and anti-money laundering**, Serbia has improved its legal framework in recent years. The range of obliged entities under the Law on Prevention of Money Laundering and Financing of Terrorism has been expanded to include lawyers and notaries while performing some activities, and obliged entities are also required to establish and verify the identity of the beneficial owner when a customer is a natural person. Customer due diligence (CDD) actions and measures are applied not only when establishing a business relationship with a customer, but in other situations as well. The Administration for the Prevention of Money Laundering (APML) exists as the Financial Intelligence Unit in Serbia and it is mandated to receive, analyse and disseminate reports on suspicious financial transactions. The APML is not fully independent, and APML actions have been challenged due to the alleged misuse of APML's data for smear campaigns against watchdog NGOs and other individuals.

Serbia has a *lex specialis* law in the area of **asset recovery** since 2009: The Law on the Confiscation of Proceeds from Crime. This law enabled temporary and permanent confiscation of property which does not have to be related to the criminal offence itself, but the law can only be applied for a list of the most serious criminal offences. Cooperation at the international level has been established by international conventions, and trainings are constantly held with the aim of improving the knowledge of judges and prosecutors in this area. There is a special unit within the Ministry of Justice, the Directorate for the Management of Confiscated Assets, that is in charge of managing confiscated property, but not all information about confiscated property and how it is managed is presented to the public.

Table 1: Implementation and enforcement summary

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice*
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Art. 5 – Preventive anti-corruption policies and practices	Largely implemented	Moderate
Art. 6 – Preventive anti-corruption body or bodies	Largely implemented	Moderate
Art. 7.1 – Public sector employment	Largely implemented	Moderate
Art. 7.3 – Political financing	Fully implemented	Moderate
Art. 7, 8 and 12 – Codes of conduct, conflicts of interest and asset declarations	Partially implemented	Moderate
Art. 8.4 and 13.2 – Reporting mechanism and whistleblower protection	Largely implemented	Moderate
Art. 9.1 – Public procurement	Fully implemented	Moderate
Art. 9.2 – Management of public finances	Fully implemented	Moderate
Art. 10 and 13.1 – Access to information and the participation of society	Fully implemented	Moderate
Art. 11 – Judiciary and prosecution services	Fully implemented	Moderate
Art. 12 – Private sector transparency	Fully implemented	Moderate
Art. 14 – Measures to prevent money-laundering	Fully implemented	Moderate
Art. 52 and 58 – Anti-money laundering	Fully implemented	Moderate
Art. 53 and 56 – Measures for direct recovery of property	Fully implemented	Good
Art. 54 – Confiscation tools	Fully implemented	Good
Art. 51, 54, 55, 56 and 59 – International cooperation for the purpose of confiscation	Fully implemented	Good
Art. 57 – The return and disposal of confiscated property	Fully implemented	Moderate

*For the most of the UNCAC articles analysed in this report, Transparency Serbia’s assessment of the status of implementation and enforcement in practice would be either between good and moderate, or between moderate and poor, which is why the vast majority of them have been classified as ‘moderate’.

Table 2: Performance of selected key institutions

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance
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Agency for Prevention of Corruption	Moderate	Understaffed, independence questioned in several occasions.
Public Procurement Office	Moderate	Understaffed, its monitoring is insufficient.
Commissioner for Information of Public Importance and Personal Data Protection	Moderate	Understaffed, complaint procedures take too long.
Administration for the Prevention of Money Laundering	Moderate	Lack of independence.
Supreme Audit Institution	Good	Strong expertise.
Ministry of Justice	Moderate	Often lack of willingness to cooperate with interested subjects during public debates.
Public Prosecutors Office	Moderate	Insufficient proactivity when dealing with corruption crimes.
Directorate for Management of Confiscated Property	Moderate	Lack of transparency.

2.4 Recommendations for Priority Actions

The following recommendations are addressed to the government of Serbia to ensure better implementation and enforcement of UNCAC articles under Chapters II and V:

1. Adopt the National Anti-Corruption Strategy, which will be a comprehensive strategic document containing preventive anti-corruption measures which are not limited only to certain areas, as soon as possible.
2. Strengthen the Agency for Prevention of Corruption's staff capacity so that it can perform all assigned tasks and specify some of its responsibilities.
3. Stop the widespread practice of employment on temporary and fixed-term contracts in the public sector, thus avoiding public competition.
4. Include individuals with potential high influence (advisors to the president, prime-minister and minister, heads of cabinets) in designing government policies in the public officials' category, so that they become subject to conflict of interest and asset reporting rules.
5. Amend the Law on Whistleblower Protection in order to appropriately penalize all forms of retaliation and to place one authority in charge of general and comprehensive oversight of the law's implementation.
6. Introduce election campaign expenditure limits and address the ever-increasing spending of public funds for elections.
7. Abandon the practice of contracting the most valuable projects through interstate agreements and special laws, thereby avoiding the application of the Law on Public Procurement.
8. Increase transparency within the process of preparation of the national budget and organize public hearings about the budget.
9. Ensure the enforcement of decisions of the Commissioner for Information of Public Importance and Personal Data Protection.
10. Enhance participation of society in decision-making processes and stop targeting civil society activists and journalists reporting about corruption.

11. Be proactive about corrupt criminal acts, especially when there is information in the media that indicates potential corrupt actions.
12. Introduce the obligation for institutions in charge of overseeing the application of accounting and auditing rules to provide information about their findings, which should significantly increase transparency levels.
13. Provide the Administration for the Prevention of Money Laundering (APML) with the necessary level of independence, so that it can perform its duties without political influence.
14. Enable better international cooperation for the purpose of confiscation and return of stolen assets.
15. Organize training for judges and prosecutors on the topics of asset recovery and confiscation of proceeds of crime.

III. Assessment of Review Process for Serbia

This report was written during the process of the second review cycle in Serbia and it was published prior to the publication of Serbia's official UNCAC review report.

3.1 Report on the Review Process

Serbia was selected by the UNCAC Implementation Review Group on 24 May 2019 by a drawing of lots for review in the fifth year of the second cycle. The scheduled year for the review was 2020. The Ministry of Justice coordinates the review process.

There was no published information about the review process from the Serbian authorities. The only available information about the review process could be found on the UNCAC Coalition Review Status Tracker webpage, where the information about the focal point and the Government expert list were published.³ A person from the Agency for Prevention of Corruption was initially marked as being the Serbian focal point; however, after contacting this person, it turned out that the person was mistakenly marked as a focal point.

A new focal point from the MoJ was designated and the authors of this report sent an official letter in March 2023 to the MoJ inquiring about the review process. There was no response to this inquiry. However, through informal channels of communication, the authors have managed to gather information about the official review process from the Ministry of Justice.

Another Serbian CSO, the Belgrade Centre for Security Policies (BCSP), submitted an FOI request to the MoJ about the review process through the UNCAC Coalition's Access to Information (ATI) campaign. The MoJ responded to this request and released the documents in February 2023.⁴

In May 2023, the authors of this report submitted an official FOI request to the MoJ inquiring about information on the review process and the visit of peer reviewer's countries. The MoJ shared that the country visit is expected to happen in the first quarter of 2023 and the submitted self-assessment checklist. Another question in the FOI was whether there are planned meetings between representatives of civil society organizations representatives and the peer reviewers during their visit, but there was no direct answer to this. Instead, MoJ stated that it is planning to include CSO representatives at some point during the review process.

At the time of completion of this report, Serbia has submitted the self-assessment checklist and is waiting for the desk review. The peer reviewing countries are Latvia and the Netherlands. It has been stated that the country visit is foreseen in the first quarter of 2023, however, as of May 2023, it has still not occurred. No other stakeholders were invited to provide inputs to the self-assessment checklist. Serbia has not signed the UNCAC Coalition's Transparency Pledge.⁵

³ See: <https://uncaccoalition.org/uncacreviewstatustracker/>.

⁴ Available at: <https://drive.google.com/drive/u/0/folders/1UHFSUu3z7fnO9-xrWAhIFCuUkAeJ7IRJ>, accessed on 5 May 2023.

⁵ See: <https://uncaccoalition.org/uncac-review/transparency-pledge/>.

Table 3: Transparency of the government and CSO participation in the UNCAC review process

Did the government disclose information about the country focal point?	Yes	Information about the country's focal point is available on the UNCAC Coalition's website, ⁶ but it cannot be found on the website of the Ministry of Justice.
Was the review schedule published somewhere/publicly known?	No	The review schedule was not published, nor was there any news about the review process.
Was civil society consulted in the preparation of the self-assessment checklist?	No	Civil society representatives were not included in the preparation of the self-assessment checklist.
Was the self-assessment checklist published online or provided to civil society?	No	The self-assessment checklist was not published online, but it has been provided to civil society through FOI requests.
Did the government agree to a country visit?	Yes	It is expected that a country visit will take place in the first quarter of 2023, as stated on the UNCAC Review Status Tracker webpage.
Was a country visit undertaken?	Not yet	It is expected that a country visit will take place in the first quarter of 2023.
Was civil society invited to provide input to the official reviewers?	No	Civil society representatives were not invited to provide input to the official reviewers.
Was the private sector invited to provide input to the official reviewers?	No	Representatives from the private sector were not invited to provide their inputs to the official reviewers.
Has the government committed to publishing the full country report?	No	Serbia has not signed the Transparency Pledge.

3.2 Access to Information

In preparing this report, the authors have consulted several different sources in order to access information necessary for the review:

- **National laws and other regulations** - The authors of this report evaluated national laws, policies and other regulations and accessed them either through the webpage of the Legal Information System,⁷ which contains the electronic database of the Official Gazette or through the webpage of Paragraf,⁸ which also contains a legal base.
- **Reports from public authorities** - Internal documents from public authorities have also been used, such as annual reports, information booklets and statistical reports. All of these documents are published on the respective websites of the different authorities

⁶ See: <https://uncaccoalition.org/uncacreviewstatustracker/>.

⁷ Legal Information System, <https://www.pravno-informacioni-sistem.rs/>.

⁸ Paragraf legal database, <https://www.paragraf.rs/>.

(see bibliography at the end of this report), but not all of them are published in a searchable format. Some of them are published as scanned PDF documents, which makes access to the information contained in those documents more difficult.

- **Civil society reports and reports from international organisations and bodies** - Reports and publications from civil society and international organisations (such as the Organization for Security and Co-operation in Europe (OSCE); Group of States against Corruption (GRECO); SIGMA etc.) provided a valuable source of information for this report.
- **Media articles and press releases** - Used to present relevant cases in practice, taken from local Serbian media (such as the as Balkan Investigative Network (BIRN)⁹, Crime and Corruption Reporting Network (KRIK)¹⁰, Radio Slobodna Evropa (RSE)¹¹ etc.)
- **Requests for free access to information of public importance** – The authors of this report have submitted eight requests for free access to information. All but one of the requests were answered. More information about the requests and answers is provided in the Annex of this report.

All links provided in this report were accessed on 5 May, 2023 and were functional on that day.

⁹ <https://birn.rs/>

¹⁰ <https://www.krik.rs/en/>

¹¹ <https://www.slobodnaevropa.org/>

IV. Assessment of Implementation of Chapter II and Chapter V Provisions

This chapter analyses the implementation of the provisions of UNCAC Chapter II on preventive measures and Chapter V on asset recovery in Serbia through the application of laws, regulations and practices, and highlights both good practices and areas for improvement.

4.1 Chapter II

4.1.1 Art. 5 – Preventive Anti-Corruption Policies and Practices

The legal framework in Serbia contains several legal documents which are of distinct importance for anti-corruption. The most important laws in Serbia when it comes to anti-corruption are the Law on the Ratification of the United Nations Convention against Corruption¹² and the Law on Prevention of Corruption (LPC).¹³ Other highly relevant strategic documents are the Revised Action Plan for Chapter 23¹⁴ (AP23) on EU integration, subchapter “Fight against Corruption,”¹⁵ as well as the Operational Plan for Prevention of Corruption (OPPC) in areas of particular risk.¹⁶ There is currently no National Anti-Corruption Strategy (NACS), since the previous one ceased to be valid at the end of 2018.

The LPC, which is the main anti-corruption law, was adopted in May 2019 and its implementation began in September 2020, thus replacing the previous Law on Anti-Corruption Agency¹⁷ which has been in force since 2010. Although the LPC was adopted relatively recently, it has already been amended five times, and its provisions were the subject of authentic interpretation before the National Assembly. An authentic interpretation is the interpretation of a legal norm or other rule given by the adopter of the legal act itself. In the case of the LPC (as for every other law in Serbia), the adopter is National Assembly, which means that it is responsible for providing the authentic interpretation.

The LPC governs the status of the Agency for the Prevention of Corruption (APC) and rules regarding conflicts of interest, incompatibilities, gifts, asset and income disclosure reports, procedures for sanctioning of violations and other topics relevant for the prevention of

¹² Law on the Ratification of the United Nations Convention against Corruption, 2005, https://www.paragraf.rs/propisi/zakon_o_ratifikaciji_konvencije_ujedinjenih_nacija_protiv_korupcije.html, accessed on 5 May 2023.

¹³ Law on Prevention of Corruption, 2019, https://www.acas.rs/storage/page_files/Law%20on%20Prevention%20of%20Corruption.pdf, accessed on 5 May 2023. Other relevant laws include the Law on Ratification of the Criminal Law Convention on Corruption, together with the Law on Ratification of the additional protocol to this Convention, the Law on Ratification of the Civil Law Convention on Corruption, the Law on Financing Political Activities, the Law on Lobbying, Law on Whistleblower Protection, and others.

¹⁴ Chapter 23 is one of 35 Chapters on which Serbia has been negotiating with the EU in the process of its accession to the Union. Chapter 23 covers the areas of the judiciary, fundamental rights and the fight against corruption. The negotiation process for this Chapter was officially launched on 18 July 2016.

¹⁵ Revised Action Plan for Chapter 23, 2020, https://www.acas.rs/storage/page_files/Revised%20Action%20Plan%20for%20Chapter%2023.pdf, accessed on 5 May 2023.

¹⁶ Operational Plan for Prevention of Corruption, 2021, [https://www.acas.rs/storage/page_files/Operativni%20plan%20za%20spre%20C4%8Davanje%20korupcije%20u%20oblastima%20od%20posebnog%20rizika%20\(1\).pdf](https://www.acas.rs/storage/page_files/Operativni%20plan%20za%20spre%20C4%8Davanje%20korupcije%20u%20oblastima%20od%20posebnog%20rizika%20(1).pdf), accessed on 5 May 2023.

¹⁷ Law on the Anti-Corruption Agency, 2008, <http://www.pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2008/97/6/reg>, accessed on 5 May 2023.

corruption, but only for the public officials as they are defined in the LPC.¹⁸ This list of public officials includes holders of the highest state functions, but leaves out Prime Ministers' and Deputy Prime Ministers' chiefs of cabinet as well as special government advisers. This is something which has also been noted in the Group of States against Corruption (GRECO) fifth evaluation round report,¹⁹ where it is recommended that the LPC should be amended in a way for its remit to include such individuals.

Since there is currently no valid NACS in Serbia, one of the more important anti-corruption documents is the AP23,²⁰ revised in July 2020. AP23 contains a particular subchapter called the "Fight against corruption." This subchapter envisages interim benchmarks together with a list of activities, responsible authorities for its implementation, timeframe, resources and expected results for three different areas: the Implementation of anti-corruption measures; the Prevention of Corruption, and the Repression of Corruption. In order to coordinate the authorities responsible for the implementation of AP23, the Government has established the Coordination Body for Monitoring the Implementation of the Action Plan for Chapter 23 (CB). In addition to coordinating the work of the authorities, the task of this body is to monitor and report on a quarterly basis on the implementation of planned activities, and to consider and make recommendations for improving implementation. CB's quarterly reports on the implementation of the AP23 are published on the website of the Ministry of Justice (MoJ).²¹

Alongside the CB, the APC has also been tracking and reporting on the implementation of AP23 activities which refer to the subchapter on the "Fight against corruption." Their reports can be found on their website.²² As it was noted in the 'preUgovor coalition'²³ alarm report,²⁴ when comparing the reports produced by the CB and the APC, inconsistencies are visible: both evaluated the same activities, but gave different marks regarding some measures. For example, for a number of measures which the CB considered partially implemented, the APC took a different approach, clearly identifying which parts of the measure were implemented and which were not. This was specifically the case with measures which envisaged collection of data on the effects of implemented anti-corruption measures in different sectors, but also with respect to measures regarding the prevention and repression of corruption. Moreover, the CB report

¹⁸ "Public official" is any person who was elected, appointed or nominated to a public authority, with the exception of persons who are representatives of private capital in managing bodies of companies that are public authorities; Article 2, paragraph 1, point 3, of the LPC.

¹⁹ GRECO, July 2022, Fifth Evaluation Round Report, Page 13, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a7216b>, accessed on 5 May 2023.

²⁰ The original Action Plan was adopted in April 2016 by the Government of Serbia, and it was revised in July 2020.

²¹ Reports of the Coordination Body on AP23 implementation, <https://www.mpravde.gov.rs/sr/tekst/33945/izvestaji-o-sprovodjenju-revidiranog-akcionog-plana-za-poglavlje23.php>, accessed on 5 May 2023.

²² APC Report on the Implementation of the AP23 – Subchapter "Fight against corruption" for 2022, available at: https://www.acas.rs/eng/pages_eng/annual_reports_1, accessed on 5 May 2023

²³ The PreUgovor Coalition consists of seven civil society organizations from Serbia with expertise in various policies under chapters 23 and 24 of the European Union accession negotiations. The mission of preUgovor is to oversee the implementation of policies in the field of judiciary and fundamental rights (Chapter 23) and Justice, freedom and security (Chapter 24) and propose measures to improve the reforms, using the process of EU integration to achieve substantial progress in the further democratization of Serbia, <https://preugovor.org/en/Home>, accessed on 5 May 2023.

²⁴ preUgovor coalition, May 2022, Alarm Report on Progress of Serbia in Cluster 1, Page 62, <https://preugovor.org/Alarm-Reports/1747/Alarm-Report-on-Progress-of-Serbia-in-Cluster-1.shtml>, accessed on 5 May 2023.

does not contain an overview of the implementation of activities, but only findings regarding individual activities. Taken as a whole, the report of the APC is better structured and more objective than the one produced by the CB.

One of the activities which was envisaged by the AP23 was the adoption of the OPPC, which was done by the government in October 2021. The OPPC foresees measures and activities to prevent corruption in five areas of particular risk for corruption, out of eight which were identified in a screening process. The areas covered refer to Customs, Local-Self Government (LSG) units, Privatisation, Public Procurement and the Police, and the areas which were left out are those which refer to Healthcare, Education and Taxation.

The OPPC contains an overview of the actions of previous strategies and action plans, their level of implementation, as well as an assessment of the impact of implemented measures in areas of particular risk. In the OPPC itself, it was emphasized that previous experiences in terms of monitoring the implementation of strategic documents did not contribute to their better implementation, but rather led to ambiguities. For this reason, a more effective system of internal and external coordination is envisaged, through the establishment of a Coordination Body for the implementation of the Operational Plan (CBOP) and four implementation groups. The CBOP is responsible for ensuring coordination of the implementation of measures and activities on a political level, as well as coordination between implementation groups, while the implementation groups themselves are responsible for ensuring the coordination of the implementation of measures and activities from particular areas that are the subject of this document at the operational level. The CBOP should publish its reports on the website of the MoJ, and in order to avoid discrepancies with reports prepared by the APC, the guidelines for reporting on the implementation of the OPPC were prepared.²⁵

Perhaps even the main purpose of the OPPC, which was stated in the OPPC itself, is that it should represent the basis for the development of the new NACS and the accompanying Action Plan, which should cover the period from 2023 to 2028. It should also serve to bridge the period between the previous strategic documents in the field of the fight against corruption and the future national strategy. For these reasons, the OPPC will be valid only until the end of 2022.

In order to develop a new strategy, it was envisaged that a working group will be formed and start work in the first quarter of 2022. There was also a public call by the Ministry for Human and Minority Rights and Social Dialogue (MHMRSD) for the inclusion of CSOs in the working group.²⁶ However, no news was shared about the formation of the working group, whether it met and whether anything was actually done. The Prime Minister announced in December 2022 that the working group was formed and that the NACS should be adopted by June 2023.²⁷ The working group started drafting the NACS in March 2023.²⁸ Alongside representatives of numerous state authorities, the working group also includes representatives of CSOs dealing with anti-corruption.

²⁵ Available at: [https://www.acas.rs/storage/page_files/Smernice%20za%20Operativni%20plan%20\(1\).pdf](https://www.acas.rs/storage/page_files/Smernice%20za%20Operativni%20plan%20(1).pdf), accessed on 5 May 2023.

²⁶ See: <https://www.minljud.gov.rs/konkursi-javni-pozivi-47.php>, accessed on 5 May 2023.

²⁷ See: <https://www.021.rs/story/Info/Srbija/326388/Brnabic-Nova-nacionalna-strategija-za-borbu-protiv-korupcije-u-junu-sledece-godine.html>, accessed on 5 May 2023.

²⁸ Danas, March 2023, Five years after the NACS expired, work began on writing a new one, <https://www.danas.rs/vesti/drustvo/pet-godina-nakon-sto-je-istekla-nacionalna-strategija-za-borbu-protiv-korupcije-poceo-rad-na-pisanju-nove/>, accessed on 5 May 2023.

There is an obligation in the AP23 addressed to LSG units, which is the creation of local anti-corruption (action) plans (LAP), aimed at strengthening preventive mechanisms for tackling corruption. The LAPs are documents that aim to identify competences, fields, processes and procedures which carry risks of various forms of corruption and propose methods for tackling such risks and their elimination. In order to facilitate the adoption of these acts, the APC has developed a comprehensive model for the LAP, together with ‘Guidelines for Adoption, Implementation and Monitoring.’²⁹ In the latest report of the APC on the preparation of the LAP from December 2022, it is stated that a total of 111 LSG units have adopted LAPs, i.e., 76.55% of the 145 LSGs that are subject to this obligation³⁰. Civil society organisations (CSOs) often collaborate with LSGs and participate in the development of these plans.

There is no uniform practice when it comes to the involvement of CSOs in drafting regulations related to anti-corruption. CSOs have been included in working groups for some of the strategic documents, such as the OPPC, but their suggestions have mostly been rejected, often without an adequate explanation. CSOs dealing with anti-corruption in Serbia play an important role when it comes to preventive activities, raising public awareness and through monitoring the implementation of the anti-corruption activities.

Serbia has been a member of GRECO since 2003 and has been evaluated five times. The latest GRECO evaluation report on Serbia was published in July 2022 and contains many recommendations (some of which will be mentioned throughout this report) which are crucial to improving anti-corruption legislation.³¹ Serbia should submit a report on the measures taken to implement the recommendations by 30 September 2023. However, considering the scope of the given recommendations and the fact that Serbia was delayed by six years³² in fulfilling most of the previous recommendations, this deadline does not seem realistic for most of the necessary activities. The reason for not fulfilling most of the recommendations on time is the lack of political will, which indicates that the fight against corruption is not on the list of priorities of the Serbian government.

Good practices

- The previous NACS has been adopted by the National Assembly, which enabled it to apply to a wider range of authorities.
- There was also an obligation for the National Assembly to consider the implementation report of previous NACS, although this never happened in practice.
- Civil society organisations (CSOs) often collaborate with LSGs and participate in the development of these plans.

Deficiencies

- The only strategic anti-corruption document in the period from 1 January 2019 until the adoption of the OPPC in October 2021 was the AP23. This is an example of bad practice because the issue of the fight against corruption was considered only in the

²⁹ Available at: https://www.acas.rs/storage/page_files/Model%20LAP%20engleski.pdf, accessed on 5 May 2023.

³⁰ Available at: https://www.acas.rs/storage/page_files/Izve%C5%A1taj%20o%20izradi%20LAP%20-%20C4%8Detvrti%20kvartal%20%202022.%20godine_1.pdf, accessed on 5 May 2023.

³¹ GRECO Fifth Evaluation Round Report on Serbia, 2022.

³² Transparency Serbia, April 2022, Six years of delay in meeting GRECO recommendations, <https://transparentnost.org.rs/en/ts-and-media/press-issues/12261-six-years-of-delay-in-meeting-greco-recommendations>, accessed on 5 May 2023.

- context of the EU integration, although it is of a much broader significance for Serbia.
- Monitoring the implementation of anti-corruption activities is not well established. Because of this, the APC and CB produce reports which evaluate the same activities differently.
 - Serbia was delayed by six years in implementing the recommendations contained within the last GRECO evaluation report, prior to 2022.
 - The fight against corruption is not on the list of priorities for the Serbian Government.

4.1.2 Art. 6 – Preventive Anti-Corruption Body or Bodies

The APC is the main anti-corruption body in Serbia, whose status is regulated by the LPC. It has the status of a legal person, and is an independent state authority accountable to the National Assembly for performance of work from its purview.³³ The APC has a wide range of competences prescribed by the LPC when it comes to activities related to the prevention of corruption.³⁴ Among them are: deciding on the existence of conflict of interest, auditing of the financing of the political activities, lobbying, maintaining and publishing the Register of the Public Officials and the Register of Assets and Income of Public Officials, acting upon complaints submitted by natural and legal persons, providing opinions about the applications of the LPC, analysing risks of corruption, and several others.

Funds for the work of the APC are derived from the special section of the Budget of the Republic of Serbia, as well as from other sources, in accordance to the LPC.³⁵ Funds should be sufficient to enable its effective and independent work.³⁶ This legal provision is more of a declarative nature, as the mechanisms set in the Budget System Law³⁷ apply for all budget users. However, the Government cannot suspend, postpone or limit the execution of budget funds intended for the work of the APC without the consent of its director.³⁸ This is a safeguard which was introduced on the basis of GRECO recommendations.³⁹ The total execution of funds for the work in 2022 amounted to 96.77% of the approved funds.⁴⁰ Almost 90% of the APC budget goes to salaries and regular operating costs.⁴¹

In March 2019, the Director of the APC introduced a new classification of job positions,⁴² which envisaged a new structure and increased the number of employees to 162 (compared to 126 in the 2018 system), plus four employees based on employment contracts. However, as of

³³ Article 3 of the Law on Prevention of Corruption (LPC).

³⁴ Article 6 of the LPC.

³⁵ Article 4 of the LPC.

³⁶ Article 4 of the LPC.

³⁷ Budget System Law, 2009, https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html, accessed on 5 May 2023.

³⁸ Article 4 of the LPC.

³⁹ GRECO, July 2015, Fourth Evaluation Round Report, Page 64, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca35d>, accessed on 5 May 2023.

⁴⁰ Agency for Prevention of Corruption, Budget Execution Report for 2022, https://www.acas.rs/storage/page_files/Izvr%C5%A1enje%20bud%C5%BEta%202022.%20godina.pdf, accessed on 5 May 2023.

⁴¹ Ibid.

⁴² Available at: [https://www.acas.rs/storage/page_files/Pravilnik%20o%20unutra%C5%A1njem%20ure%C4%91enju%20i%20sistemizaciji%20radnih%20mesta%20u%20Slu%C5%BEbi%20Agencije%20\(2019.\).pdf](https://www.acas.rs/storage/page_files/Pravilnik%20o%20unutra%C5%A1njem%20ure%C4%91enju%20i%20sistemizaciji%20radnih%20mesta%20u%20Slu%C5%BEbi%20Agencije%20(2019.).pdf), accessed on 5 May 2023.

31 July 2022, the Agency has 93 permanent employees, two temporary employees and seven more under contract,⁴³ and the approved budget relates only to the existing number of employees. Personnel capacity is only about 60% filled, which indicates that the APC does not have adequate resources to achieve its goals in practice in all its competencies. In addition to the human resources problem, the APC lacks office space since the building where it is located is not adequate for the number of employees.⁴⁴

The principal bodies of the APC are the Director and the Council (used to be the Board).⁴⁵ The National Assembly elects the Director and Council of the APC after a public competition conducted by the Judicial Academy and announced by the MoJ. The Selection Committee conducts candidate testing, based on the MoJ's tests. It evaluates the competence of the candidate, their professional integrity for the position, and finally, the working programme (of the Director only).⁴⁶ However, regardless of the testing results, the National Assembly can decide to choose any of the candidates who have passed the test (at least 80 out of 100 points). During the drafting of this report, the process of election of a new director was underway,⁴⁷ since the term of the previous director was about to expire. The new Director of the APC was appointed by the National Assembly on 27th February 2023. Three candidates applied for the competition which was run by the Judicial Academy, and all three of them had the right to present their programs before the Selection Committee. The presentation of programs was public and was broadcast through the YouTube channel of the Judicial Academy.⁴⁸ The programs of the candidates have also been published on the academy's website, which represents a positive step in terms of transparency of the election process.⁴⁹

The National Assembly also decides on the Director's dismissal by a majority vote of all deputies.⁵⁰ There are a few reasons for a director's dismissal: if he/she becomes a member of a political party, if he/she is convicted of a criminal offence with a prison sentence of at least six months, or for a punishable offence that makes him/her unworthy of public office, or being found to have violated the Law in the field of corruption prevention.

The Judiciary Committee of the Parliament initiates a procedure to decide whether there are reasons for the Director's dismissal, and the Director has the right to address the Committee. The same conditions for release from office also apply to the Council of the Agency members.⁵¹ Both the Director and the Council members are elected for a term of five years and can be

⁴³ Available at: https://www.acas.rs/storage/page_files/Informator%20o%20radu%20jul%202022_1.pdf, accessed on 5 May 2023.

⁴⁴ Annual Report of the APC, 2017, Page 16, https://www.acas.rs/storage/page_files/Izve%C5%A1taj%20o%20radu%20za%202017.%20Agencije%20za%20Oborbu%20protiv%20korupcije.pdf, accessed on 5 May 2023.

⁴⁵ Article 8 of the LPC.

⁴⁶ Article 12 of the LPC.

⁴⁷ See: <https://mpravde.gov.rs/obavestenje/37709/javni-konkurs-za-izbor-direktora-agencije-za-sprecavanje-korupcije.php>, accessed on 5 May 2023.

⁴⁸ Presentation of the program of candidates for the election of the Director of the APC, <https://www.youtube.com/watch?v=AvokvYgARrI>, accessed on 5 May 2023.

⁴⁹ Programs of candidates for the election of the director of the APC, <https://www.pars.rs/sr/aktuelno/aktuelno/2503-ukupni-rezultati-kandidata-agencije>, accessed on 5 May 2023.

⁵⁰ Article 16 of the LPC.

⁵¹ Article 27 of the LPC.

elected to the same position a maximum of two times.⁵² The Director, Council members and employees do not have immunity or other special privileges because of their work.

There are no special rules or norms regarding the verification of the ethical standards of candidates. However, employees have regular training on ethics and integrity issues, which are repeated in cycles. Within the Agency, there is a Sector for Prevention and Strengthening of Integrity.⁵³ The APC also has an Act regulating the issue of internal whistleblowing.⁵⁴

The APC's independence has been called into question on several occasions in connection with the selection of its directors, their resignations and decisions. The last director's term expired in January 2023, (originally elected in January 2018), almost a year after the APC worked without a director and with an incomplete Board for years. His independence was questioned, due to the fact that he was a member of the ruling Serbian Progressive Party (In Serbian: Srpska Napredna Stranka – (SNS)) party until the day of his election to office,⁵⁵ a donor of the party, as well as nominee of this party for the local Election Commission in 2017.⁵⁶

The APC is active in education and training in the area of prevention of corruption. It cooperates with state bodies, officials, civil servants, journalists, students and civil society. Reports about these activities are presented in the annual reports of the APC.⁵⁷ However, the scope of these activities and number of participants is limited by the budget and the number of employees in the APC. The APC also has a special sector for cooperation with the media and civil society.

The APC held a series of trainings for various institutions on corruption risk management, integrity plans, conflict of interest, financing of political activities, money laundering and other topics within its competencies. Over one hundred thousand (103,401) employees and managers in public authorities have completed training on ethics and integrity remotely by taking a test.⁵⁸ The APC has also developed a number of guidelines, handbooks, methodologies, and manuals for the areas for which it is competent.⁵⁹

The APC has an obligation to submit its annual report for the previous year to the National Assembly by 31 March, each year. As already mentioned, APC has also been reporting on the

⁵² Articles 14 and 25 of the LPC.

⁵³ The Sector includes the Department for Strengthening Institutional Integrity, the Department for Integrity Plans and Analysis, and the Department for Education, Anti-Corruption Plans and Strategy.

⁵⁴ Available at:

[https://www.acas.rs/storage/page_files/Pravilnik%20o%20postupku%20unutra%C5%A1njeg%20uzbunjivanja%20\(2020\).pdf](https://www.acas.rs/storage/page_files/Pravilnik%20o%20postupku%20unutra%C5%A1njeg%20uzbunjivanja%20(2020).pdf), accessed on 5 May 2023.

⁵⁵ Danas, November 2018, Sikimić: All conditions fulfilled for my election,

<https://www.danas.rs/vesti/politika/sikimic-ispunjeni-svi-uslovi-za-moj-izbor/>, accessed on 5 May 2023.

⁵⁶ For the 2017 presidential election in the municipality of Zemun.

⁵⁷ Available at: https://www.acas.rs/eng/pages_eng/annual_reports_1.

⁵⁸ APC Annual Report for 2022, Pages 28 to 32,

https://www.acas.rs/storage/page_files/Izve%C5%A1taj%20o%20radu%20za%202022.%20Agencije%20za%20Ospre%C4%8Davanje%20korupcije_1.pdf, accessed on 5 May 2023.

⁵⁹ As an example, APCs Methodology for Assessing the Risk of Corruption in Regulations, April 2021 available at:

https://www.acas.rs/storage/page_files/Metodologija%20za%20procenu%20rizika%20od%20korupcije%20u%20Opropisima.pdf, accessed on 5 May 2023.

implementation of the AP23 activities which refer to the subchapter “Fight against corruption.” Both reports are available on the APC website.⁶⁰

Another body which is important for the prevention of corruption in Serbia is the Anti-Corruption Council. The ACC was established by the Decision of the Government on 11 October 2001.⁶¹ The ACC is an expert, advisory body of the government, founded with a mission to oversee all aspects of anti-corruption activities, to propose measures to be taken in order to fight corruption effectively, to monitor their implementation, and to make proposals for regulations, programs and other acts and measures in this sector. The ACC prepares reports on potential systemic corruption with recommendations and submits them to the government, which is obliged to consider them. The ACC has prepared 72 reports since its establishment, which are available on their website.⁶² However, the work of the ACC and their reports and recommendations have been ignored by the government, and they did not receive any feedback.

The President of the ACC is appointed from among the members of the ACC on their proposal. The ACC has six members. The new members of the ACC should be appointed by the government on the proposal of the ACC’s current members. Alongside these six members, seven places are vacant, even though the ACC has repeatedly made proposals for the appointment of new members. On the contrary, the government has tried to directly appoint three members in breach of the rules.⁶³ The ACC spends budgetary funds adopted by the government on the proposal of the ACC. The AP23 recognized the need to strengthen the budget and staff resources within the ACC, but nothing has been done in that regard.⁶⁴

The need for strengthening the influence and capacities of the ACC was also recognized by GRECO: the fifth evaluation round report included a recommendation on to the Council. GRECO recommended that the advisory role of the ACC in the institutional framework to combat corruption be fully acknowledged by ensuring that the government engages with it, that all vacant posts of the ACC be filled and that cooperation with the APC be formalised.⁶⁵

Good practices:

- The APC was established as an independent state body, with a broad mandate in the area of prevention of corruption.
- The APC has good cooperation with other relevant national stakeholders who are dealing with the issue of corruption.
- The recent election of a new APC director represented a positive step in terms of transparency, with candidates’ programs publicly presented and broadcast on the Judicial Academy’s YouTube channel, and subsequently published on the Academy’s website.

⁶⁰ APC Report on the Implementation of the RAP23 – Subchapter “Fight against corruption” for 2022, available at: https://www.acas.rs/storage/page_files/Report%20on%20RAP%2023%202021_2.pdf, accessed on 5 May 2023.

⁶¹ Governments Decision on establishing the Anti-Corruption Council, 2001, http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/savet/odluka_preciscen_tekst.pdf, accessed on 5 May 2023.

⁶² ACC, Reports, Available at: <http://www.antikorupcija-savet.gov.rs/en-GB/page/home/>.

⁶³ GRECO, 2022, Fifth Evaluation Round Report, Page 16.

⁶⁴ Annual Report on AP23, 2022, Page 12, https://www.acas.rs/storage/page_files/Report_on_RAP23_2022.pdf, accessed on 5 May 2023.

⁶⁵ GRECO, July 2022, Fifth Evaluation Round Report, Page 15.

- Employees of the APC have regular training on ethics and integrity issues, which are repeated in cycles. Over one hundred thousand employees and managers in public authorities have completed training on ethics and integrity remotely.
- The ACC has prepared 72 reports since its establishment, on potential systemic corruption with recommendations, and submitted them to the government, which is obliged to consider them. Unfortunately, the government has disregarded this work.

Deficiencies

- Even though the APC has made significant efforts in preventing corruption, their impact is limited due to a lack of follow-up from the government and National Assembly and the insufficient promotion of activities by the APC itself.
- The APC's position is weak due to the lack of a NACS and due to unclear division of roles between the APC, the CB and the CBOP regarding the monitoring of implementation of anti-corruption activities.
- Although the APC has strongly prescribed competencies in some areas (such as, for example, auditing of the financing of political activities), its duties are not precise enough, thus limiting the accountability of this body in terms of its results but also the accountability of public officials and political entities that the APC oversees for potential wrongdoing.
- The APC does not have adequate resources to achieve all of its envisaged goals (in particular staff).
- The APC's scope of work is severely limited by the exclusion of many public officials from the definition of the term through an authentic interpretation of the LPC.
- The APC's independence and integrity were challenged based on how it has dealt with prominent cases related to the ruling party and its high-level officials.
- The role of the ACC has been completely neglected, and the work done by the ACC deliberately ignored.

4.1.3 Art. 7.1 – Public Sector Employment

Employment in the public sector is mainly regulated by the Law on Civil Servants,⁶⁶ the Law on State Administration,⁶⁷ the Law on Employees in Public Services,⁶⁸ the Code of Conduct of Civil Servants,⁶⁹ the Labour Law⁷⁰ and by other legal acts.

Basic provisions on the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials are contained in the Law on Civil Servants (LCS). This law was adopted in 2005 and was last amended in December 2022. It defines the concept of civil servant,⁷¹ regulates their rights and duties, prescribes the division

⁶⁶ Law on Civil Servants, 2005, https://www.paragraf.rs/propisi/zakon_o_drzavnim_sluzbenicima.html, accessed on 5 May 2023.

⁶⁷ Law on State Administration, 2005, https://www.paragraf.rs/propisi/zakon_o_drzavnoj_upravi.html, accessed on 5 May 2023.

⁶⁸ Law on Employees in Public Services, 2017 <https://www.paragraf.rs/propisi/zakon-o-zaposlenima-u-javnim-sluzbama.html>, accessed on 5 May 2023.

⁶⁹ Code of Conduct of Civil Servants, 2008 <https://www.paragraf.rs/propisi/kodeks-ponasanja-drzavnih-sluzbenika-republike-srbije.html>, accessed on 5 May 2023.

⁷⁰ Labour Law, 2005, https://www.paragraf.rs/propisi/zakon_o_radu.html, accessed on 5 May 2023.

⁷¹ According to Article 2 of the LCS, a “civil servant” is a person whose workplace consists of tasks within the scope of state administration bodies, courts, public prosecutor's offices, the State Attorney's Office, the services of the National Assembly, the President of the Republic, the Government, the Constitutional Court and the services of bodies whose members are elected by the National Assembly or related to them general legal, IT,

of job positions⁷² into appointed positions and executive positions, establishes special bodies and regulates other matters of importance for the civil service. The Administrative Inspectorate, which is the Ministry of Public Administration and Local Self Government body (MPALSG), is in charge of supervision of the implementation of the LCS.

Certain public authorities, such as public agencies, which perform state functions and include regulatory bodies, are excluded from the scope of the civil service, and their employment relations are regulated by the general Labour Law, with exceptions based on special legislation.

The division of job positions as appointed and executive positions is based on the method of employment, complexity of the work, powers and responsibilities. An appointed position is one in which a civil servant has powers and responsibilities related to the management and coordination of work in a state authority and is acquired by appointment by the government or another state authority or body. Executive job positions are all those job positions that are not considered as appointed positions, including the job positions of managers of internal units in a state authority. Executive job positions are classified according to ranks depending on the complexity and responsibility of tasks, required knowledge and requirements for work.

Regarding employment conditions, the LCS contains only general provisions such as the one that a civil servant must be an adult who has the prescribed professional qualifications and meets the other requirements. A civil servant cannot be a person whose employment in a state body was previously terminated due to a serious breach of duty from the employment relationship or if he was sentenced to a prison sentence of at least six months.⁷³ Civil servants must have passed a professional state exam, or they can be employed in an executive position without it, but must pass a professional state exam within a year from the date of employment.

Every state authority is obliged to adopt its own Rulebook on the Internal Arrangement and Systematization of Job Positions in a State Authority.⁷⁴ These rulebooks regulate in more detail jobs, the required number of civil servants at each job, the conditions for working at each job related to the type and degree of professional training, i.e., education, the state professional exam or special professional exam and the required work experience in the profession, as well as the required competencies for performing the tasks of a workplace in a state authority.

The procedure of filling executive and appointed positions through internal and public competitions is regulated in more detail by the Regulation on Internal and Public Competition for Work Positions in State Authorities.⁷⁵ Executive positions are, as a rule, firstly filled out through an internal competition, and if this fails, by a public competition. Appointed positions are filled out either through a public or internal competition. Both internal and public competitions are published on the website of the Human Resource Management Service

material-financial, accounting and administrative tasks. Civil servants are not MPs, the President of the Republic, judges of the Constitutional Court, members of the Government, judges, public prosecutors, deputy public prosecutors and other persons elected to office by the National Assembly or appointed by the Government and persons who, according to special regulations, have the position of officials.”

⁷² Articles 32 to 43 of the Law on Civil Servants (LCS).

⁷³ Article 45 of the LCS.

⁷⁴ Article 46 of the LCS.

⁷⁵ Available at: <https://www.paragraf.rs/propisi/uredba-internom-konkursu-radnih-mesta-drzavnim-organima.html>, accessed on 5 May 2023.

(HRMS),⁷⁶ which is the Government body responsible for civil service recruitment and selection, mobility and career development in public administration authorities.⁷⁷ Competitions are conducted by a commission appointed by the head of the authority.

The right to legal remedy is ensured by the LCS, and the candidates can file an appeal regarding the selection decision of the competition to the Government Appeals Commission.⁷⁸ However, there is no available data on the appeals against selection decisions.

Employment through a competition is a rule when employing on a permanent contract, however, when civil servants are employed on a fixed-term contract, recruitment is carried out without competition. This creates a significant risk of a political influence and corruption, since the heads of the state authorities are usually appointed by the government, and represent political, and not professional figures. According to the available data, the total fixed-term employment in central government bodies amounted to 11.7% at the end of 2020.⁷⁹ This practice should have been curtailed from 2023, since the postponed provisions of LCS requiring open competitions for fixed-term employment have been envisaged to come into force since January 2023. However, in late December 2022, the LCS was amended in a way that the obligation prescribing open competitions for fixed-term employment has been postponed until 2025.⁸⁰

It is not uncommon for there to be a large number of ‘ghost workers’ in the public sector, and especially in public enterprises. In 2021, when the employees of the public enterprise ‘Pošta Srbija’ were on strike, they published a list of 60 famous people who were supposedly employed by that company, but who actually don’t work for the enterprise but only receive a salary.⁸¹

Alongside the aforementioned Commission, another body established by the LCS is the High Civil Service Council (HCSS). The HCSS decides on the rights and duties of a civil servant who manages a state body appointed by the government, conducts disciplinary proceedings against a civil servant appointed by the government, appoints a Competition Commission to conduct the competition when the position is filled by the government, adopts a code of conduct for civil servants and performs other duties specified by the LCS.⁸² The HCSS has 11 members, all of whom are appointed by the government for a period of six years. The members of the HCSS are chosen from the ranks of senior civil servants and external experts, and political officials cannot be members.

There is a slightly different procedure prescribed by the LCS for the appointment and staffing of senior civil servants’ positions. Firstly, the HCSS decides on the structure of the Competition Commission for senior civil servants’ positions which are appointed by the government. The

⁷⁶ They also need to be published on the official website of the public authority official website, the eGovernment Portal, and the National Employment Service website. <https://www.suk.gov.rs/>.

⁷⁷ HRMS, Competitions, available at: <https://www.suk.gov.rs/konkursi/170>, accessed on 5 May 2023.

⁷⁸ Articles 142 to 153, LCS.

⁷⁹ SIGMA (November 2021) Monitoring Report, the Principles of Good Administration, Page 71, <https://www.sigmaweb.org/publications/Monitoring-Report-2021-Serbia.pdf>, accessed on 5 May 2023.

⁸⁰ See: <https://www.paragraf.rs/dnevne-vesti/191222/191222-vest12.html>, accessed on 5 May 2023.

⁸¹ Among these 60 people were mostly celebrities such as famous singers. Direktno, February 2021, Who is on the pay list of the Post?, <https://direktno.rs/vesti/drustvo-i-ekonomija/331733/radnici-poste-zaposleni-starlete-estrada.html>, accessed on 5 May 2023.

⁸² Article 164 of the Law on Civil Servants (LCS).

Commission then compiles a list of a maximum of three candidates who meet the criteria prescribed for the selection with the best results, and submits it to the head of the public authority who can propose any candidate from the list to the government. The main issue regarding senior positions is the high percentage of acting appointments of for senior civil servants, which became a practice in Serbia regarding all state bodies.⁸³ An acting appointment means that senior civil servants are appointed by the government without a competition. It is not rare that even after their term expires, they stay in these positions. In this way, the Executive branch influences the work of senior civil servants, because they can be dismissed at any time since their term has expired. Senior civil servants are also vulnerable when it comes to the reorganisation of job positions, since they can end up being transferred to a lower position without any valid reason.⁸⁴

A dismissal of civil servants which is not based on their performance may also happen in a case of internal restructuring or downsizing of public bodies.⁸⁵ These redundant civil servants have the right to be offered vacant positions in other bodies if such positions exist, but there are no guarantees that they will be offered the same position and same salary level which they used to have. In case they reject this transfer, they will be dismissed from service. Otherwise, dismissal reasons are based on objective criteria and the termination of employment of civil servants in this manner is uncommon. Retention rates of newly employed civil servants are quite high.⁸⁶

When it comes to salaries, the LCS only prescribes the right to a salary, while the Law on Salaries of Civil Servants and State Employees⁸⁷ provides in-depth regulation, such as provisions on the method of determining the basic salary, determining the coefficient and the salary groups, as well as salary grades for civil servants and state employees.

The salaries are competitive with the private sector, with the average salary in the public sector being slightly above the national average salary.⁸⁸ Nevertheless, there is a big gap in salaries between the lowest ranked public servants and those in higher positions. For positions in which the private sector can offer significantly higher salaries, such as the IT sector, the public sector is not attractive to potential employees.

The LCS prescribes provisions for the evaluation of work performance of civil servants.⁸⁹ It is carried out on the basis of work performance criteria, which include the behavioural competencies of civil servants and the results of the work of the organizational unit in which the civil servant is working. Civil servants cannot be promoted based on a performance appraisal, but they can get a permanent salary increase (based on a higher coefficient). Hence,

⁸³ According to the SIGMA (November 2021) Monitoring Report, the percentage of senior civil servant's vacancies filled through acting appointments remained above 60%, Page 76, accessed on 5 May 2023.

⁸⁴ SIGMA (November 2021) Monitoring Report, the Principles of Good Administration, Page 77, accessed on 5 May 2023.

⁸⁵ Articles 133 and 134 of the LCS.

⁸⁶ According to the SIGMA 2021 Monitoring Report for Serbia, the retention rate was on average 97% for 5 institutions which were analyzed, Page 73.

⁸⁷ Law on Salaries of Civil Servants and State Employees, 2006
https://www.paragraf.rs/propisi/zakon_o_platama_drzavnih_sluzbenika_i_namestenika.html, accessed on 5 May 2023.

⁸⁸ Statistical Office of the Republic of Serbia, available at:
<https://www.stat.gov.rs/vesti/statisticalrelease/?p=8951&a=24&s=2403?s=2403>.

⁸⁹ Articles 82 to 86 of the LCS.

performance reviews do not necessarily represent the actual competencies of the employee, because heads of organizational units will often try to get salary increases for their subordinates by evaluating them positively.⁹⁰

The National Academy for Public Administration (NAPA) is a special organisation dedicated to the professional development of employees in public administration. The NAPA implements various training programs aimed at improving the competences of public employees. An overview of the available training is available on the NAPA website⁹¹ and some training can also be followed online. Alongside civil servants, the training of the NAPA is available to the employees in public agencies, regulatory and supervisory bodies, independent organisations, and LSG units. The work of the NAPA is supervised by the MPALSG. There is no specific training envisaged for civil servants who are in positions that are considered to be especially vulnerable to corruption.

Good practices

- A comprehensive system for the recruitment, hiring, retention, promotion and retirement of civil servants has been established through the LCS.
- NAPA is an organisation dedicated to the professional development of employees in public administration. It has implemented various training programs, some of which can also be followed online.
- Salaries in the public sector are competitive with those in private sector, except for positions with high salaries, such as the IT sector.

Deficiencies

- The procedures for recruitment are bypassed through hiring on fixed-term and temporary contracts, which opens the door to arbitrariness and employment based on political or other affiliations.
- There is a large number of acting civil servants in top positions, in most instances appointed by the Government contrary to the rules.
- There is no available data from the Government Appeals Commission on the appeals against selection decisions.
- There is a big gap in salaries between the lowest ranked public servants and those in higher positions. The public sector is not attractive to potential employees, since the private sector can offer significantly higher salaries.
- There is no specialised training for civil servants who are in positions that are considered especially vulnerable to corruption.

4.1.4 Art. 7.3 – Political Financing

The sources and manner of financing, records and auditing of financing of activities of political subjects in Serbia is regulated by the Law on Financing Political Activities (LFPA).⁹² This law was adopted in 2022, thus replacing the previous LFPA from 2011. Although this is a ‘new’ law, it is essentially based on the previous law that has undergone many changes, which is why

⁹⁰ SIGMA 2021, Monitoring Report for Serbia, Page 82, accessed on 5 May 2023.

⁹¹ <https://www.napa.gov.rs/>, accessed on 5 May 2023.

⁹² Law on Financing Political Activities (LFPA), 2022, https://www.acas.rs/storage/page_files/Law%20on%20Financing%20Political%20Activities.pdf, accessed on 5 May 2023.

it formally bears the label of a new law. Another law important for this area is the LPC, because the APC deals with the financing of political activities.

Political entities can be financed both from public and private sources. Public sources for financing comprise pecuniary funds given from the budgets of the Republic of Serbia, autonomous provinces and LSG, and from services and goods given by the aforementioned authorities and by organisations founded by them, under equal conditions for all political entities. Private sources of financing comprise membership dues, donations, inheritance, legacy and income from property. Political entities can also take credits and loans exclusively from banks and other financial organisations in Serbia, supervised by the National Bank of Serbia, to match up to 25% of funds provided from public sources, on an annual basis.⁹³

As defined in the LFPA, “a donation is a pecuniary amount (other than membership due) given by a natural or legal person, a gift, as well as a good or service provided without compensation or under conditions deviating from market conditions”.⁹⁴ Credits and loans which are given under conditions deviating from market ones are also considered as donations. A legal person is required to submit its ownership structure when donating to a political entity. Donations which are pecuniary amounts must be provided only from the donors’ current account. A political entity is required to keep records about received donations.

Article 10 of the LFPA prescribes the maximum value of donations at an annual level. For a natural person, the maximum value that can be donated for financing the regular work of a political entity must not exceed 10 average monthly salaries, while the maximum for a legal person is 30 average monthly salaries. Any donation that, at an annual level, exceeds the value of one average monthly salary must be published on the website of the political entity.

It is prohibited to finance a political entity by foreign sources, except international political associations,⁹⁵ anonymous donors, state authorities and institutions, companies with state capital share, and others listed in Article 12 of the LFPA. It is also prohibited to give a donation to a political entity through a third party, but there are no effective sanctions to implement the prohibition. There were some activities before the presidential and parliamentary elections held in 2022 which could be considered as trading of influence, contrary to Articles 18 and 19 of the UNCAC. The ruling party’s campaign was supported by several celebrities, allegedly supporting the party *pro bono* but known to be beneficiaries of governmental sponsorships, subsidies, projects or awards.⁹⁶ Another issue is social media posts sponsored by third parties, primarily by unaffiliated individuals, which were disseminated online in favour of a number of participants.⁹⁷ The lack of third-party regulation was especially used when advertising on social networks.

There is a difference between the rules for financing the regular work of political entities and for financing election campaign expenditures. Political entities which have won seats in

⁹³ Article 2 to 7 of the LFPA.

⁹⁴ Article 8 of the LFPA.

⁹⁵ Their donations may not be in money, but for example, they can hold training for party members.

⁹⁶ Blic, 2016, Aca Lukas: I sing pro bono only for SNS, <https://www.blic.rs/zabava/vesti/aca-lukas-besplatno-pevam-samo-za-sns/63qbf99>, accessed on 5 May 2023.

⁹⁷ Such social media can be shown through an example of a Facebook profile such as the one called “Pristojna Srbija” (<https://www.facebook.com/pristojnarsrbija/>). Their ads are not promoting a concrete political party, but are aimed at belittling other participants in the elections.

representative bodies⁹⁸ receive funds from public sources for their regular work on an annual level in proportion to the number of votes they had in elections.⁹⁹ Funds received for regular work can also be used for financing election campaign expenditures.

Funds from public sources for covering election campaign expenditures are allocated in equal amounts to submitters of proclaimed election lists who declared that they will use public funds. These equal amounts are shared from the amount of 40% of the total allocated funds for election campaign expenditures in the year of regular elections.¹⁰⁰ However, as noted in an election observation report by the Office for Democratic Institutions and Human Rights (ODIHR), the first disbursement is only carried out upon the completion of candidate registration, thus limiting the possibility to use public funds for campaigning to only one week for most contestants.¹⁰¹ The remaining portion of 60% of funds is allocated to submitters of winning election lists in proportion to the number of sets won, or in case of elections held according to the majority system, to the nominator of the winning candidate. The second disbursement, however, is not conditioned to the lawful financing of campaigns, because the payment is executed before the verification of the reports. If a political entity does not spend all the allocated public funds, it should return them in the budget. In practice, political entities somehow manage to spend almost all public funds they get, with some exceptions.¹⁰²

Every political entity which declared an interest to use public funds for campaign expenditures must give the election bond for the amount they receive before the elections. If they receive less than 1% of votes in the elections, they must return the funds for which they placed an election bond.¹⁰³

Political entities which have representatives in representative bodies and registered political parties are required to submit to the APC an annual report on the financing of the political entity, which shall include information on donations and assets, together with the previously obtained opinion of an auditor certified in accordance with accounting and audit regulations not later than 30 April of the current year for the preceding year.¹⁰⁴ Annual reports must be published both on the website of the political entity and of the APC.

Legislative changes to the LFPA in 2022 introduced preliminary (interim) reports as a novelty. All political entities participating in the elections are required to submit a preliminary report on election campaign expenditure seven days before the day set for the voting. They are obliged to submit a final report within 30 days from the date of publication of the aggregate report on election results. The preliminary reports, however, only contain data on expenditures incurred

⁹⁸ Which have members of the parliament, deputies and/or councilors. Funds are set at the level of 0.105% of tax revenues of the budget of the Republic of Serbia, tax revenues of the budget of the autonomous province and/or tax revenues of the budget of the local self-government unit, according to Article 16 of the LFPA.

⁹⁹ The number of votes of a political entity taken as basis for allocation of funds is calculated by multiplying the number of votes up to 3% of valid cast votes of all voters with a quotient of 1.5, and the number of votes over 3% of valid cast votes of all voters with a coefficient of 1; Article 17 of the LFPA.

¹⁰⁰ These funds are allocated in the amount of 0.07% of tax revenues of the budget of the Republic of Serbia, tax revenues of the budget of the autonomous province and/or of tax revenues of the budget of the local self-government unit, for the budget year; Article 20 of the LFPA.

¹⁰¹ ODIHR (August 2022) Election Observation Mission Final Report on Presidential and early Parliamentary Election held in April 2022, Serbia, Page 17, https://www.osce.org/files/f/documents/0/0/524385_0.pdf.

¹⁰² JugPress, June 2022, Coalition MORAMO returned money from campaign, <https://jugpress.com/koalicija-moramovratila-pare-od-kampanje/>, accessed on 5 May 2023.

¹⁰³ Article 25 and 26 of the LFPA.

¹⁰⁴ Article 28 of the LFPA.

up to 15 days before the election.¹⁰⁵ In practice, until that date, political entities pay only a very small amount of costs, so the effects of this novelty are not that significant.

There is no limit on campaign expenditures, which leads to a considerable difference in the financial means available between the election participants. Because of the lack of a limit, the amount spent for administering the elections has been increasing over the years. According to the campaign expenditure reports of the APC, for the presidential, parliamentary and a few local elections held in April 2022, a total amount of 2.15 billion RSD was spent (approx. USD \$20.02 million).¹⁰⁶

Political entities are prohibited from using, for the conduct of activities within the election campaign, funds which they have at their disposal as public officials for the purposes of performing their official duties.¹⁰⁷ However, through the 'Functionary campaign', which is the term first used by Transparency Serbia in 2012 to denote the activities of public officials in the pre-election period, public officials perform activities that are essentially political promotion, but are presented as their 'regular work'.¹⁰⁸

The institution which is mandated with the oversight of political and campaign finance is APC. The APC has adopted Rulebook¹⁰⁹ which regulates the manner of keeping records on donations and property of political entities and the form, content, and manner of submitting the previously mentioned reports. APC prepares a report on the results of the monitoring of the final reports on election campaign expenditure no later than 120 days from the deadline for submitting these reports.¹¹⁰ However, the drawback is that the LFPA does not precisely determine what must be the subject of the monitoring carried out by the APC and what is the minimum amount of data that the APC should present in its report.

The LFPA also introduced, in Article 36, the possibility of auditing donors and providers of services to political parties by the Tax Administration, but no clear criteria for such monitoring is prescribed in the law, nor the scope of possible monitoring, which is subject to the discretionary assessment of representatives of the APC and the Tax Administration.

Punitive provisions are also foreseen in the LFPA. The APC will issue a warning to a political entity in the case that during an audit, it identifies deficiencies that may be remedied. If it fails to act upon the warning, the APC shall initiate misdemeanour proceedings leading to a financial sanction. The APC can act both *ex officio* and upon receiving complaints, and it also may initiate criminal proceedings.

¹⁰⁵ APC register of campaign expenditure reports, both preliminary and final, <https://publicacas.acas.rs/#/acas/pretragaKampanja>, accessed on 5 May 2023.

¹⁰⁶ This amount can be reached upon by collecting the information from campaign expenditures reports which are published on the APC website, https://www.acas.rs/cyr/page_with_sidebar/politicki_subjekti#.

¹⁰⁷ Article 23 of the LFPA.

¹⁰⁸ Transparency Serbia, 2022, Regular presidential and extraordinary parliamentary functionary campaign, https://transparentnost.org.rs/images/dokumenti_uz_vesti/Funkcionerska_kampanja_2022_zavrni.pdf, accessed on 5 May 2023.

¹⁰⁹ Rulebook on Records and Reports of the Political Entity, https://www.acas.rs/storage/page_files/Pravilnik%20o%20evidencijama%20i%20izve%C5%A1tajima%20politi%C4%8Dkih%20subjekata%20sa%20obrascima.pdf, accessed on 5 May 2023.

¹¹⁰ Published report of political entities on the APC website – https://www.acas.rs/cyr/page_with_sidebar/politicki_subjekti, accessed on 5 May 2023.

During the 2022 campaign period, the APC reviewed 15 complaints concerning alleged misuse of administrative resources and public office, all submitted against the SNS, which is the ruling party.¹¹¹ Only four warnings and a fine were issued against the party, and in nine other cases no violation was found. CSOs have also filed complaints to the APC during the campaign, but due to the lack of expedited deadlines in the LPC, they were reviewed only after the elections. Nine of these complaints were rejected by the APC in the form of notifications rather than administrative decisions, which did not allow for appeals.¹¹²

Civil society organisations in Serbia are active when it comes to election rights and financing of political activities. Some of the CSOs are particularly engaged in monitoring the election process and voters' rights,¹¹³ while others are engaged in monitoring the financing of political subjects and election campaign expenditures.¹¹⁴ These activities are independent, i.e., they are not carried out through cooperation with some authority.

The LFPA prescribes a criminal offence related to the financing of political entities. However, the Criminal Code¹¹⁵ does not contain provisions necessary to implement the criminal provisions of the LFPA, which is why this provision is not effective. The Prosecutor's Office has received seven criminal charges/reports during the electoral campaign, and it did not file any charge.¹¹⁶

The rules on the financing of election campaigns from the LFPA are applied according to the collection of funds and the use of own funds to finance the costs of organising the referendum campaign. In Serbia, there is a Law on Referendum and People's Initiative, adopted in 2021.¹¹⁷

Good practices

- The LFPA provides for comprehensive reporting on income and expenditure.
- The LFPA bans indirect and anonymous financing of political parties and campaigns.
- The introduction of interim reports is a good step, even though they have not yet contributed to increased transparency as expected.
- Civil society organisations in Serbia are active when it comes to election rights and monitoring the financing of political activities, and do so independently.

Deficiencies

- Reports are in many cases not prepared in accordance with the stipulated rules.
- The transparency of electoral funding is limited.
- In several prominent cases, identified or suspected violations remain unpunished. Some activities before the presidential and parliamentary elections held in 2022 could be considered as trading of influence, contrary to Articles 18 and 19 of the UNCAC.

¹¹¹ ODIHR (August 2022), Election Observation Mission Final Report, Page 19.

¹¹² Ibid.

¹¹³ Most notable organisations include CeSID, CRTA, BIRODI, Lokalni Front.

¹¹⁴ Transparency Serbia monitored the 2022 election campaigns, specifically the financing of the campaign, the functionary campaign and its placement in TV dailies, the presentation of party leaders on the front pages of the press, advertising on the Internet and especially on social networks, transparency of the campaign, commented on APC reports and published its own parallel reports - <https://www.transparentnost.org.rs/sr/projekti/276-monitoring-izbora-2022>; <https://www.transparentnost.org.rs/index.php/sr/projekti/269-fatra-poboljsanje-pravila>; <https://izbori.transparentnost.org.rs/>, accessed on 5 May 2023.

¹¹⁵ Criminal Code, 2005, <https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html>, accessed on 5 May 2023.

¹¹⁶ ODIHR (August 2022), Election Observation Mission Final Report, Page 26.

¹¹⁷ Law on Referendum and People's Initiative, 2021, https://www.paragraf.rs/propisi/zakon_o_referendumu_i_narodnoj_inicijativi.html, accessed on 5 May 2023.

- Public officials in Serbia are known to perform activities that are essentially political promotion, but are presented as their ‘regular work’.
- There are no campaign expenditure limits which leads to a considerable difference in the financial means available between the election participants. Because of the lack of a limit, the amount spent for administering the elections has been increasing over the years.
- CSOs have filed complaints to the APC during electoral campaigns, but due to the lack of expedited deadlines in the LPC, they were reviewed only after elections. Nine of these complaints were rejected by the APC in the form of notifications rather than administrative decisions, which did not allow for appeals.

4.1.5 Art. 7, 8 and 12 – Codes of Conduct, Conflicts of Interest and Asset Declarations

The criteria for the appointment of most, but not all public offices are established in the Constitution,¹¹⁸ relevant laws and by-laws. Such criteria include in most cases a requirement that the candidate is free from previous criminal conviction and in some instances also other types of offences (misdemeanour) that may disqualify the candidate. However, more frequently, a conviction for a criminal offence, or other type of wrongdoing, is considered as a ground for dismissal of an official, but not as a condition for candidacy. Typically, the reason for such dismissal would be the final court verdict on six months of imprisonment.¹¹⁹

However, for some officials there are no such pre-conditions. This is the case with the President of the Republic and members of Parliament, where the only pre-condition is for him/her to be an adult citizen of Serbia who possess full business capacity, or limited business capacity with preserved voting rights.¹²⁰ When it comes to the Prime Minister and other ministers, there is no such precondition.

On the other hand, the LCS,¹²¹ that applies also to top positions in administration, filled on the basis of government decisions, provides that adult citizens of Serbia may not apply for a job in administration if he/she has previously been sentenced to six months of imprisonment, or if he/she was dismissed from a job in a state institution due to severe violation of duties. These rules indirectly apply to the selection of new judges, prosecutors and many other public officials (e.g., Law on Judges, in Article 43, refers to the “general conditions for the work in state institutions”). For some officials, such preconditions are not explicit. For example, the Ombudsman has to possess “high ethics and professional qualities” (Article 7 of the LCS). Therefore, while some criteria to hold public office do exist, such criteria are not always clear and relevant criteria for some offices are missing.

¹¹⁸ Constitution of the Republic of Serbia, 2006, https://www.paragraf.rs/propisi/ustav_republike_srbije.html, accessed on 5 May 2023.

¹¹⁹ For an example, that is the case with the provision of the LPC. According to the Article 102 of the LPC, if a public official is convicted for a criminal offence for which the least punishment is threatened with six months of imprisonment, it will result in a termination of public office and prohibition of acquiring of a public office for ten years.

¹²⁰ Law on the Election of the President of Republic, 2022, Article 3, https://www.paragraf.rs/propisi/zakon_o_izboru_predsednika_republike.html and the Law on the Election of Members of the Parliament, 2022, Article 3, https://www.paragraf.rs/propisi/zakon_o_izboru_narodnih_poslanika.html, accessed on 5 May 2023.

¹²¹ Article 45 paragraph 1 of the LCS.

Conflict of interest prevention rules do exist in the legal system and they are defined in the Constitution and relevant laws, with the LPC being the most comprehensive, as it applies to most public officials, either as only regulation or as a supplement regulation. According to Article 41 of the LPC, conflict of interest is a situation where a public official has a private interest which affects, may affect, or appears to affect the discharge of public office. As it can be seen, the definition of conflict of interest in this law includes both actual and potential conflicts. It is also related to the constitutional ban of conflict of interest.

However, actual coverage of the rule is limited. Rules from the LPC do not apply to candidates, but only to officials already elected or appointed. So even if there is some type of conflict of interest that is recognized in legislation as an obstacle for election, it has to be effectively resolved upon taking the public office, e.g., through transfer of managerial rights in privately owned enterprises.

When it comes to the disclosure of interests, most but not all have to be listed by elected officials and only exceptionally, by candidates as well. For example, an elected official has to list his/her interests such as shares in private companies, assets, membership in associations, loans and information about household members. On the other hand, officials do not have to expose at the beginning of their mandate other types of potential interests, coming from, for example, previous contracts with companies or valuable gifts received before taking office, even if such connections may potentially raise a conflict of interest during their mandate. However, according to Article 42 of the LPC, public officials are required to disclose “suspicions of conflicts of interests” which may arise during the course of their work and if they fail to do so, it may be reported or investigated.

Candidates are not obliged to file asset declarations, but elected officials are, within the 30-day deadline upon taking office. Such declarations should reflect the state of affairs of the person on election day.¹²² Such a duty exists for members of national Parliament, the autonomous province parliament, and assemblies of the capital city of Belgrade and 29 other cities. Elected members of municipality and in-city municipality assemblies (141 in total) are not required to file asset declarations, but they may be asked to do so by the APC. Similarly, such a duty exists for judges, public prosecutors and a number of other public officials in independent and regulatory bodies, public administration, local government, public enterprises and other public institutions, according to the laws governing these areas.

The duty for public officials to file a declaration of assets and income (that covers also the duty to report on some other types of interests) has existed since 2004, and currently it is prescribed in Article 68 of the LPC. From January 2010, the coverage significantly increased, and included officials in all branches and levels of government. However, the Parliament, through authentic interpretation of the Law in 2021, significantly reduced the number of officials covered by the legislation, in particular in the educational sector. For instance, after authentic interpretation, principals of schools which are appointed by the Minister of Education, are no longer considered as public officials, i.e., they don't have to file a declaration of assets and income.¹²³

¹²² Article 68 of the LPC.

¹²³ RTV, February 2021, The authentic interpretation narrows the application of the LPC, https://rtv.rs/sr_lat/drustvo/ts-autenticno-tumacenje-suzava-zakon-o-sprecavanju-korupcije_1207178.html, accessed on 5 May 2023.

Some important stakeholders are not covered by the definition of public official, without due justification, such as directors of indirectly state-owned companies. As previously mentioned, others are excluded from the list through authentic interpretation, like public school's principals. The distinction between officials that have to submit asset declarations and those who are not obliged to do so follows some sort of logic related to the scope of their duties. However, as also noted by GRECO in their Fifth Evaluation Round Report for Serbia,¹²⁴ some individuals with potential high influence in designing government policies are not considered public officials nor have specific conflict of interest rules (such as advisors to the president, prime-minister and minister, heads of cabinets). Furthermore, there are no asset declaration rules for employees of the public administration (not even for those working in high corruption risk positions), with some exceptions (e.g., in some departments of the Police).

Asset declarations do cover most relevant financial interests and assets. Gifts are not necessarily reported in asset declarations, but separately, when such a gift is offered or received, but only if it was "connected with public office."¹²⁵ Other gifts should be visible in asset declarations, if they resulted in a significant change of the value of assets.

Declarations filled by an official also have to cover some household members, i.e., spouse or extra-marital partner and minor children of officials, either natural or adopted. Other members of the household (e.g., parents, siblings, adult children) are not covered.

The required frequency of declarations could be considered mostly adequate, as officials have to submit it upon taking and leaving office and also during term in office, as well as annually, in case of significant changes in the assets' value.¹²⁶ However, in case other changes do not necessarily affect the property value, there is no requirement to submit an annual declaration.

There is an independent mechanism in place to check samples of declarations, aimed at ensuring compliance and that filings are complete and correct. The APC has to conduct such checking based on its annual verification plan.¹²⁷ However, the number of such audits is not determined in the LPC.

The LPC provides for both criminal and misdemeanour sanctions in case of violations of the rules. In the case of intentional hiding or intentional rigging of data on assets and income, an official may be sentenced to prison between six months and five years.¹²⁸ Following such a sentence, their term in office will be terminated and a ban imposed for obtaining a new position within the ten years period.¹²⁹ There is also a fee (between 100-150,000 RSD, i.e., approx. USD \$9000 and \$14,000) for officials that fail to submit declarations in a timely manner or submit incomplete declarations.¹³⁰ While the action/omission by an official is the same, the difference between the criminal offence and misdemeanour is in the specific intent of the official, which must be proven by the public prosecution.

¹²⁴ GRECO Fifth Evaluation Round Report on Serbia, 2022, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a7216b>, accessed on 5 May 2023.

¹²⁵ Article 62 of the LPC.

¹²⁶ Article 68 of the LPC.

¹²⁷ Article 76 of the LPC.

¹²⁸ Article 101 of the LPC.

¹²⁹ Article 102 of the LPC.

¹³⁰ Article 103 of the LPC.

The LPC makes a distinction between officials whose office requires permanent employment, meaning that it has to be their primary and only job, and the rest.¹³¹ The former category is banned from taking any other job during their mandate, with two considerable exceptions. They may request approval from the APC for taking another job which requires their superior's approval as well. Furthermore, they do not have to ask for approval, but only to inform the APC, in the case that they intend to work in the area of science and research, lecturing, culture and arts, for humanitarian activities or sports. However, the APC may order them to abandon even such activities, if they identify a conflict of interest, risk for damage of the reputation of the public office or a bias in performing their public duties. All public officials are required to inform the APC about outside activities at the beginning of their mandate. The APC may order officials to stop their incompatible activity within a maximum of 60 days. However, if the APC fails to provide an opinion within the 30 days deadline, the official is free to continue their outside activity.¹³²

It has to be noted that bans and restrictions are also introduced through other laws for specific types of officials (e.g., members of cabinet, judges). When it comes to civil servants, for most jobs they have to seek employers' approval for additional jobs.

Conflict of interest activities are regulated in all relevant areas (executive, legislative, administration, judiciary, state-controlled entities). A major loophole exists for employees (i.e., not officials) working in state-owned enterprises, where conflict of interest regulations do not apply.

When it comes to shareholding, it is generally allowed for both public officials and civil servants. However, they must transfer managerial rights in such a company to another, unrelated person, if they possess more than 3% of the company's ownership.¹³³ Similar duties exist for civil servants. Restrictions for sitting in legal entities are regulated in the same way as additional work.¹³⁴ When it comes to non-governmental organizations, there is a conditional ban from performing managerial and representative functions (if there is a risk for bias or damage to the reputation of the public office).¹³⁵

Standards are relatively strong when it comes to the prevention of conflicts of interests. However, the purpose of restrictions may be easily circumvented, in particular if a public official manages to keep their influence in private companies and other organizations through their new (formal) management/owners.

Officials' actions in the situation of conflict of interest are limited. According to Article 42 of the LPC, a public official shall stop acting in a case in which there is a suspicion of a conflict of interest, unless there is a danger of delay. They also have to inform both their superior and the APC about such a situation. Thereafter, the APC will propose measures to be taken. In case of a failure to follow such measures or to inform the APC in the first place, the APC may impose administrative measures, such as a warning or recommendation for dismissal. The Law

¹³¹ Article 46 of the LPC.

¹³² Article 45 of the LPC.

¹³³ Article 51 of the LPC.

¹³⁴ Article 48 of the LPC.

¹³⁵ Article 49 of the LPC.

on Administrative Procedure¹³⁶ and various other laws provide restrictions for an official or civil servant from taking action in cases where they have private interests as well, which are typically recognized as a close or improper connection with the interested party (e.g., relatives up to a certain degree, companies owned or managed by their relatives). The consequence of taking part in such a procedure may be annulment of the act.

The APC, aside from its oversight role, is also mandated to educate officials and the public about conflict-of-interest issues. When it comes to the conflict of interests of civil servants and other public sector employees, it is generally the duty of institution heads to ensure application of the rules, and there is no duty to designate special officers.

There is no structure or procedure for overseeing compliance with conflict-of-interest rules proactively. Rather, conflicts of interests are assessed only if an official/civil servant declares it to the competent body, or if someone else reports an alleged failure of the official/civil servant to disclose conflicts of interests. Integrity, honesty and responsibility in performing public office duties are generally promoted as the main principles in laws and codes of conduct.

All public institutions have to establish channels for whistleblowing that are related to any potential wrongdoing, which may also include decision-making where conflicts of interests existed or a failure to comply with the preventive rules (e.g., reporting of gifts, submission of assets declaration) related to the work of these institutions. The APC is mandated to receive complaints indicating a violation of the Law by a public official.¹³⁷

There are duties and restrictions in place for former public officials.¹³⁸ They have to submit asset declarations in the two subsequent years after leaving office. Furthermore, they have to seek permission from the APC if they intend to work for or have other types of business relations with companies and other subjects having business cooperation with the public body they previously worked in. The APC must provide the results of their decision within 30 days. The provision does not cover many potentially problematic situations, as there is no possibility to forbid employment in a company that used to cooperate with the concerned public authority, but does not any more, nor in companies whose activities were formerly officially regulated or inspected. For violation of the rules, the Law envisages only fees (100-150,000 RSD, or approx. USD \$9000-14,000), while criminal charges could not apply even in the case of intentionally providing a rigged asset declaration.

Public officials' asset declarations are only partially accessible to the public. They are published by the APC in the Registry of Asset Declarations¹³⁹ that as of January 2023, contained information on a total of 15,508 officials and former officials. The database is not presented in open data format and is not searchable nor downloadable. One may assess the content of all asset declarations after selecting a public official that person is interested in. There is also another registry maintained by the APC,¹⁴⁰ that contains data on 64,711 public officials, out of which 43,826 are active. It may be searched on the basis of officials' name, office title, public authority, date of election, appointment or termination of the office or by

¹³⁶ The Law on Administrative Procedure, 2016, <https://www.paragraf.rs/propisi/zakon-o-opstem-upravnom-postupku.html>, accessed on 5 May 2023.

¹³⁷ Article 43 and 78 of the LPC.

¹³⁸ Article 55 and 69 of the LPC.

¹³⁹ <https://publicacas.acas.rs/#/acas/obrazacZaPrijavuImovineIPrihoda>, accessed on 5 May 2023.

¹⁴⁰ See: <https://publicacas.acas.rs/#/acas/funkcioner>, accessed on 5 May 2023.

city. Information about former officials is erased from the database three years after the mandate expiration and is not available, even on the basis of free access to information requests.

Rules related to asset declarations are largely respected, but it is not possible to determine to which extent. Namely, it is not known how many public officials had to submit asset declarations in the first place as such information is not published by the APC. The APC claims in its annual report that it performs checks on the accuracy of the submitted asset declarations “by comparing two registers.”¹⁴¹ In addition to that, the APC’s annual plan for 2022 included verification of report contents for a total of 250 public officials (it was 200 in 2021), while an additional 116 checks, planned in previous years, were implemented in 2021 as well. In addition, there were 8 extraordinary verifications based on suspicion of irregularities. In 2022, the APC initiated a total of 356 proceedings based on identified wrongdoings (in 2021 it was 284). They are distinguished per type of report (initial assets declarations – 125, information about re-appointment – 35, reports after leaving office – 88 and in subsequent years – 1, reports on substantial changes in assets – 87, several wrongdoings – 20).¹⁴² It is, however, not specified how many violations were related to the failure to respect deadlines as opposed to the omission to provide full data as requested by the law. In a total of six cases, the APC addressed the public prosecution because of potential intentional hiding of assets and income data.

The quality of the verification process performed by the APC may not be externally assessed, as it is fully confidential. Furthermore, the outcomes of cases where some wrongdoing is identified are not always visible to the public. On its website, the APC does not publish decisions in cases where only a warning measure is issued against the official who violated the LPC. One may assess their decisions only where recommendations for dismissal, recommendations for resignation or decisions that the former official violated the law are issued.¹⁴³ These decisions are not systematized per type of violation nor type of public function, and may be listed by date or name of official only. Moreover, misdemeanour reports and criminal charges/information delivered to the public prosecutor are not published by the APC, nor are the final decisions of misdemeanour and criminal courts in such cases. This means that the public has no available data on the outcome of audits in the most severe instances of wrongdoing, unless they are further investigated by journalists.¹⁴⁴

When it comes to sanctions for presenting false and incomplete information in asset declarations, the main impression is that they do not have a deterrent effect. First of all, the number of such cases identified is very low, criminal procedures last long, most criminal charges are dismissed completely and even when there is a court verdict, punishments are only conditional. According to APC data, based on criminal charges submitted by the institution, there was only one conditional prison sentence in 2022. In one case in 2022, there were liable official plea bargains with the prosecution office. In three instances, criminal charges were

¹⁴¹ Annual Report of the APC for 2022, Page 15 to 20, https://www.acas.rs/storage/page_files/Izve%C5%A1taj%20o%20radu%20za%202022.%20Agencije%20za%20Ospre%C4%8Davanje%20korupcije_1.pdf, accessed on 5 May 2023.

¹⁴² Annual Report of the APC for 2022, Page 16.

¹⁴³ Available at: <https://www.acas.rs/cyr/decisions/4>, accessed on 5 May 2023.

¹⁴⁴ Anđela Milivojević, Bojana Bosanac - CINS (July 2022) Educational punishments for irresponsible officials, <https://www.cins.rs/vaspitne-kazne-za-neodgovorne-funkcionere/>, accessed on 5 May 2023.

dismissed, two cases concluded with the release of individuals from charges in court and in 12 cases the investigation was still ongoing.¹⁴⁵

When it comes to ethics advisors, the only notable exception is Parliament, which established in 2021 its own Ethics Committee, in charge of, among other things, providing confidential advice to the Members of Parliament (MPs) about the implementation of the Code of Conduct and conflict of interest rules. There is no information on any activity of that body.¹⁴⁶

While some statistics are available, they are not sufficiently informative when it comes to the types of identified violations and perpetrators. The APC published guides for public officials related to the reporting of assets, conflicts of interests and Code of Conduct for MPs, with some examples.¹⁴⁷ However, as explained, cases of identified wrongdoing are not promoted in the public, in order to achieve greater compliance in the future. When it comes to the Code of Conduct of civil servants, only some statistical data are available, i.e., the number of cases reported and punished in various ministries. Data are presented in a very non-user-friendly manner and without any details about wrongdoing.¹⁴⁸

The APC is mostly able to check whether public officials submitted their assets disclosure at the beginning of mandate, upon expiration of the mandate and after appointment on some additional public function. Such checking is based on information that the APC receives from the institutions where the appointment and dismissal took place and the share of public officials covered by such basic checks is high, although not exactly known. On the other hand, the number of substantially verified declarations remained relatively low. Since the monitoring plan includes (currently) 270 officials per year, it may be estimated that little more than 5% of all public officials will be covered by such a check during their typical four-year mandate.¹⁴⁹

While the APC enjoys a very high level of independence in the law, there are practical examples where its independence in performing its duties was challenged. This relates to instances where the APC was allegedly too lenient when deciding about a possible violation of the law by high-level ruling party officials,¹⁵⁰ deciding to apply weaker measures (a warning and not a recommendation for dismissal) or failed to investigate all relevant data.

The APC's decisions and recommendations relating to violations of conflict of interests and other rules are not always followed. For example, out of seven recommendations for dismissal in 2022, only three public officials were dismissed.¹⁵¹ On the other hand, the level of

¹⁴⁵ APC Annual Report 2022, Page 18.

¹⁴⁶ Code of Conduct of MPs, available at: <http://www.parlament.gov.rs/aktivnosti/narodna-skupstina/kodeks-ponasanja-narodnih-poslanika.4455.html>, accessed on 5 May 2023.

¹⁴⁷ Available at: https://www.acas.rs/cyr/pages/priru%C4%8Dnici_i_vodi%C4%8Di, accessed on 5 May 2023.

¹⁴⁸ HRMS report about application of Code of Conducts for civil servants, 2021, <https://www.suk.gov.rs/>, accessed on 5 May 2023.

¹⁴⁹ APC Annual Plan on Control of Asset Declaration 2023, https://www.acas.rs/storage/page_files/Godi%C5%A1nji%20plan%20provere%20Izve%C5%A1taja%20o%20i%20prijehodima%20javnih%20funkcionera%20za%202023.%20godinu.pdf, accessed on 5 May 2023.

¹⁵⁰ Nova.rs, Nataša Laković, September 2020, The Agency for the Prevention of Corruption guarded Mali, Drobnjak, <https://nova.rs/vesti/politika/agencija-za-sprecavanje-korupcije-cuvala-malog-drobnjaka/>, accessed on 5 May 2023.

¹⁵¹ Annual Report of the APC for 2022, Page 23.

compliance is close to full when it comes to the cumulation of several public offices (26 out of 28 recommendations).¹⁵²

Potential positive incentives for officials complying with the APC's opinions and recommendations are not fully in place, due to insufficient promotion of the APC's work in the media.

There is some visible evidence that the APC deals with violations reported by whistleblowers. Namely, information about the number of cases investigated based on external reports is presented in the APC's annual report. However, there is no further information about the content of such reports and the efficiency in dealing with them. The outcome of such investigations is presented jointly with the APC's *ex officio* work.

When it comes to former public officials and 'revolving door' rules, there are known instances where the APC checks compliance¹⁵³ with the rules. However, the exact number of instances where public officials asked approval for post-office employment, the number of approvals granted or rejected and the number of related decisions thereupon is not clearly presented in the APC's reports. Furthermore, decisions are not publicized on the APC's website.

Good practices

- There are prescribed rules for the declarations of assets and interests of public officials and conflicts of interest, as well as income and gifts, along with sanctions in case of violation of the rules.
- The APC published guides for public officials related to the reporting of assets, conflicts of interests and Code of Conduct for MPs, with some examples.
- As defined in the LPC, conflict of interest definition includes both actual and potential conflict of interest.

Deficiencies

- Some public officials are excluded from oversight due to the authentic interpretation.
- A relatively small number of declarations are thoroughly checked.
- Data on imposed sanctions is not sufficiently promoted.
- The APC does not publish decisions in cases where only a warning measure is issued against the official who violated the LPC.
- Some individuals with potential high influence in designing government policies are not considered public officials nor have specific conflict of interest rules (such as advisors to the president, prime-minister and minister, heads of cabinets).

4.1.6 Art. 8.4 and 13.2 – Reporting Mechanisms and Whistleblower Protection

Serbia has a special law dedicated to the protection of whistleblowers, the Law on Protection of Whistleblowers (LPW).¹⁵⁴ It was adopted in November 2014 and its implementation began

¹⁵² Ibid.

¹⁵³ Danas, January 2023, The State Secretary did not seek the consent of the APC for employment, <https://n1info.rs/vesti/danas-drzavna-sekretarka-nije-trazila-saglasnost-agencije-pri-zaposljavanju/>, accessed on 5 May 2023.

¹⁵⁴ Law on Protection of Whistleblowers, 2014, https://www.paragraf.rs/propisi/zakon_o_zastiti_uzbunjivaca.html, accessed on 5 May 2023.

six months later. Before the adoption of this law, provisions regarding the protection of whistleblowers could be found in the Law on the Anti-Corruption Agency.

The LPW defines the concept of whistleblowing¹⁵⁵ in a way that it can be related to the disclosure of information about violations in any area, and not just to possible corruption, which is a positive example. This means that whistleblowers will enjoy legal protection even when, for example, there is a violation of some preventive anti-corruption regulation, regardless of whether there is an intention to hide an act of corruption behind that violation. On the other hand, the concept of a whistleblower¹⁵⁶ is defined in a way that legal protection is conditioned by the existence of a certain relation between the whistleblower and the authority or legal entity where the reported irregularity occurred. This means that, for example, a journalist or a representative of a CSO cannot be given legal protection prescribed by this law, if they are pointing out irregularities which have affected another individual. However, they can be given protection if they make the probable claim that a harmful action has been undertaken against them.

Whistleblowing may be internal, external, or public, depending on whether the information is disclosed to an employer, an authorised authority, or to the public. An employer¹⁵⁷ or an authorised authority shall also act upon anonymous disclosures regarding the information referred to in Article 2 of the LPW, within their respective remits.¹⁵⁸ Any employer which has more than ten employees must regulate the internal whistleblowing procedure by a general act and make it available to every employed person, and also publish it on its website if there are ‘technical possibilities’. The MoJ has adopted a Rulebook that more closely regulates internal whistleblowing.¹⁵⁹

The LPW contains a provision which prohibits employers from placing whistleblowers in unfavourable positions either by doing a certain action or by failing to do a certain action, and enlists possible harmful actions. A whistleblower against whom a harmful action has been taken in connection with whistleblowing has the right to judicial protection, which is achieved by filing a claim for protection in connection with whistleblowing to the court. The procedure for judicial protection in relation to whistleblowing is urgent and the revision of procedure is allowed. In cases of damage caused by whistleblowing, the whistleblower has the right to compensation.

In order to protect whistleblowers, the court leading the proceeding (even before the proceeding) can decide on an interim measure that can delay the legal effect of an act, prohibit

¹⁵⁵ “Whistleblowing” is the disclosure of information on violations of laws and regulations, violation of human rights, exercising a public authority contrary to the entrusted purpose, risk to public health, security, environment, as well as for the purpose of preventing damage of large proportions; Article 2 of LWP.

¹⁵⁶ “A whistleblower” is a natural person who engages in whistleblowing, in the context of his/her work-based relationship; employment/recruitment procedure; use of services rendered by public authorities, holders of public authority or public services; business cooperation and the right of ownership in a company; Article 2 of LWP.

¹⁵⁷ “An employer” is an authority of the Republic of Serbia, autonomous province or local self-government unit, holder of public authority or public service, a legal entity or an entrepreneur who employs one or more persons; Article 2 of the LPW.

¹⁵⁸ Article 13 of the LPW.

¹⁵⁹ Rulebook on the method of internal whistleblowing, the method of designating an authorized person at the employer, as well as other issues of significance for internal whistleblowing at an employer who has more than ten employees; Available at: https://www.paragraf.rs/propisi/pravilnik_o_nacinu_uzbunjivanja.html, accessed on 5 May 2023.

the implementation of a harmful action, or to order rectifying of the consequences caused by harmful action. The judges in these procedures must have acquired special knowledge about protection of the whistleblowers, and the court must rule on the motion to institute interim measure resolved within eight days.¹⁶⁰

In the largest number of cases in practice, interim measures delayed the legal effect¹⁶¹ of an individual act of the employer that decided on the rights, obligations and responsibilities based on work, and most often the legal effect of dismissal or transfer to another workplace.¹⁶²

The solutions provided for monitoring enforcement of the LPW are not adequate. Namely, it is prescribed that monitoring will be carried out by the Administrative Inspectorate and the Labour Inspectorate, institutions whose duties are not clearly delineated within the law, which is why some cases remain completely unaddressed.¹⁶³ The LPW also does not prescribe the obligation to prepare any kind of report, but the MoJ does so based on the obligation stipulated in the AP23. This report collects data on judicial whistleblowing procedures as well as internal whistleblowing procedures, but only for a limited number of ministries. It does not contain cases of external whistleblowing, since there is no obligation for ministries, or other state authorities, to keep records of this.

According to data from the MoJ reports, there has been a constant decrease in the number of whistleblowing-related cases received by the courts since 2016 (289 reported cases in 2016 versus 99 reported cases in 2021).¹⁶⁴ This can be explained by the fact that in 2016, the LPW was in the initial stages of its application, and whistleblowers were encouraged to report wrongdoings. However, over time they became discouraged, primarily because of the way in which the most famous whistleblowing cases were handled, and the way whistleblowers were treated in them.

In the most famous case of whistleblowing that occurred after the start of the application of the LPW, due protection to the whistleblower was not provided.¹⁶⁵ In autumn 2019, based on the files leaked by a whistleblower to investigative reporters, it was revealed that a company linked to the father of the former Minister of Interior may have made significant gains by brokering

¹⁶⁰ Article 25 and 34 of the LPW.

¹⁶¹ Delaying the legal effect of the act in practice means that if the whistleblower was terminated from his employment contract by the employer, and his/her motion for an interim measure is accepted by the court, the legal effect of the termination of employment will be postponed, i.e., he/she will continue to be employed by the employer.

¹⁶² Pištaljka (2017) Loud whistle, https://pistaljka.rs/public/banners/glasna_pistaljka_publikacija.pdf, accessed on 5 May 2023.

¹⁶³ This is, for example, the case with the protection of whistleblowers who are not employed by public institutions, but appear as whistleblowers who use their services.

TI BiH, June 2022, Protection of Whistleblowers in BiH and Serbia: Comparative analysis, <https://ti-bih.org/wp-content/uploads/2022/06/TI-BIH-ZASTITA-ZVIZDACA-U-BIH-I-SRBIJI-WEB.pdf>, accessed on 5 May 2023.

¹⁶⁴ MoJ Report about Whistleblowing for 2021, <https://www.mpravde.gov.rs/sr/tekst/36946/izvestaj-o-primeni-zakona-o-zastiti-uzbunjivaca-za-2021-godinu.php>, accessed on 5 May 2023.

¹⁶⁵ prEUgovor Coalition (May 2020) Report on Progress of Serbia in Chapters 23 and 24, <https://preugovor.org/Alarm-Reports/1596/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml>, accessed on 5 May 2023.

arms export deals for the publicly owned enterprise ‘Krušik’.¹⁶⁶ Instead of giving the whistleblower protection, he was formally denied that status because, in accordance with the LPW, he was obliged to contact the relevant authorities first and not the media even though, in this case, it can be argued that contacting the police and prosecution to report wrongdoings related to the Minister of Interior would have put him at significant risk. He was arrested and placed in detention, from which he was put under house arrest only after a public outcry and protests in October 2019. His detention has since ended, but there has been no indictment or release from criminal liability, and the case is still pending.¹⁶⁷ Whistleblower protection in Serbia clearly still has a long way to go in order to be considered an effective anti-corruption mechanism.

In Table 4, which is presented below, we can see the statistics presented by the MoJ on whistleblowing-related cases which were handled by the courts since the beginning of recording statistics in 2016. By looking at the statistics, it can be noted that there has been a constant decrease in the number of whistleblowing-related cases received by the courts since 2016 (explained two paragraphs above). It can be also noted that there is a high percentage of unsolved cases¹⁶⁸ at the end of every year, which can be justified by the length of proceedings in Serbia. In addition, even though these cases are urgent, at the end of 2021 there were 13 unresolved cases in which more than 36 months have passed since the initial act, and in which the procedure has not been completed.¹⁶⁹

Table 4: Number of whistleblowing-related cases handled by the courts¹⁷⁰

Year	Received	Solved	Unsolved
2016	289	235	80
2017	149	158	71
2018	122	124	68
2019	152	160	60
2020	117	128	59
2021	99	106	41

¹⁶⁶ Veljković, J - BIRN, Balkan Insight (October 2019) Storm over Serbia, Whistleblower Arrest in State Arms Scam, <https://balkaninsight.com/2019/10/14/storm-over-serbia-whistleblower-arrest-in-state-arms-scam/>, accessed on 5 May 2023.

¹⁶⁷ Danas, September 2022, Hostage of Corrupt System - Whistleblower still under investigation, <https://www.danas.rs/vesti/drustvo/talac-koruptivnog-sistema-uzbunjivac-aleksandar-obradovic-i-dalje-pod-istragom/>, accessed on 5 May 2023.

¹⁶⁸ It should be noted that even if the case is marked as unsolved, it does not mean that the court has not decided on the motion for an interim measure, in order to protect the whistleblower.

¹⁶⁹ MoJ Report about Whistleblowing for 2021, Page 13.

¹⁷⁰ MoJ Report about Whistleblowing for 2021, Page 7.

Source: Ministry of Justice Report about Whistleblowing for 2021, Page 7.

Although these cases are not numerous, their importance is great, given that exercising the right of whistleblowing, as a human right that protects freedom of speech, is important for the rule of law and the development of every democratic society.

Civil servants have the duty to report to their superiors if they find out that an act of corruption has been committed by an official, civil servant or state employee in the authority in which s/he works.

Complaints about the work of the civil servant or state employee can be submitted to the head of the authority in which they work, and they should be responded to within 15 days from the day of receipt of the complaint.¹⁷¹ If the complaint is related to the work of the civil servants, it can also be submitted to the HCSS, which will forward the complaint to the authority. The authority is obliged to inform the HCSS about the merit of the complaint and measures. According to the annual report of the HCSS, in 2022 there were 90 citizen complaints filed against the work of civil servants.¹⁷² The anonymous and secure transmission of reports is not covered by the law, but varies from one authority to another.

The Criminal Procedure Code (CPC) provides for the right to witness protection. It provides for basic witness protection,¹⁷³ as well as protection of ‘particularly sensitive’ witnesses.¹⁷⁴ The court or the public prosecutor is obliged to provide these types of protection to the witness, taking into account the stage of the procedure.

There is also a legal institute of the protected witness,¹⁷⁵ which serves to prevent the identity of the witness from being revealed. Along with it, the court can order special protection measures, which include the exclusion of the public from the main trial and the ban on the publication of information on the identity of witnesses.

Protection and assistance can be granted to participants and persons close to them in criminal proceedings, who are exposed to danger to their life, health, physical integrity, freedom or property as a result of giving statements or notifications important for proof in criminal proceedings, based on the Law on the Program for the Protection of Participants in Criminal Proceedings.¹⁷⁶ One of the criminal offences for which this type of protection can be granted is that of organised crime.

The decision to include a specific witness in the Witness Protection Program is made by a special Commission, and within the Ministry of Internal Affairs there is a special unit (the Unit

¹⁷¹ Article 81 of Law on State Administration.

¹⁷² Report of the HCSC for 2022, <https://www.suk.gov.rs/tekst/78/akti-saveta.php>, accessed on 5 May 2023.

¹⁷³ “Protection of the witness against any discomfort, verbal or physical attack, threat or insult directed at the witness by any other participant in the proceedings”, Article 102 CPC.

¹⁷⁴ “Witness who, considering his age, life experience, way of life, gender, state of health, nature, method or consequences of the committed criminal act, or other circumstances of the case, is particularly sensitive”. Article 103 CPC.

¹⁷⁵ “If there are circumstances that indicate that the witness, by giving a statement or answering certain questions, would expose himself or a person close to him to a greater danger to his life, health, freedom or property”; Article 106 CPC.

¹⁷⁶ Available at:

https://www.paragraf.rs/propisi/zakon_o_programu_zastite_ucesnika_u_kvivicnom_postupku.html, accessed on 5 May 2023.

for Protection) that is in charge of implementing the Commission's decisions and orders. The protection measures that are foreseen are the physical protection of persons and property, change of residence or transfer to another institution, concealment of identity and data on ownership and change of identity. International cooperation mostly through regional or bilateral agreements regulate the transfer of witnesses from one country to another and the transfer of responsibility and care for the safety of witnesses from one country to another.

Good practices

- The defined concept of whistleblowing is broad and the burden of proof is reversed in favour of the whistleblower who seeks protection.
- The judicial protection of whistleblowers is effective, including temporary protection before the final court decision.
- There is a duty to open safe channels for whistleblowing in institutions.
- There is a special unit (Unit for Protection) within Ministry of Interior in charge for supporting the Witness Protection Program.

Deficiencies

- Some types of whistleblowing are insufficiently protected, in particular when dealing with classified information.
- Oversight is not comprehensive.
- There is insufficient follow-up on cases brought by a whistleblower.
- The number of whistleblower-related cases which are handled by courts has been decreasing over the years. Potential whistleblowers are also discouraged to act when they see how former whistleblowers were treated in the most famous cases.

4.1.7 Art. 9.1 – Public Procurement

Public procurement in Serbia is governed by the Law on Public Procurement (LPP).¹⁷⁷ This Law was adopted in December 2019, and its application started in July 2020, thus replacing the previous LPP which was in force since 2013.

The LPP provides for the basic principles of the public procurement system, on the basis of which contracting authorities are obliged to act on public procurement procedures. These include the principles of cost-effectiveness and efficiency, the principle of ensuring competition and prohibition of discrimination, the principle of transparency, the principle of equal treatment of tenderers and the principle of proportionality. According to Article 5 of the LPP, public procurement must not be designed with the intention of excluding it from the application of the LPP or to circumvent from usage of a certain type of public procurement procedure, or with the intention of unduly favouring or disadvantaging certain tenderers.

The LPP sets clear rules for the types of procedures, criteria for selection of tenderers and contract award criteria that contracting authorities can use. It also provides an exhaustive list of exclusions from the application of the LPP.

As a rule, the contracting authority should award contracts in an open or restrictive procedure, but awarding may also be carried out in other public procurement procedures if the conditions

¹⁷⁷ Law on Public Procurement, 2019, <https://www.ujn.gov.rs/wp-content/uploads/2021/07/Public-Procurement-Law-OG-91-2019-PPO.pdf>, accessed on 5 May 2023.

prescribed by the LPP are met.¹⁷⁸ Open procedure dominates with a participation of 98% for all concluded contracts in 2022.¹⁷⁹

It should be noted that since the Covid-19 pandemic, there has been an increased use of the negotiation procedure without publishing a contract notice, which is the most opaque type of procedure. Here, contracting authorities are not obliged to publish a contract notice but choose themselves to which tenderers they will send an invitation to submit bids. Furthermore, contracting authorities are not obliged to publish tender documents either, so the conditions for participation as well as the criteria for awarding the contract are often unknown. Contracting authorities continue to use this type of procedure, even after the legitimate reasons for its application had passed.¹⁸⁰

According to Article 114 of the LPP, the criteria for selection of the tenderers must be logically related and proportionate to the subject matter of procurement and may relate to fulfilment of conditions to pursue the professional activity, economic and financial capacity and technical and professional capacity. Article 132 of the LPP prescribes that the contract awarding criteria must be based on the most economically advantageous tender, determined on the basis of one of the following criteria: price or costs by applying a cost-effectiveness approach or the price-quality ratio. In practice, the criterion of price dominates in 96% of all public procurement procedures.¹⁸¹

Although the LPP provides all the necessary rules, there are widely-used ways to circumvent its application. It has become practice that the Government contracts the most valuable projects through interstate agreements and tailor-made laws with the aim of avoiding the application of the LPP, thus hindering transparency and completely excluding competitiveness for these projects. This practice has also been noted in the previous report of the European Commission, along with recommendations to halt this practice.¹⁸²

The registered value of procurement that was exempted from the application of the LPP in 2022 was RSD 747 billion (approx. USD \$6.99 billion).¹⁸³ For comparison, the total registered value for all public procurement in 2022 was RSD 662 billion (approx. USD \$6.2 billion), meaning that exemptions from the LPP had higher value than the total value of all (public) procurement in Serbia in 2022. However, it should be noted that reasons for such a high value of procurement exempt from the LPP were also connected to the energy crisis that occurred in Serbia and Europe.¹⁸⁴

¹⁷⁸ Other possible types of procedures are: competitive procedure with negotiations; competitive dialogue; negotiated procedure with publication of the contract notice; innovation partnership; negotiated procedure without publication of the contract notice. Article 51 of the LPP.

¹⁷⁹ PPO Annual Report for 2022, Page 10, <https://jnportal.ujn.gov.rs/annual-reports-ppo-public>.

¹⁸⁰ Transparentnost Srbija (2021) - Public Procurement and Public Private Partnerships - Between Solid Regulations and Bad Practice, <https://www.transparentnost.org.rs/images/publikacije/TS%20MATRA%20ENG%20ONLINE.pdf>, accessed on 5 May 2023.

¹⁸¹ PPO Annual Report for 2022, Page 17.

¹⁸² European Commission 2022 report on Serbia, Page 79, <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Serbia%20Report%202022.pdf>, accessed on 5 May 2023.

¹⁸³ Ibid, Page 18.

¹⁸⁴ According to monitoring concluded by the PPO, it was established that the difference in the value of concluded contracts as compared to the previous year, on these grounds, was the consequence of the energy crisis and distortion of coal production, which caused the need to purchase more coal for electric power

The average number of bids per public procurement offers is constantly declining: in 2022 it was 2.5.¹⁸⁵ The raising of thresholds below which the LPP provision does not apply has certainly contributed to this decline. Thresholds have been raised from the earlier RSD 500 thousand to the amounts ranging from one to 20 million RSD (depending on the subject and type of the contracting authority).¹⁸⁶ Because of this, a large number of public procurement procedures do not have to be carried out according to regular procedures and do not have to be published on the Public Procurement Portal (PPP).¹⁸⁷ Another concerning fact is that in 51.6% of all public procurement procedures conducted during 2022, there was only one bid.¹⁸⁸

All public procurement above the threshold prescribed in the LPP must be carried out in electronic form through the PPP. All stages of the public procurement procedure take place on the PPP, from the publication of a contract notice and tender documents, to the submission and opening of tenders, publication of the decision on awarding the contract to the submission of the request for the protection of the rights of tenderers. Contracting authorities are also obliged to publish the annual public procurement plan on the PPP, as well as the estimated value for each individual procurement.

Any interested person can access data and documents published on the PPP.¹⁸⁹ The data can also be downloaded in machine-readable format and is published in an Open Data format. The new PPP started operating in July 2020, and represents a significant improvement compared to the previous PPP.

However, some data is not available on the PPP. There is no data on the execution of contracts, since there is no obligation for the contracting authorities to publish it. The LPP only prescribes the general provision that the ministry in charge of financial affairs will monitor the execution of contracts, but does not regulate it further. From January 2023, the Budgetary Inspection, a body within the MoF, will be in charge of monitoring of the execution of public procurement contracts.

Article 49 of the LPP contains general measures for the prevention of corruption, prescribing contracting authorities to take all the necessary measures to prevent corruption in all phases of public procurement procedures. Contracting authorities are also obliged to regulate through a special (internal) act the method of planning, implementation and monitoring of the public procurement procedure, and of procurements to which the LPP does not apply, and to publish it on their website.

Regarding conflicts of interest, Article 50 of the LPP prescribes that contracting authorities must undertake all measures in order to identify, prevent and eliminate conflicts of interest and lists situations in which a conflict of interest particularly exists. The APC maintains a register of public procurement procedures, privatisations and other affairs on its website, in which it is

generation, distortion in electric power generation, resulting in the need to purchase more electric power, as well as distortion in the gas market, causing the need to purchase more gas. PPO Annual Report for 2022, Page 19.

¹⁸⁵ PPO Annual Report for 2022, Page 4.

¹⁸⁶ Article 27 of the LPP.

¹⁸⁷ In 2019 there were around 60,000 procedures published on the PPP, while in the first year of the full implementation of the LPP there were around 48,000 procedures published on the PPP.

¹⁸⁸ PPO Annual Report for 2022, Page 5.

¹⁸⁹ Public Procurement Portal, <https://jnportal.ujn.gov.rs/konzola>, accessed on 5 May 2023.

possible to search whether a legal entity in which a public official has shares participated in the procedure, that is, was awarded a contract.¹⁹⁰

The Public Procurement Office (PPO) monitors the implementation of the LPP, manages the PPP, records data about procedures and contracts and performs other professional activities in the public procurement field. The LPP doesn't provide for a list of banned companies from public procurement procedures. The PPO is an organisation within the government managed by its Director. In 2022, the PPO had 33 employees, and it hired nine more people outside of employment contract to perform temporary and occasional tasks. This shows that there are many vacant positions within the PPO, since their internal rulebook on job systematisation currently envisages 55 job positions.¹⁹¹

One of the most important activities performed by the PPO is the monitoring of the implementation of regulations on public procurement. In 2022, the PPO conducted 630 monitoring exercises, which means that only 1.4% of all procedures were monitored. Even though this number is still low, it represents an increase in monitoring, since in 2021, the PPO conducted 258 such exercises. Based on the conducted monitoring, the PPO has submitted 429 requests to the misdemeanour courts to initiate misdemeanour proceedings in 2022, which is a significant increase in comparison to the previous years (in 2021 there were 143 such requests).¹⁹²

Other state authorities, such as the Supreme Audit Institution (SAI), are tasked with the supervision of public procurement, while performing audits of business regularity. The SAI found irregularities in 19% of the total value of public procurement contracts they inspected in 2022.¹⁹³ A criminal offence called 'Abuse in Connection with Public Procurement' has been established in the Criminal Code. In 2022, there were only 12 adjudications for this criminal offence.¹⁹⁴

Considering other facts, such as that public procurement is one of the areas marked as particularly vulnerable to corruption and that the share of public procurement in gross domestic product for 2022 in Serbia was 9.34%, it can be concluded that the current monitoring system is insufficient.

The PPO has an important educational role. It organises and holds seminars and training for contracting authorities and public procurement officers, but also for other relevant stakeholders, such as tenderers, judges, prosecutors and others. The PPO also provides opinions (on the request of contracting authorities and tenderers) regarding the application of the provisions of the LPP and other regulations in the field of public procurement, but they are not published.

The basic legal remedy in the public procurement system is a request for the protection of rights (see Table 5 below), which can be submitted to the Republic Commission for the Protection of

¹⁹⁰ <https://publicacas.acas.rs/#/acas/postupakJavneNabavke>, accessed on 5 May 2023.

¹⁹¹ PPO Annual Report for 2022, Page 28.

¹⁹² PPO Annual Report for 2022, Page 36.

¹⁹³ Supreme Audit Institution Annual Report 2022, Page 28, <https://www.dri.rs/godisnji-izvestaji-o-radu>, accessed on 5 May 2023.

¹⁹⁴ Republic Public Prosecutor Annual Report 2022, Page 79, http://www.rjt.gov.rs/docs/Izvestaj_Republika_Srbija_Republicko_javno_tuzila%C5%A1tvo_mart2023.pdf, accessed on 5 May 2023.

Rights in Public Procurement Procedures (RCPP). Tenderers can submit this request during the procedure and after the contract was awarded, and the submission of the request results in the temporary suspension of the procedure. There is a fee for submitting a request and it amounts to at least RSD 120 thousand (approx. USD \$1000), with the aim to prevent abuses by tenderers.

The RCPP is an autonomous and independent body responsible for deciding on the protection of the rights of tenderers, and it is accountable to the National Assembly. It has a president and eight members appointed over a period of five years by the National Assembly, after conducting a public competition. It works and decides in panels of three members.

Another competence of the RCPP is to adopt general legal views concerning the application of legislation under the scope of its competencies. These legal views are crucial for the purpose of standardising the RCPP's practices. They used to be published, but since 2014 that has not been the case, which led to different decisions of the RCPP in in cases with a similar background.¹⁹⁵

Table 5: The number of requests for the protection of rights in public procurement procedures

Year	2022	2021	2020	2019
Received	698	754	814	866
Solved	709	759	835	873
Adopted ¹⁹⁶	349	359	419	452
Rejected ¹⁹⁷	460	400	416	419

Source: Annual reports of the Republic Commission for Protection of Rights in Public Procurement Procedures.¹⁹⁸

Good practices

- The LPP sets clear rules for the types of procedures, the criteria for the selection of tenderers and contract award criteria that contracting authorities can use.
- A lot of information about public procurement procedures is available online, through the Public Procurement Portal.
- There are legal remedies available and an independent authority that decides about complaints.
- There is an increase in the monitoring which PPO does, when compared to previous years.

Deficiencies

¹⁹⁵ Ponuđači Srbije, November 2022, Will the Republic Commission adopt a clear position this time and restore confidence in public procurement procedures? <https://ponudjacisrbije.rs/razmena-iskustava/da-li-ce-republicka-komisija-ovoga-put/>, accessed on 5 May 2023.

¹⁹⁶ The requests were accepted and the procedure was partially or completely annulled.

¹⁹⁷ Requests rejected either as unfounded, due to procedural deficiencies or the submitter abandoned the request.

¹⁹⁸ Annual Reports of the RCPP, <https://kjin.rs/o-nama/izvestaji-o-radu-republicke-komisije/>, accessed on 5 May 2023.

- The LPP has often been bypassed by the government through interstate agreements and tailor-made laws for particular projects, thus hindering transparency and totally reducing competitiveness.
- The overall scope of supervision over the public procurement system is insufficient.
- Competition in public procurement procedures is at a low level, and there is a huge percentage of tenders where there is only one bid.
- The RCPP doesn't publish its legal view on the application of LPP anymore, which does not contribute to the establishment of legal certainty. The PPO also does not publish its opinions.

4.1.8 Art. 9.2 – Management of Public Finances

Preparation and adoption of the national budget in the Republic of Serbia is regulated through the comprehensive Budget System Law (BSL) since 2002 and the set of by-laws adopted on the basis of this law.¹⁹⁹ Furthermore, the Constitution proclaims that the Republic of Serbia, autonomous provinces and local self-government units shall have their own budgets, which must outline all receipts and expenses with which they are funding their competencies. Furthermore, the execution of all budgets shall be audited by the State Audit Institution (SAI), while the Parliament shall discuss the financial statement proposal of the Budget upon the received evaluation of the SAI.²⁰⁰

The current BSL provides extensive rules for budget preparation, with the pre-defined roles of indirect (e.g., public schools) and direct budget beneficiaries (e.g., ministries), the MoF, the Government of Serbia, the National Assembly and the Fiscal Council,²⁰¹ as well as deadlines for each activity.²⁰²

The national budget must include, among other things, the approved expenditures of all budget beneficiaries, allocated according to economic classification, organizational unit, functional classification, program classification and source of income. The budget has to provide information about budget surpluses or deficits as well as the government's debt (including information about maturity and interest rates). Capital investments must also be presented for both the budget year and the two following years.²⁰³ The budget also contains specific information, such as expected support from the EU, the estimation of guarantees that will be issued by the Government (e.g., to ensure being able to pay off public companies' debts) and the amount of contingency funds.

In the process of the budget preparation, the MoF issues guidelines for budget beneficiaries. The MoF and Government have to prepare a Fiscal Strategy for a three-year period and the draft of that document has to be analysed by an independent and permanent expert body, the Fiscal Council. The budget is prepared and adopted in the form of the law, although there are some provisions in place which are different from the common legislative procedure. As explained, there is a deadline for procedural steps. The MoF must submit its draft budget law to the Government before November 1st of each year, based on inputs received from budget beneficiaries before September 15. The Government has to propose an annual budget law by

¹⁹⁹ Budget System Law (BSL), adopted in 2009 and last amended in 2022, https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html, accessed on 5 May 2023.

²⁰⁰ Constitution of The Republic of Serbia (2006), Article 92.

²⁰¹ Articles 28-48 of the Budget System Law (BSL).

²⁰² Article 31 of the BSL.

²⁰³ Article 2, para 1, line 1) of the BSL.

November 15 and the Parliament must adopt it by December 20. In addition to the list of budget income and expenditures, the law on the annual budget should also contain provisions related to the budget implementation, as well as the percentages of salary increases in the public sector. Importantly, an explanatory note for the budget law must also be provided. It should contain information on non-financial indicators for budget programs (e.g., number of students, number of social care services) in the basic year, budget year and for the following two years.²⁰⁴

The BSL regulates the budget accounting and administration of budget funds.²⁰⁵ Similarly, the same law regulates internal financial monitoring, internal audit and external audit.²⁰⁶ External audits are conducted by the SAI, whose work is regulated also through a separate law.²⁰⁷ The work of budget inspection is now (since January 1st 2023) regulated through a different law as well: the Law on Budget Inspection.²⁰⁸

Budget expenditures must be based on accounting documentation, that has to be in written form and based on legal grounds.²⁰⁹ Payments can be made through a consolidated Treasury account. The different classifications of budget documents, as well as preserving of the integrity of documentation are further regulated through a by-law²¹⁰ and based on relevant international accounting standards for the public sector.

Rules and procedures for budget preparation and adoption are mostly followed in practice. In some years, there were significant delays in the preparation process, in particular when it came to the pre-budget statement (Fiscal Strategy) or budget law itself, but the situation has improved in recent years.²¹¹ In some cases, the drafting of the budget law has not even started by the time when it should have almost been adopted, which was justified by the desire to prepare to prepare a high-quality budget that will serve for negotiations with the International Monetary Fund (IMF).²¹²

The amount of information in the proposed and adopted annual budget laws also constantly increases over time. However, some substantial information has at times not been presented in a transparent manner, as was the case for the 2023 budget law, when it comes to expenditures related to the energy sector.²¹³ Additionally, program budget indicators are frequently irrelevant or even missing.²¹⁴ MPs rarely have enough time to elaborate on their amendments

²⁰⁴ Article 28. Para 2 of the BSL.

²⁰⁵ articles 76-79a of the BSL.

²⁰⁶ Articles 80 – 92 of the BSL.

²⁰⁷ Law on State Audit Institution (2005, last amended in 2018).

²⁰⁸ Law on Budget Inspection (2022).

²⁰⁹ Article 58 of the BSL.

²¹⁰ Decree on Budget Accounting (2003, last amended in 2020).

²¹¹ Open Budget Survey 2021 country results, <https://internationalbudget.org/open-budget-survey/country-results/2021/serbia#:~:text=Serbia's%20transparency%20score%20of%2046,than%20its%20score%20in%202019>, accessed on 5 May 2023.

²¹² N1, October 2014, Is the budget late again? Vujović admitted that the writing had not even started, <https://n1info.rs/biznis/a6573-budzet-opet-kasni-vujovic-priznao-da-pisanje-nije-ni-pocelo/>.

²¹³ Fiscal Council Assessment of the proposed Budget Law of the Republic of Serbia for 2023, Page 2, https://fiskalnisavet.rs/doc/eng/FC_Summary_Assessment_budget_2023.pdf, accessed on 5 May 2023. Precise data on expenditures in energy sector is not available because the Government has remained nontransparent in the presentation of these expenditures (the same as in the supplementary budget for 2022). As a consequence, the exact amount allocated from the budget to public enterprises in the energy sector is not known, nor is it known how much of it goes to “EPS” and how much to “Srbijagas”, how exactly their losses were incurred, for what exact purposes the budget allocations will be used or other relevant information.

²¹⁴ Nemanja Nenadić - Peščanik (December 2022) Budget and final account, <https://pescanik.net/budzet-i-zavrsni-racun/>, accessed on 5 May 2023.

to the budget, due to the widespread practice of discussing the budget law along with other legislation, while the total time for discussion of all amendments is limited by the parliamentary Rules of Procedure.²¹⁵

Transparency of the process is a bigger problem. Unlike with other legislation, the draft budget prepared by the MoF has never been discussed with anyone from the public and is typically not published at all. As a consequence, the first opportunity for the public to obtain information about the content of the budget is when the government submits its proposal to the Parliament. Two years ago, the Parliamentary Committee for Finances established the practice of organizing public hearings about the budget, where members of the public have limited opportunities to provide comments, but not to effectively influence the content of the budget that will be approved. Government sessions are not broadcast and are verbatim, classified by default. Committee and plenary sessions are broadcast on the parliamentary website,²¹⁶ and the latter are on national television as well. However, amendments submitted by MPs are not published.

The adopted budget is published on several websites (Parliament, Government, MoF) and in the Official Gazette. The budget is published in a format that is not fully in line with Open Data standards. Once a budget is adopted, budget beneficiaries do publish information on their budget/financial plan, as mandated by the Law on Free Access to Information of Public Importance, but do not always comply with this rule.²¹⁷

Information on the budget structure for some beneficiaries (in the area of security and defence) is not fully visible in the budget, but the overall amount is. In some instances, information on budget contingency funds was hidden as well, even if unrelated to the security sector.²¹⁸

Despite there being many instances in the past where budget preparation and adoption was beyond prescribed deadlines, there were no sanctions in these instances for the delays.²¹⁹ In fact, since the only sanctions possible for these delays would be those of a political nature (such as losing the trust of the National Assembly), they were not taken into consideration due to the fact that the members of the legislature and the executive were part of the same political group(s).

The MoF publishes some information (aggregate, but not per each budget beneficiary and approved appropriation) on budget expenditures on a monthly basis.²²⁰ The same document contains information on the amount of budget income, disaggregated per type. A comprehensive report is available only far after the end of the budget year, in the draft law on the final account for one budget year. This document is typically published along with the

²¹⁵ Mirjana Nikolić - Istinomer (December 2022) Debate about the budget, the stadium and a slava cake, <https://www.istinomer.rs/analize/rasprava-o-budzetu-stadionu-i-jednom-slavskom-kolacu-parlament/>.

²¹⁶ <http://www.parlament.gov.rs/activities/national-assembly/sessions.544.html>, accessed on 5 May 2023.

²¹⁷ Law on Free Access to Information of Public Importance, 2004, https://www.paragraf.rs/propisi/zakon_o_slobodnom_pristupu_informacijama_od_javnog_znacaja.html, accessed on 5 May 2023.

²¹⁸ Danas, December 2014, Pavle Petrović: Increased non-transparency of spending from the budget, <https://www.danas.rs/vesti/ekonomija/pavle-petrovic-povecana-netransparentnost-trosenja-iz-budzeta/>, accessed on 5 May 2023.

²¹⁹ Istinomer, December 2014, The budget is delayed again, <https://www.istinomer.rs/analize/budzet-opet-kasni/>

²²⁰ MoF, Public Finance Bulletin, <https://www.mfin.gov.rs/aktivnosti/bilten-javnih-finansija>, accessed on 5 May 2023.

budget for next year (e.g., final account for year 2021 with the proposed budget for year 2023).²²¹

Although budget documents (such as for the program budget) have to contain performance targets and non-financial performance data, such indicators and targets are not always clear or relevant. Furthermore, the case of failure to meet targets is not clearly elaborated on in the final account of the budget and in some cases is even omitted. This type of failure is in practice not the matter of discussion in Parliament nor in the audit reports of the State Audit Institution.

While budget execution reports do show how much each budget beneficiary spent from the approved budget and within the concrete program, information is sometimes misleading. Namely, the percentage of budget execution is compared against the budget re-balance, and not the originally approved budget. Such rebalance (i.e., law on amendments to the annual budget law) typically take place close to the end of the budget year. Transparency of budget execution is also diverted by frequent transfers to and from contingency funds.

Even if Serbia has in place a Fiscal Council that provides analyses and comments on the key budget documents and other legislation that might affect fiscal stability, their recommendations face mounting criticism from MPs of the ruling party, rather than support and acceptance. The SAI regularly publishes its audit reports in which it identifies various types of violations of the rules and standards.²²² Some of those wrongdoings are related to the absence of documentation that would verify that all appropriate and prescribed procedures in the budget execution were followed.

During verification of the internal audit system, the SAI found and wrote in its annual report for 2022 that as many as 56% of the audited entities (120 out of 212) did not establish an internal audit system, despite the legal requirement to do so.²²³

Good practices

- Comprehensive rules on budget preparation and execution exist, covering all major income, expenditures and debts.
- The duty to establish internal monitoring and to perform internal and external audits is envisaged in the law.
- In the process of the budget preparation, the MoF issues guidelines for budget beneficiaries.
- Compared to the previous year, the timeliness of preparation and adoption of the budget has improved.

Deficiencies

- There is a lack of possibilities for the public to influence the national budget or its priorities.
- Internal audit systems are not fully established.
- There are frequent delays in the preparation of budget documents, however, the situation has been improving.
- There is an insufficient level of transparency of the budget execution processes during the year.

²²¹ Final budget account for 2021, <https://mfin.gov.rs/propisi/zakon-o-zavrnomo-raunu-budzeta-republike-srbije-za-2021-godinu-slubeni-glasnik-rs-br-1382022>, accessed on 5 May 2023.

²²² SAI Annual Report 2022, <https://www.dri.rs/godisnji-izvestaji-o-radu>, accessed on 5 May 2023.

²²³ Ibid.

4.1.9 Art. 10 and 13.1 – Access to Information and the Participation of Society

The right to access information is provided for in Article 51 of the Constitution. The Law on Free Access to Information of Public Importance (LFOI)²²⁴ regulates the rights to access information of public importance held by public authority bodies, with the purpose of the fulfilment and protection of the public interest to know and attain a free democratic order and an open society. It was adopted in 2004 and last amended in 2021. According to the Global RTI Rating, Serbia has the third best legal framework in the area of access to information, with a score of 135 out of 150.²²⁵

The legal basis and procedure for the access to information is clearly defined and provided for in the LFOI. The procedure for obtaining the information is free of charge, except for the necessary cost of duplication of the documents, but in practice authorities do not request these costs. Public authorities should publicly announce all information about their work that is considered to be information of public importance, and they are obliged to provide information on the procedure of submitting the request for access to information.

Exemptions and limitations to access to information have been clearly stated and defined in the Article 9 of the LFOI. The latest amendments in the law increased the number of restricting grounds from five to seven, but the provision that enabled public authorities to claim “abuse of rights” of information seekers was erased, which is a positive change.

Another guarantee to the right of free access is the provision of the LFOI, under Article 4, that prescribes that there is always a justified interest of the public to know, unless proven otherwise by the authority. This means that there are no absolute exemptions and that the public authority must prove that the interest in keeping the information outweighs the public's right to know, otherwise it must disclose the information. However, public authorities often use alleged ‘confidentiality’ as an excuse to deny access to information of public importance: this is especially the case when it comes to issues related to the COVID-19 pandemic.

In order to discover exact data on the number of persons who died from COVID-19 and to re-establish the confidence of citizens, the civil society Coalition for Free Access to Information, along with a group of almost 90 Serbian NGOs, submitted a request for access to information to the Institute for public health’s Dr. Milan Jovanović Batut (known as Batut) on 9th July 2020, asking for access to the original COVID-19 database (without the personal data of patients).²²⁶ Batut responded on 13 July, claiming that the requested data were already published on the website of the Government of Serbia. Based on the appeal, the Commissioner decided on 20th August 2020 that Batut should provide the requested information within seven days.²²⁷ However, in its new response delivered to the NGOs on 16th October 2020, Batut

²²⁴ Law on Free Access to Information of Public Importance, 2004, https://www.paragraf.rs/propisi/zakon_o_slobodnom_pristupu_informacijama_od_javnog_znacaja.html, accessed on 5 May 2023.

²²⁵ Global RTI Rating, Total of 135 countries were evaluated, <https://www.rti-rating.org/country-data/>, accessed on 5 May 2023.

²²⁶ SPI Coalition, July 2020, Provide public access to aggregated data from the Covid-19 information system, <https://spikoalicija.rs/omoguciti-javnosti-pristup-zbirnim-podacima-iz-informacionog-sistema-covid-19/>, accessed on 5 May 2023.

²²⁷ Danas, October 2020, „Batut“ ignored the Commissioner's decision to provide data on the sick and deceased <https://www.danas.rs/vesti/drustvo/nvo-batut-ignorisao-resenje-poverenika-da-dostavi-podatke-o-bolelim-i-preminulim/>, accessed on 5 May 2023.

failed to do so. The response provided only aggregated reports on the monthly level (identical to those already published) for the entire country. It also failed to provide information on persons with access to the database. When it comes to disaggregation of information at the municipal level, Batut now claimed that “such information is not available, due to interventions and upgrading of COVID-19 software database after 6th June 2020.” The purpose of these interventions, never mentioned before by the authorities, remains unknown.²²⁸

A public authority must respond to the request within 15 days from the receipt of the request. However, authorities often use the possibility provided by the LFOI to extend the deadline up to 40 days because of ‘justified reasons’, according to Article 16. Practice has shown that authorities often use this possibility.

A list of public authorities which are subject to the provisions of the LFOI has been prescribed in Article 3. One of the most important positive changes brought with the amendments from 2021 relate to the expansion of the circle of authorities to which the LFOI applies. The list now includes natural persons with public powers, such as notaries and public enforcement agents, as well as private economic entities that provide communal services, to the extent that the information relates to the performance of that work. All companies owned more than half by the state, the province or an LSG (in total), including their subsidiary ‘daughter’ and ‘granddaughter companies’, have also been included.²²⁹

There is an appeals mechanism in place in case requests are denied,²³⁰ and the appeal can be submitted to the Commissioner for Information of Public Importance and Personal Data Protection. There are no fees for submitting a complaint and it is not required to hire a lawyer. The Commissioner and (often) state authorities provide complaint forms on their website.²³¹

The Commissioner is an autonomous and independent institution established in 2004 by the LFOI. The Commissioner and his Deputy are appointed by the National Assembly, and the Commissioner is supported by a staff member in exercising his powers.²³² Available evidence suggests that the work of the Commissioner is independent, but not effective. The Commissioner is obliged to reach a decision within 60 days from the submission of the complaint at the latest, but this deadline is often exceeded. It can be said that this delay is justified because of the large number of complaints that the Commissioner is dealing with.²³³

The Commissioner’s Annual Report for 2022 showed a significant increase in the number of cases in comparison with 2021. In total, 9219 complaints were filed for denied access to information, which is almost more than double the previous year (in 2021 there were 5,181 filled complaints). Together with the 2475 transferred complaints from previous years, 8702 of

²²⁸ Coalition prEUgovor Report on the Progress of Serbia in Chapter 23 and 24 November 2020, Page 51 <https://preugovor.org/Alarm-Reports/1611/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml>, accessed on 5 May 2023.

²²⁹ prEUgovor Coalition (November 2021) Alarm Report on Progress of Serbia in Cluster 1, <https://preugovor.org/Alarm-Reports/1689/Alarm-Report-on-Progress-of-Serbia-in-Cluster-1.shtml>, accessed on 5 May 2023.

²³⁰ All grounds for appeal are listed in Article 22 of LFOI.

²³¹ Example: <https://www.poverenik.rs/en/access-to-information/forms-pi.html>.

²³² See: <https://www.poverenik.rs/en/>.

²³³ Commissioner Annual Report for 2022, https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2022/Godi%C5%A1nji_izve%C5%A1taj_2022_-_16_03_2023.pdf, accessed on 5 May 2023.

them were solved in 2022. Complaints were well founded in large numbers, namely 3736 complaints or 42.93% of the total number of resolved complaints.²³⁴

However, it should be noted that the one of the main reasons for the significant increase in the number of received complaints in 2022 is the severe abuse of the right to access information by five related complainants from the city of Vranje, who in a very short period of time submitted 5027 appeals.²³⁵ All appeals were resolved and for most of those appeals it was determined that they were not founded (4240), while the appeal procedure was suspended in a slightly smaller number of cases (787), mainly because the first-instance authorities had a problem with submitting evidence of the procedure to the requests of the complainants from Vranje, due to the difficult work of the post office in Vranje while the abuse of rights was taking place.²³⁶ For these reasons, all the data in the Annual Report of the Commissioner for 2022, which refer to the area of access to information, should be taken with a grain of salt, in the sense that the general picture may indicate an apparently significant improvement in the situation of access to information (a lower number of founded complaints, etc. or a worsening of the situation in certain segments, e.g. it may seem that the percentage of well-founded complaints reported due to the so-called "silence of the administration" has increased). According to the Commissioner's Annual Report for 2022, without data on complaints from malicious complainants from Vranje, the trend is quite similar to previous years.²³⁷

The same obstacle which existed in previous years remained, and that is the inability of the government to act on the Commissioner's decisions. The authorities did not act in around 27% of all decisions made by the Commissioner, ordering the former to make information available to information seekers. The situation is even worse with decisions made on the complaints of journalists and media representatives, where authorities did not act in 32% of all decisions. This is a particularly worrying fact, given the content of information that was the subject of the FOI submitted by journalists and media representatives, and since it is a profession that seeks information to write and report to the public on topics of general public interest.²³⁸

An administrative dispute can be initiated before the Administrative Court against the decision of the Commissioner. There is also a list of authorities against whom it is not possible to file a complaint to the Commissioner, but only to initiate an administrative dispute. The list used to include six different authorities but it is now seven (the National Assembly, the President of the Republic, the Government of the Republic of Serbia, the Supreme Court of Serbia, the Constitutional Court, the Republic Public Prosecutor and the National Bank of Serbia).²³⁹

Public authorities are obliged to publish information booklets, i.e., documents in which they must publish important information even before anyone requests it. The form in which booklets are published has been improved and now it is a single information system kept and maintained

²³⁴ Commissioner Annual Report for 2022, Page 72.

²³⁵ CINS, September 2022, A new way to extract money: And the former councilor in Vranje buried the Commissioner with complaints, <https://www.cins.rs/novi-nacin-za-izvlacenje-novca-i-bivsi-vecnik-u-vranju-zatrpao-poverenika-zalbama/>, accessed on 5 May 2023.

²³⁶ Commissioner Annual Report for 2022, Page 73.

²³⁷ Commissioner Annual Report for 2022, Page 74.

²³⁸ Ibid, Page 75.

²³⁹ Article 22 of LFOI.

by the Commissioner.²⁴⁰ In this way, the structure and manner of publishing should reduce the number of errors.

When it comes to the participation of society, there is a legal obligation for public consultations before adopting laws and other planning documents, however, this obligation is not respected in all cases. There are no consequences if no public consultations or public hearings are organized in the process of law-making. The willingness to accept recommendations from members of society varies from one case to another, and most often proposals are rejected without an adequate explanation. During the adoption of the amendments of the LFOI, the readiness to accept proposals that came from civil society was higher than it was in the case of many other important regulations that were adopted in the recent years. This was the case due to the great influence and interest of CSOs that deal with the field of access to information of public importance.²⁴¹

Citizens have a right to submit the people's initiative, which has been guaranteed by the Constitution. If the citizens collect more than a certain number of signatures,²⁴² they can propose the adoption, amendment or termination of the Constitution, law or any other regulation.²⁴³ The National Assembly is obliged to decide on the proposal contained in the initiated people's initiative at the first following session, in the regular session. However, in practice, the National Assembly has been ignoring the submitted people's initiative even after the deadline of six months from the date of submission has elapsed. The organisation which proposed the people's initiative has submitted a constitutional appeal.²⁴⁴

In terms of awareness-raising initiatives among the public, there is an e-Government Portal²⁴⁵ and Open Data Portal²⁴⁶, but very little information regarding corruption can be found on them. Information about public hearings before the adoption of laws and regulations can be found on the eConsultations²⁴⁷ website, but not in all cases. Other platforms have been established for specific sectors, such as the e-Procurement Portal, but apart from those which are maintained by the APC, they do not operate with the purpose of preventing corruption.

There is a developed practice for interested citizens to submit their suggestions on how to allocate parts of the budget in LSG units. These processes take place in the form of consultations or public hearings, and citizens' proposals are often adopted.

The LPC prescribes that every authority that has more than 30 employees must adopt an Integrity Plan (Article 95). Integrity Plans must contain areas and processes that are particularly susceptible to the risks of corruption and the assessment of the degree of risk of corruption, preventive measures and persons responsible for implementation. The APC has adopted the

²⁴⁰ Informational Booklet Database, <https://informatior.poverenik.rs/naslovna>, accessed on 5 May 2023.

²⁴¹ For instance there is a coalition of CSOs which advocate for freedom of access to information. See: <https://spikoalicija.rs/>, accessed on 5 May 2023.

²⁴² A different number of signatures is prescribed for different proposals. For a proposal to change the Constitution, the required number of signatures is 150,000.

²⁴³ Articles 56 to 70 of the Law on the Referendum and People's Initiative.

²⁴⁴ Danas, November 2022, The Move-Change movement filed a constitutional complaint because the parliament ignored the people's initiative to ban lithium mining, <https://www.danas.rs/vesti/drustvo/pokret-kreni-promeni-podneo-ustavnu-zalbu-zbog-toga-sto-parlament-ignorise-narodnu-inicijativu-o-zabrani-kopanja-litijuma/>, accessed on 5 May 2023.

²⁴⁵ <https://euprava.gov.rs/>, accessed on 5 May 2023.

²⁴⁶ <https://data.gov.rs/sr/>, accessed on 5 May 2023.

²⁴⁷ <https://ekonsultacije.gov.rs/>, accessed on 5 May 2023.

Instruction for the Development and Implementation of Integrity Plans²⁴⁸ and authorities must submit the Integrity Plan and the report on its implementation to the APC.

In February 2022, the government adopted the Strategy for Creating a Stimulating Environment for the Development of Civil Society in Serbia for the period 2022-2030.²⁴⁹ As one of its goals, it envisages the inclusion of the civil sector in the decision-making processes at all levels. Some institutions have regular consultations with civil society, such as the Ministry for Human and Minority Rights and Social Dialogue MHMRSD and the APC. Nevertheless, there is still a great repulsion by most authorities towards civil society because of its critical views, and media attacks by representatives of the authorities against the members of the civil sector are not uncommon.²⁵⁰

Electronic media outlets must get a license to broadcast from an independent regulatory and supervisory body – the Regulatory Body for Electronic Media (REM).²⁵¹ Even though the REM is defined as an independent body, it does not function effectively. The rights for terrestrial broadcasting (that guarantees broadcasting on cable providers as well) are issued in a public competition for a limited number of licences and for cable TVs on demand. Although the Law on Electronic Media sets the criteria for selection, the decision-making process is arbitrary. Due to the overall situation in the Serbian media scene, Freedom House lowered the rating of media independence from 3.25 to 3.00.²⁵²

Investigative journalism is limited mainly to the Internet, cable television, and some print media.²⁵³ In the last few years, investigative journalists (from outlets such as BIRN, KRIK, CINS etc.) have discovered many corruption cases at the highest level. One of the most recent cases in which investigative journalists discovered and reported about potential corruption concerns the cabinet of the mayor of Belgrade. Namely, BIRN journalists came into possession of two audio recordings that allegedly show that the head of the Belgrade mayor's cabinet offered representatives of the Turkish company 'Kentkart' to set up a tender for them for a new job related to maintenance and improvement of the system for ticket collection and vehicle management in public city transport, if they agreed to the mutual termination of the existing contract from 2021.²⁵⁴ After the text was published by the BIRN, the Mayor of Belgrade

²⁴⁸ Available at: https://www.acas.rs/uploads/source/Plan_integriteta-IKONICE/Uputstvo%20za%20izradu%20i%20spravo%C4%91enje%20plana%20integriteta.pdf, accessed on 5 May 2023.

²⁴⁹ Strategy for Creating a Stimulating Environment for the Development of Civil Society in Serbia for the period 2022-2030, 2022, <https://www.minljpdd.gov.rs/doc/strateska-dokumenta/Strategy-for-Creating-an-Enabling-Environment-for-the-Development-of-Civil-Society-in-the-Republic-of-Serbia2022to2030.pdf>, accessed on 5 May 2023.

²⁵⁰ European Western Balkans, October 2021, the hostile atmosphere towards civil society organizations does not stop, <https://nuns.rs/neprijateljska-atmosfera-prema-organizacijama-civilnog-drustva-ne-prestaje/>, accessed on 5 May 2023.

²⁵¹ Law on Electronic Media (LEM), Article 4; https://www.paragraf.rs/propisi/zakon_o_elektronskim_medijima.html, accessed on 5 May 2023.

²⁵² Freedom House, Freedom in the World Report 2022 - Serbia, <https://freedomhouse.org/country/serbia/freedom-world/2022>, accessed on 5 May 2023.

²⁵³ Some of the most prominent media that practice investigative journalism are CINS, KRIK, BIRN Serbia, TV N1, weeklies NIN and Vreme, dailies Danas and Nova, and Južne Vesti on the local level.

²⁵⁴ BIRN, Jelena Zorić, April 2023, the recordings reveal that Šapić's chief of cabinet offered to rig the tender to Kentkart, <https://birn.rs/nudjeno-namestanje-tendera-kentkartu/>, accessed on 5 May 2023.

announced that he will file a criminal complaint against the head of his cabinet.²⁵⁵ It is unknown to the authors of this report whether this criminal complaint was actually submitted or whether the Public Prosecutor’s Office started an investigation. In June 2023, the head of the mayor’s cabinet sued BIRN for defamation of reputation and honor.²⁵⁶

Civil society activists are often being targeted in the media as ‘domestic traitors’ and ‘foreign mercenaries’. In 2022 there were 132 reported attacks on journalists, according to data from the Independent Association of Journalists of Serbia (see Table 6 below).²⁵⁷ For the same year, there were 62 criminal charges filed in connection with attacks on journalists. Since 2016, 423 related cases have been established, and convictions have been reached in 46 cases. In 2021 there were 30 SLAPP lawsuits against mostly investigative journalists and journalists who cover topics of general public interest.²⁵⁸ This state of affairs is worrisome considering that in the past, some of the most serious cases of attacks on journalists ended in murder.²⁵⁹

Serbia has been a member of the Open Government Partnership (OGP) since 2012. However, limited progress has been made during the last years, which seems to signal a reluctance from authorities to make commitments that would significantly contribute to greater transparency and accountability.

Table 6: Recorded and prosecuted attacks on journalists, 2016 – 2022

Year	Number of attacks	Number of opened cases	Number of rejected criminal reports	Application of the Institute of Opportunity ²⁶⁰	Number of acquittals	Number of convictions
2016	69	58	10	5	0	4
2017	92	38	14	3	1	3
2018	102	57	17	3	1	6
2019	119	62	14	3	1	18
2020	189	58	15	4	1	5
2021	151	87	18	/	1	8

²⁵⁵ RTS, April 2023, Šapić announced a criminal complaint against the head of his cabinet, the opposition demands that the mayor resign, <https://www.rts.rs/lat/vesti/drustvo/5171872/sapic-najavio-krivicnu-prijavu-protiv-sefa-svog-kabineta-opozicija-trazi-da-gradonacelnik-podnese-ostavku.html>, accessed on 14 July 2023.

²⁵⁶ BIRN, June 2023, Šapić’s head of cabinet is suing BIRN for defamation of reputation and honor, <https://birn.rs/sapicev-sef-kabineta-tuzi-birn/>, accessed on 14 July 2023.

²⁵⁷ See: <https://www.bazenuns.rs/srpski/napadi-na-novinare>.

²⁵⁸ Article 19, NUNS, December 2022, SLAPP – Situation in Serbia, https://nuns.rs/media/2022/02/A19-Serbia-SLAPPs-report_Final_Serbian-18Feb22.pdf, accessed on 5 May 2023.

²⁵⁹ Cenolovka, December 2022, The trial for the murder of journalist Slavko Ćuruvija, <https://www.cenolovka.rs/english/the-trial-for-the-murder-of-journalist-slavko-curuvija-wrestling-with-the-deep-state/>, accessed on 5 May 2023.

²⁶⁰ The Institute of Criminal Prosecution Opportunity is an opportunity for the public prosecutor, who can postpone criminal prosecution for criminal offenses punishable by a fine or a prison sentence of up to five years, if the suspect accepts one or more of the prescribed obligations, such as such as: to remove the harmful consequences caused by committing a criminal offense or to compensate for the damage caused or to perform certain socially useful or humanitarian work.

2022 ²⁶¹	134	63	6	/	0	2
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Sources: *Independent Journalist Association of Serbia*²⁶² and *Republic Public Prosecutor Office*.²⁶³

Good practices

- There is a comprehensive right of the public to information of public importance.
- All rejection decisions have to be elaborated on and based upon prevailing public interest envisaged in the Law.
- There is an independent body in charge of appeals for requests denied.
- Authorities have a duty to proactively publish most crucial information.
- Latest amendments of the LFOI expanded the circle of authorities to which the LFOI applies, along with some other positive changes.

Deficiencies

- The mechanism for the protection of rights to access information is ineffective.
- Access to information is not provided in many cases despite the mandatory decisions by the Commissioner.
- The public remains deprived of information on many publicly sensitive topics, such were the cases during COVID-19 pandemic
- The mechanism for public consultations in law-making is frequently not implemented.
- Journalists and CSO activists are frequently subjected to smear campaigns, among other forms of harassment and attacks.

4.1.10 Art. 11 – Judiciary and Prosecution Services

The Constitution of Serbia guarantees the independence of the judiciary, the independence of judges and their judicial functions. It also prohibits undue influence on judges, as well as political activities of judges. The judicial power belongs to the courts and is independent of the legislative and executive power. Court decisions are mandatory for everyone and cannot be subject to extrajudicial debate. Court decisions can be reviewed only by the competent court. In order to preserve the authority and impartiality of the court, it is forbidden to use a public position and make public statements that influence the course and outcome of court proceedings. Any other influence on the court and pressure on the participants in the procedure is prohibited. The judge is independent in acting and making decisions.²⁶⁴

The prosecution is “independent in exercising its powers.”²⁶⁵ Any influence by the executive and legislative authorities on the work of the Public Prosecutor’s Office and on the handling of cases, through the use of a public position, means of public information or in any other way that may threaten the independence of the work of the Public Prosecutor's Office, is prohibited.

In January 2022, a national referendum was held with the question of constitutional amendments related to the provisions on judiciary and prosecution.²⁶⁶ The referendum had low

²⁶¹ All data (except the data for the total number of attacks) for 2022 is ending with 30 October.

²⁶² Database of attacks on journalists, <https://www.bazenuns.rs/srpski/napadi-na-novinare>.

²⁶³ Statistics on the attacks on journalists, <https://nuns.rs/rjt-statistika-napada-na-novinare-2016-2022/>.

²⁶⁴ The Constitution of Serbia, 2006, Chapter VII, https://www.paragraf.rs/propisi/ustav_republike_srbije.html.

²⁶⁵ Article 4 of the Law on Public Prosecution, 2023, <https://www.paragraf.rs/propisi/zakon-o-javnom-tuzilastvu.html>, accessed on 5 May 2023.

²⁶⁶ Insajder, January 2022, A referendum was held in Serbia on changing the Constitution in the section on the judiciary, <https://insajder.net teme/u-srbiji-odrzan-referendum-o-promeni-ustava-u-delu-pravosuda>

citizen turnout, and the majority voted for changes. In February 2023, Serbia adopted a set of key judicial laws in order to implement the constitutional changes aimed at strengthening the guarantees of the independence of the judiciary and prosecution.²⁶⁷ Constitutional amendments reduce possibilities for exerting direct political influence on judges and prosecutors, through the election procedures (with the fear that this influence will be exerted indirectly).

The work of the judicial and prosecutorial group of the MoJ tasked with drafting of the laws was marked by extraordinary speed, but the key decisions were made by the MoJ. The proposed solutions allow the legislative and executive branches of power to maintain the possibility of influencing the most important decisions in the judiciary. The working version of the texts of prosecutorial laws are fundamentally limited by previously adopted constitutional solutions that maintain the strict hierarchical nature of this body. Despite certain procedural and changes in terminology, the connection between the prosecution and the executive power is still present.²⁶⁸

Disciplinary complaints against judges and prosecutors can be submitted to the Disciplinary Prosecutor of the High Judicial Council (HJC) and High Prosecutors Council (HPC). The disciplinary prosecutor can reject the disciplinary report as unfounded or accept it and submit a proposal for conducting disciplinary proceedings. Disciplinary proceedings are conducted by the Disciplinary Commission and are considered urgent, and are thus closed to the public, unless the judge or prosecutor against whom the proceedings are conducted does not require the proceedings to be closed. Disciplinary sanctions include a public reprimand, a salary reduction of up to 50% for a period of no longer than one year, and a ban on promotion for up to three years. There is a right to a legal remedy - against the decision of the Disciplinary Commission, the Disciplinary Prosecutor and the judge or prosecutor can appeal to the HJC or HPC.²⁶⁹

The Code of Ethics for Judges, adopted by the HJC in December 2010 and amended in 2021, contains comprehensive rules on independence, impartiality, expertise, responsibility, dignity, commitment, freedom of association and loyalty to the principles of the Code of Ethics.²⁷⁰ The Ethics Committee is a permanent working body of the HJC that is responsible for monitoring the implementation of the Code of Ethics. In 2021, the Code of Ethics of Public Prosecutors and Deputy Public Prosecutors of the Republic of Serbia, the Guidelines for its implementation, as well as amendments to the Rules of Procedure of the Ethics Committee were adopted.²⁷¹

There is an extensive legal framework regarding the integrity of judicial representatives. The Constitution provides for the prohibition of conflicts of interest as well as the political activity

²⁶⁷ The National Assembly adopted a set of judicial laws, <https://www.srbija.gov.rs/vest/683031/skupstina-srbije-usvojila-set-pravosudnih-zakona.php>, accessed on 5 May 2023.

²⁶⁸ prEUgovor Coalition (November 2021) Alarm Report on Progress of Serbia in Cluster 1, <https://preugovor.org/Alarm-Reports/1689/Alarm-Report-on-Progress-of-Serbia-in-Cluster-1.shtml>, accessed on 5 May 2023.

²⁶⁹ Law on Judges, Articles 95 to 106; Law on Public Prosecution, Articles 103 to 111

²⁷⁰ Code of Ethics for Judges, 2010, <https://www.paragraf.rs/propisi/eticki-kodeks-principi-i-pravila-ponasanja-sudija.html>, accessed on 5 May 2023.

²⁷¹ Code of Ethics of Public Prosecutors and Deputy Public Prosecutors, 2021, https://www.paragraf.rs/propisi/eticki_kodeks_javnih_tuzilaca_i_zamenika_javnih_tuzilaca_republike_srbije.html, accessed on 5 May 2023.

of judges. The Law on Judges²⁷² and the Law on Public Prosecution²⁷³ also prohibit activities that could jeopardize the judge's or prosecutors' impartiality, as well as their obligation to adhere to the Code of Ethics.

The LPC stipulates that public officials, including judges, prosecutors and deputy prosecutors, can perform only one public function, and in exceptional cases, other public functions, with the consent of the APC. The law obliges officials to report any doubts regarding a possible conflict of interest to the APC. The APC will not give consent for the performance of another public function, if the performance of that public function is incompatible with the public function that the public official already performs.

All officials, including judges, public prosecutors and their deputies, are obliged to report to the APC within 30 days from the day of election a report on their assets and income, the assets and income of their spouse or common-law partner, as well as minor children if they live in the same family household, and if the property or income of a public official changes significantly in the previous year. The APC compiles and maintains the Register of Assets and Income of Public Officials, which is published on the APC's official website.²⁷⁴ The shortcoming is that the application for searching the assets and income report contains a note saying that "If the Asset and Income Report of a public official is not found in this search, it does not mean that the public official did not submit it."

According to semi-annual reports from the APC, the majority of prosecutors and deputies fulfil their duty to declare assets and income.²⁷⁵ In one case, it was established that the judge of the Appellate Court violated the obligation to report a significant change in data from the property and income report (delay), and he was given a warning measure to comply with the law in the future.²⁷⁶ That decision of the APC was the subject of a court dispute that ended with the decision of the²⁷⁷ Administrative Court to reject the lawsuit.

The Constitution envisages the transparency of the judiciary, as deliberations before the court are public, and the public cannot be excluded in accordance with the Constitution. Laws provide for the public access to court proceedings and trials. Only in special cases prescribed by law, can the public be excluded from the procedure, with the aim of protecting some interest of national security, public order or the interests of a child, relating to the privacy of participants in the court procedures. According to the CCP, anyone who has a legitimate interest can review, copy or record certain files, except for those marked as classified, while in civil proceedings, other persons have that right with respect to certain files.

Research conducted in 2022 on a sample of 30% of basic courts and four higher courts showed that the majority of basic courts and prosecutors' offices do not publish news and

²⁷² Law on Judges, 2023, <https://www.paragraf.rs/propisi/zakon-o-sudijama.html>, accessed on 5 May 2023

²⁷³ Law on Public Prosecution, 2023, <https://www.paragraf.rs/propisi/zakon-o-javnom-tuzilastvu.html>, accessed on 5 May 2023.

²⁷⁴ <https://publicacas.acas.rs/#/acas/funkcioner>, accessed on 5 May 2023.

²⁷⁵ Annual Report of the APC for 2021, https://www.acas.rs/storage/page_files/Izve%C5%A1taj%20o%20radu%20za%202021.%20Agencije%20za%20spre%C4%8Davanje%20korupcije.pdf, accessed on 5 May 2023.

²⁷⁶ Ibid, Page 84.

²⁷⁷ Ibid.

announcements on their websites or that they do so very rarely.²⁷⁸ Most of the courts and prosecutors' offices in the sample published Informational Booklets, however their contents are not updated regularly. An analysis of their websites showed that there is no information about planned media conferences; only one news item about a media conference held in 2021 was found.²⁷⁹ However, the Serbian Justice Portal allows you to track the flow of cases in all courts with several search options (name of court, type and number of cases) - from an individual case to a search for each judge and their resolved or pending cases.²⁸⁰

The Law on Judges and Rules of Court²⁸¹ regulates the so-called random distribution of cases, which actually represents the right to the so-called natural judge, one of the fundamental principles of access to justice and fair trial. The principle of random allocation of cases is in accordance with and closely related to the principle of independence of the judicial authority, that is, it directly follows from the principle that only the judicial authority can allocate cases to judges according to predetermined rules. At the same time, the distribution of cases is carried out in order to ensure an equal workload for all judges. This principle is concretized by the provisions of the Rules of Court, which stipulate that the distribution of cases is carried out by the clerk's office by first classifying newly received cases according to urgency and type of procedure, and then distributing them according to the calculation of the reception time, using the method of random determination of the judge. Individual subjects are assigned by manual entry in the register according to the order of admission and serial number, or by using business software for subject management.

Government officials, including those at the highest level, and MPs continue to publicly comment on ongoing court proceedings and attack individual judges.²⁸² Statements related to ongoing cases and seemingly coordinated campaigns of insults and attacks on judges continued in the mainstream media and tabloids.²⁸³ What is worrying is that this is also done in the government and Parliament, as well as during the debates on the elections for judges.²⁸⁴

There are serious objections to the way prosecutorial independence is manifested in practice. The threat to the prosecution, caused by the influence of the executive and legislative authorities on the selection of public prosecutors, and the hierarchical organization with the imposition of mandatory instructions by superiors, causes concern about the influence of political authorities on cases.

²⁷⁸ Partners Serbia, 2022, Analysis of the implementation of transparency standards in courts in the Republic of Serbia, Page 17,

https://www.rolps.org/public/documents/upload/Partneri%20Srbija_Analiza%20primene%20standarda%20transparency.pdf, accessed on 5 May 2023.

²⁷⁹ Ibid.

²⁸⁰ Serbia Justice Portal, <https://portal.sud.rs/sr>.

²⁸¹ The Law on Judges, Article 24.

²⁸² Cepris, Tanasije Marinković, 2021, Responsibility of the President of the Republic for Violation of the Constitution - Prohibition of Influence on Judicial Functions Performed, https://www.cepris.org/wp-content/uploads/2021/11/T.-Marinkovic-Odgovornost_predsednika.pdf, accessed on 5 May 2023.

²⁸³ Politika, December 2017, Vučević: Gentlemen, judges, do you serve the people or the thieves? <https://www.politika.rs/scc/clanak/395245/Vucevic-Gospodo-sudije-sluzite-li-narodu-ili-lopovima>, accessed on 5 May 2023.

²⁸⁴ RTV, January 2020, Vučić: They don't prosecute drug dealers, so they invent violations of the Constitution, https://rtv.rs/sr_lat/politika/vucic-ne-gone-narkodilere-pa-izmisljaju-o-krsenju-ustava_1085881.html, accessed on 5 May 2023.

In February 2023 a case happened that shook the public in Serbia. Two female prosecutors who worked in the Special Department for Suppression of Corruption were transferred from that department to the general department of the High Public Prosecution.²⁸⁵ With this transfer, they were removed from one potential corruption case that caused public attention, immediately after several arrests were made in the specific case. The professional public interpreted this development of events as hindering the work of the prosecution and undermining the independence of the prosecutors. There were public protests in support of the female prosecutors, and at the same time complaints were submitted to the State Council of Prosecutors against the Head of the Higher Public Prosecutor's Office in Belgrade.²⁸⁶ Up until the final drafting of this report, they have not been returned to their previous workplace.

The special anti-corruption departments of the Higher Public Prosecutor's Office, the Prosecutor's Office for Organized Crime and their counterparts in the Higher Courts, are responsible for cases related to corrupt criminal acts. There are separate statistics that are kept for criminal acts that are marked as corrupt. The annual reports of the Republic Public Prosecutor's Office, as well as the reports published by the MoJ on its website show statistical data on these crimes.²⁸⁷ However, the data in these reports does not always match for certain criminal offences, and therefore the question arises as to how this data is collected and shared. The number of convictions for criminal offenses related to corruption in 2022 (375) has remained similar compared to previous years (391 convicted in 2021 and 355 in 2019).²⁸⁸

Good practices

- Political influence on the judiciary is limited through constitutional provisions. In February 2023, Serbia adopted a set of key judicial laws in order to implement the constitutional changes aimed at strengthening the guarantees of the independence of the judiciary and prosecution.
- Judges and prosecutors are subjected to conflict of interests and ethics rules. The latter contains comprehensive rules on independence, impartiality, expertise, responsibility, dignity, commitment, freedom of association and loyalty to its principles, and amendments to it were recently adopted.
- Laws provide for the public access to court proceedings and trials. Only in special cases prescribed by law, can the public be excluded from the procedure, with the aim of protecting specific interests, such as national security.

Deficiencies

- There is insufficient proactivity of public prosecutors in corruption matters even when they are well documented.

²⁸⁵ N1, March 2023, Another prosecutor who worked on the "EPS" case was replaced, <https://www.danas.rs/vesti/ekonomija/n1-saznaje-smenjena-jos-jedna-tuziteljka-koja-je-radila-na-slucaju-eps/>, accessed on 5 May 2023.

²⁸⁶ Radio Slobodna Evropa, March 2023, The third protest in support of female prosecutors in Serbia, <https://www.slobodnaevropa.org/a/srbija-beograd-protest-tuziteljke/32312127.html>, and Nova.rs, March 2023, Complaints filed against Nenad Stefanović, <https://nova.rs/vesti/hronika/drzavnom-vecu-tuzilaca-podneta-prijava-protiv-nenada-stefanovica-zaustavite-urusavanje-ugleda-viseg-tuzilastva-u-beogradu/>, accessed on 5 May 2023.

²⁸⁷ RPPO Annual Reports, <http://www.rjt.gov.rs/sr/informacije-o-radugodi%20C5%A1nji-izve%20C5%A1taj-o-radugodjavnih-tu%20C5%BEila%20C5%A1tava>.

MoJ statistics of corrupt criminal offences, <https://mpravde.gov.rs/tekst/33769/statistika-koruptivnih-krivicnih-dela-.php>, accessed on 5 May 2023.

²⁸⁸ RPPO Annual Reports, <http://www.rjt.gov.rs/sr/informacije-o-radugodi%20C5%A1nji-izve%20C5%A1taj-o-radugodjavnih-tu%20C5%BEila%20C5%A1tava>, accessed on 5 May 2023.

- There is a relatively small number of corruption cases decided in the courts.
- The majority of basic courts and prosecutors' offices do not publish news and announcements on their websites or that they do so very rarely. Planned media conferences are not announced in advance.
- Judges and prosecutors are often exposed to media attacks and political pressure coming from persons with high executive positions.
- Statistical data on criminal acts related to corruption is published in the annual reports of the RPPS and the MoJ website. However, the accuracy of this data has been called into question, since the numbers do not always match.

4.1.11 Art. 12 – Private Sector Transparency

Serbia provides for the fundamental conditions of corporate transparency and corporate governance. The Law on the Serbian Business Registers Agency (LSBRA), adopted in 2004 and last amended in 2011, establishes the Serbian Business Registers Agency (SBRA) as the central agency in charge of keeping the registers prescribed by the LSBRA as unique, integrated, electronic databases.²⁸⁹ The SBRA charges fees for some services delivered to clients.

The Register of Business Entities (RBE) is a central electronic database in which an entrepreneur, business company, cooperative and cooperative union, public companies, branch and representative office of a foreign business company, foundations, and other forms of organisation are registered. The records are maintained in electronic form via the web page of SBRA. To gain access, a user has to obtain a qualified certificate for electronic signature, install an electronic card reader and the relevant application, and create a user account. The SBRA enlists the mandatory data²⁹⁰ for subjects of registration. The RBE is freely accessible to anyone, simply by searching through the SBRA website.²⁹¹

The Law on the Central Records of Beneficial Owners (LCRBO),²⁹² adopted in 2018 and amended in 2021, prescribes that the SBRA supervises the recording, accuracy, updating and storage of data. The Ministry of Economy (MoE) oversees the law's implementation and the SBRA works in connection with the Central Registry.²⁹³ However, the quality of the registry is still questionable, it is difficult to say whether the information provided by registrants is

²⁸⁹ Law on the Business Registers Agency, 2004, https://www.apr.gov.rs/upload/Portals/3/Zakoni/The%20Law%20on%20the%20Business%20Registers%20Agency_Republic%20of%20Serbia%2013122018.pdf, accessed on 5 May 2023.

²⁹⁰ Mandatory data prescribed for registering of business entities includes: business name; registered address; e-mail address; date of incorporation; date of registration, change or strike-off of data or document; company code assigned by the Statistical Office of the Republic of Serbia, which is at the same time also the registration number; tax identification number ("PIB"); registration codes assigned by the Pension and Disability Insurance Fund of the Republic of Serbia ("PIO") and the Health Insurance Fund of the Republic of Serbia; duration, if the company is incorporated for a limited period of time; legal form; code of core activity data on the person authorized to represent, and restrictions of his/her powers; registered capital; shareholder's share and contribution; appraisal of the value of non-cash contribution or certificate of the competent authority of the subject of registration on the appraisal of the value of the non-cash contribution; memorandum of association; articles of association and depending on the type of the subject of registration, data on shareholders, members, director, chairman, members of the boards.

²⁹¹ Serbian Business Registers Agency website, <https://apr.gov.rs/home.1435.html>

²⁹² Law on the Central Records of Beneficial Owners (LCRBO), 2018, <http://www.pravno-informacioni-sistem.rs/SIGlasnikPortal/eli/rep/sgrs/skupstina/zakon/2018/41/10/reg>, accessed on 5 May 2023.

²⁹³ Article 12a of the LCRBO.

reliable. Transparency efforts remain severely limited without implementing mechanisms to validate the data provided.

According to the LCRBO, companies and all other legal entities must report their beneficial owners. Wilful misrepresentation of or attempts to conceal the beneficial ownership information provides grounds for criminal penalties and fines, including the possibility of imprisonment.²⁹⁴

The National Bank of Serbia (NBS) checks whether the registered entity has recorded the data on the beneficial owner in the Central Registry, whether the information is accurate and whether the registered entity has and keeps appropriate valid and up-to-date data and documents based on which they recorded the beneficial owner.²⁹⁵ The current version of the Central Registry doesn't allow additional analysis and reuse of the published data, and the companies have to be searched one by one, either by a name or by a company code.

When it comes to the availability of the beneficial ownership information, the SBRA, at the request of an interested person, no later than within two working days from the date of receipt of the request, issues an extract from the Central Record of data on the real owners of the registered entity.²⁹⁶ The interested person must send proof of payment with the request, and the fee is RSD 1900 (USD \$18).

Legal entities and entrepreneurs in Serbia must keep business records and books to confirm and evaluate assets and liabilities, income and expenditures following the Law on Accounting (LoA).²⁹⁷ This law exhaustively enlists the international financial reporting standards businesses must comply with in their reports.²⁹⁸

Companies in Serbia are required to maintain accurate books and records that properly document all their financial transactions, as well as effective systems of internal financial verification. The LoA obligates legal persons and entrepreneurs to submit annual financial statements for the given reporting year to the SBRA. The SBRA is obliged to publish the financial reports and accompanying documentation on its website.²⁹⁹

Financial reporting and accounting in the private sector should adhere to relevant, internationally recognised standards such as International Financial Reporting Standards (IFRS) and IFRS for small and medium-sized enterprises. However, applying these standards is not mandatory for companies with less than ten employees, associations and entrepreneurs. They use a Rulebook for micro and other legal entities,³⁰⁰ which carries the risk of non-compliance with international standards. It is not a negligible fact considering that about 95% of the legal entities required to prepare financial statements use the Rulebook.³⁰¹ According to the LoA, the National Commission for Accounting monitors the application of EU accounting

²⁹⁴ Article 13 of the LCRBO.

²⁹⁵ Article 12 of the LCRBO.

²⁹⁶ Article 8 of the LCRBO.

²⁹⁷ Article 5 of the Law on Accounting.

²⁹⁸ Ibid, Article 2.

²⁹⁹ Ibid, Article 47.

³⁰⁰ A Rulebook on Financial Reports of Micro and other Legal Entities, 2020, <https://www.paragraf.rs/propisi/pravilnik-nacinu-priznavanja-vrednovanja-prezentacije-obelodanjivanja-pozicija-pojedinacnim.html>, accessed on 5 May 2023.

³⁰¹ BRA, Annual Report for 2021.

directives, the application of IFRS and IFRS for small and medium-sized enterprises, and the application of the Law on Accounting and by-laws adopted based on it.

The Law on Auditing, adopted in 2019, requires big companies to have an internal monitoring system. The system must include internal accounting verification mechanisms.³⁰² Public joint stock, public limited liability companies or those so-called public business associations are also required to include information on elements of internal and risk mitigation in financial reporting in their annual corporate management report.³⁰³

Under the Law, International Standards on Auditing are applied to all audits. The Law on Auditing recognises in that regard the International Standards on Auditing (ISA), International Standards on Quality Control (ISQC) and the related standards published by the International Auditing and Assurance Standards Board (IAASB) and the International Federation of Accountants (IFAC).³⁰⁴

Violations of accounting and auditing rules are considered a criminal offence, economic offence or misdemeanour. In the case of economic offences, both laws impose fines for legal entities and legal entity representatives. There are also fines for entrepreneurs and natural persons.³⁰⁵ Keeping off-the-book accounts, recording non-existing expenditures and presenting false documents of any kind are some reasons the legal entity can be punished.

The Law on Companies³⁰⁶ also prescribes several criminal offences, such as giving a false statement, concluding a legal transaction or taking action where personal interest is involved, violating the duty to avoid conflicts of interest and violating the responsibility of representatives to act following the powers of representation and economic offences. The Criminal Code also provides for a legal basis to punish various crimes that may be related to the violation of accounting rules, such as: “Fraud in service”, “Abuse of powers in business”, “Obstructing the performance of verification”, and “Forging a document.”³⁰⁷ All of these criminal offences assume intent to conduct such wrongdoing.

Some provisions of the Law on Accounting became effective January 1, 2023, requiring only agencies with at least one licensed accountant to keep business books. Based on data from the Association of Accountants and Auditors, 34,283 of their colleagues hold the required certificate.³⁰⁸ SBRA data shows that there are only 3,741 registered accounting service providers.³⁰⁹ Because of that the Accounting Chamber of Serbia and business associations demanded an urgent amendment to the Law on Accounting from the MoF to secure legal certainty in compiling and submitting financial reports for 2022.³¹⁰

³⁰² Article 8 of the Law on Auditing.

³⁰³ Ibid, Article 35.

³⁰⁴ Article 2 of the Law on Auditing.

³⁰⁵ Articles 114 – 116 of the Law on Auditing.

³⁰⁶ Articles 581-588 of the Law on Companies.

³⁰⁷ MONEYVAL's Fifth Evaluation Round, Second Follow-up Report on Serbia, 2018, <https://www.coe.int/en/web/moneyval/jurisdictions/-serbia>.

³⁰⁸ Association of Accountants and Auditors, <https://www.srrs.rs/>.

³⁰⁹ SBRA - Data accessed on January 10, 2023

³¹⁰ See: <https://www.racunovodstvenakomora.rs/2022/12/20/na-konferenciji-za-medijske-predsednice-rks-mr-snezana-mitrovic-je-strucno-obrazlozila-sadrzaj-inicijative-koju-je-podrzalo-sest-udruzenja-i-koja-je-predata-u-ministarstvo-finansija-sa-molbom-da-se-hit/>, accessed on 5 May 2023.

The deductibility of bribes for tax purposes is illegal, although not explicitly criminalised. In other words, companies may not account for bribes they have paid and may be liable for a crime.³¹¹ However, companies may falsely present the bribe as a legitimate cost of operation (fee, reimbursement of expenses, etc.). If such wrongdoing is detected, companies may be liable for tax evasion³¹², forgery of an official document³¹³ or other criminal offences.

In MONEYVAL's Fifth Round second follow-up report, Serbia has been rated as largely compliant on FATF Recommendations 24 and 25 which relate to transparency and beneficial ownership of legal persons and arrangements.³¹⁴

Good practices

- Serbia provides for the fundamental conditions of corporate transparency and corporate governance.
- Legal entities and entrepreneurs in Serbia must keep business records and books to confirm and evaluate assets and liabilities, income and expenditures following the Law on Accounting.
- Financial reporting and accounting should adhere to relevant internationally recognised standards such as International Financial Reporting Standards (IFRS) and IFRS for small and medium-sized enterprises.

Deficiencies

- The solid legal framework for corporate transparency and governance is not followed by efficient practice.
- According to the law, the Serbian Business Register Agency supervises the recording, accuracy, updates and storage of data. However, the quality of the registry is still questionable, that is, whether the information provided by registrants is reliable.
- Transparency efforts remain severely limited without implementing mechanisms to validate the data provided.
- Micro and other legal entities don't have to comply with International Financial Reporting Standards.
- The quality of the Central Registry of SBRA is questionable, because there are no implementing mechanisms to validate the data which was provided.
- The deductibility of bribes for tax purposes is illegal, although not explicitly criminalised.

4.1.12 Art. 14 – Measures to Prevent Money-Laundering

The main preventive law in the AML area is the Law on the Prevention of Money Laundering and the Financing of Terrorism (LAML).³¹⁵ It was adopted in 2017 and amended in 2019 and 2020. The LAML was adopted with the aim of harmonizing domestic legislation with international standards in the field of preventing money laundering/terrorist financing (ML/TF), namely with the recommendations of the Financial Action Task Force (FATF),³¹⁶

³¹¹ Articles 367 & 368 of the Criminal Code.

³¹² Ibid, Article 225.

³¹³ Ibid, Article 357.

³¹⁴ Criminal Code, 2005, <https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html>, accessed on 5 May 2023.

³¹⁵ Law on the Prevention of Money Laundering and the Financing of Terrorism Available, 2017, <http://www.apml.gov.rs/english/legislation>, accessed on 5 May 2023.

³¹⁶ Financial Action Task Force (FATF) Recommendations for Serbia, <https://www.fatf-gafi.org/en/countries/detail/Serbia.html>, accessed on 5 May 2023.

the Report of the MONEYVAL Committee,³¹⁷ as well as with Directive (EU) 2015/849 of the European Parliament and of the Council of Europe on preventing the use of the financial system for the purposes of ML/TF.³¹⁸

This law establishes the Administration for the Prevention of Money Laundering (APML) as the financial intelligence unit (FIU) in Serbia. The LAML lays down customer due diligence (CDD) that the obligated entities (also listed in the LAML) are required to apply when establishing and during the course of business relationships. It also sets out the responsibilities and powers of the APML and those of other authorities when applying the LAML. The LAML identifies AML/CFT supervisory authorities which examine compliance with this law by obligated entities, and stipulates sanctions for non-compliance. Another significant law in relation to AML/CFT is the Law on Freezing of Assets with the Aim of Preventing Terrorism and Proliferation of Weapons of Mass Destruction.³¹⁹

There are also other relevant strategic documents for this area. In 2020 the Government adopted the National AML/CFT Strategy for the period of 2020 to 2024.³²⁰ It follows up on the previous two strategies and aims to further develop the AML/CFT system in Serbia in order to face the risks which were found in the 2018 National ML/TF Risk Assessment and to adopt measures in line with international standards set by the FATF.³²¹ Two action plans have also been adopted for the implementation of the strategy, prescribing concrete objectives, measures and activities.³²² Serbia also conducted its National ML/TF Risk Assessment in 2021.³²³

In order to coordinate different state bodies whose role is significant for the prevention of ML, the LAML has prescribed the establishment of a coordination body. By decision of the government, the AML/CFT Coordination Body (CB) was established in July 2018.³²⁴ The AML/CFT CB has 30 members representing state institutions, authorities and bodies, from policy and technical levels, who analyse key issues relevant for the functioning of the AML/CFT system in Serbia, coordinating and recommending measures to improve the AML/CFT system. It is chaired by the Minister of Finance.

As already mentioned, the APML is the FIU in Serbia. It is an administrative-type FIU and since 2003 it has been a member of the Egmont Group. It exchanges information with its counterpart FIUs through the Egmont Secure Web but also in other appropriate manners, and takes part in international AML/CFT cooperation. One of the most important among the APML's prevention-related responsibilities is that of monitoring the implementation of the LAML and using its powers to correct observed irregularities.

³¹⁷ MONEYVAL (2016) Fifth Evaluation Round Report, <https://www.coe.int/en/web/moneyval/jurisdictions/-serbia>, accessed on 5 May 2023.

³¹⁸ Directive (EU) 2015/849, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>, accessed on 5 May 2023.

³¹⁹ Law on Freezing of Assets with the Aim of Preventing Terrorism and Proliferation of Weapons of Mass Destruction, 2018, <http://www.apml.gov.rs/english/legislation>, accessed on 5 May 2023.

³²⁰ National AML/CFT Strategy for the period of 2020 to 2024, <http://www.apml.gov.rs/english/strategy>, accessed on 5 May 2023.

³²¹ National ML/TF Risk Assessments, <http://www.apml.gov.rs/english/national-risk-assesment>, accessed on 5 May 2023.

³²² AML/CFT Strategy Action Plans, <http://www.apml.gov.rs/english/action-plan>, accessed on 5 May 2023.

³²³ National ML/TF Risk Assessment, 2021, <http://www.apml.gov.rs/uploads/useruploads/Documents/NRA2021.pdf>, accessed on 5 May 2023.

³²⁴ Available at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/odluka/2018/54/2>

The work of the APML is managed by its director who is a civil servant appointed by the government on the proposal of the Minister of Finance, for a period of five years. The current director, however, is in acting status since his appointment in 2015. This status undermines the independence of this authority since according to the LCS, the acting status must not last longer than six months.³²⁵

There are currently 35 civil servants employed in the APML, while the Internal Rulebook foresees a total of 42 total employees. This number has not increased since 2020, which shows that there is still room for increasing the capacity of the APML. The utilization of budget funds in 2021, expressed as a percentage, was 97.34%, and the unspent part of the funds related mostly to travel expenses.³²⁶

The National Bank of Serbia (NBS) also has an important role in the AML/CFT system since it acts both as a regulator and supervisor of a significant number of financial institutions in Serbia. As a regulator in this area, NBS takes part in the preparation of relevant laws and bylaws, issues recommendations for the upgrading of the system, cooperates with APML and international institutions, keeps contacts with obliged entities and holds training for its staff regarding AML/CFT. As a supervising authority, it issues operating licences to obliged entities under its remit and their top management, and continuously monitors whether the obliged entities comply with the regulations and their internal acts.

ML has been criminalised through the Criminal Code and a whole set of economic offences and misdemeanours related to the ML have been established in the LAML. The MONEYVAL Fifth Round Evaluation Report from 2016³²⁷ stated that the Serbian authorities have not been effective in investigating ML offences and prosecuting and convicting offenders. It was also stated that the limited number of outgoing money laundering-related MLA requests suggests that the authorities are not active in this area despite the threat from foreign predicate crime. While comparing data from 2016 and the previous year, it can be concluded that progress was made in relation to the aforementioned point. For example, for the criminal offence of ML, in 2016 there were only three convictions, while in 2021 there were 56.³²⁸

Article 112a of the LAML clearly empowers all AML/CFT supervisors to cooperate with foreign counterparts even without signed agreements. These competent supervisory authorities may, at their own initiative or based on a written and justified request of the competent supervisory authority of a foreign country, exchange data, information and documentation. The scope of cooperation is now broadened and is in line with FATF standards.

Any person crossing the state border and carrying bearer negotiable instruments amounting to EUR 10,000 (approx. USD \$10,700) or more either in Serbian dinars or foreign currency must declare it to the customs authority. The customs authority must temporarily detain these funds if undeclared or if it finds that there is grounded suspicion they are related to ML/TF, deposit them to the account or safe custody of the NBS and inform the APML. During 2021, the

³²⁵ Article 67a of LCS.

³²⁶ APML Annual Report for 2022, Page 21,

<http://www.apml.gov.rs/uploads/useruploads/Documents/GOD%20IZVE%C5%A0TAJ%20USPN%20ZA%202022.godinu-2.pdf>, accessed on 5 May 2023.

³²⁷ MONEYVAL (2016) Fifth Evaluation Round Report

³²⁸ RPPO Annual Reports, <http://www.rjt.gov.rs/docs/rad-javnih-tuzilastava-na-suzbijanju-kriminaliteta-i-zastiti-ustavnosti-2022.pdf>, accessed on 5 May 2023.

Customs Administration seized undeclared funds in the total amount of Bosnia and Herzegovina Convertible Marka (BAM) 4,250.00 (approx. USD \$2,300), Bulgarian Lev (BGN) 10,300.00 (approx. USD \$5,600), Swiss Franc (CHF) 96,180.00 (approx. USD \$104,000), Euro (EUR) 3,253,594.00 (approx. USD \$3.5 million), British Pound (GBP) 41,330.00 (approx. USD \$50,000), Swedish Krona (SEK) 771,840.00 (approx. USD \$73,000), US Dollar (USD) \$19,700 and 4.5kg of gold.³²⁹

In July 2020, the APML requested the financial data of 20 individuals and 37 NGOs and associations from banks. This move by the APML caused a reaction from both the domestic and international public and was evaluated by the United Nations (UN) as a form of pressure from the side of the public authorities on individuals and NGOs who point out corruption in their ranks, political torture or human rights violations.³³⁰ The former minister of finance claimed that the APML was just doing its job.³³¹

At its 61st Plenary meeting, MONEYVAL took note of the information from the Chair and Executive Secretary on correspondence with UN Special Rapporteurs concerning non-profit organisations (NPO) related inquiries by the FIU of Serbia.³³² On October 13th, 2021 the MONEYVAL Secretariat was once more approached by the Serbian NPO community highlighting the unintended consequences of the application of the FATF Standards by the Serbian authorities against NPOs, associated individuals and media associations. In this regard, MONEYVAL reiterated its statement made at the 61st Plenary meeting that all members should ensure that the FATF Recommendations are not intentionally or unintentionally used to suppress the legitimate activities of civil society. MONEYVAL will continue monitoring the situation in Serbia.³³³

Serbia has been a subject of the FATF Fifth Evaluation Round and the Evaluation Report was published in 2016. Since then, there have been three more enhanced follow up reports, the latest being from November 2021. In the latest report it was noted that Serbia made progress to address the technical compliance deficiencies. Out of 40 FATF recommendations, Serbia has been evaluated as largely compliant for 34 of them, with no non-compliant recommendations.³³⁴ Serbia was ranked 110th on the 2022 Financial Secrecy Index (FSI).³³⁵ Since the FSI thoroughly evaluates each jurisdiction's financial and legal systems to identify the world's biggest suppliers of financial secrecy, being higher on the FSI rankings means that the country is contributing more to financial secrecy.³³⁶ Serbia is ranked at 110th out of 141 evaluated countries, which means that Serbia is a minor contributor to global financial secrecy. In terms of this Index, this can be seen as a good result.

Good practices

³²⁹ APML Annual Report for 2021, Page 12.

³³⁰ Radio Slobodna Evropa, November 2020, UN: Misuse of Serbia's anti-terrorist laws to intimidate NGOs, <https://www.slobodnaevropa.org/a/30945008.html>, accessed on 5 May 2023.

³³¹ Radio Slobodna Evropa, July 2020, The EU, USA and Amnesty are seeking details on the verification of the finances of journalists and NGOs in Serbia, <https://www.slobodnaevropa.org/a/uprava-finansije-nvo-mediji/30755081.html>, accessed on 5 May 2023.

³³² MONEYVAL (November 2021) 4th Enhanced Follow-up Report & Technical Compliance Re-Rating, <https://rm.coe.int/moneyval-2021-34-fur-serbia/1680a4db3a>, accessed on 5 May 2023.

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Financial Secrecy Index 2022, <https://fsi.taxjustice.net/>, accessed on 5 May 2023.

³³⁶ FSI, What we measure, <https://fsi.taxjustice.net/what-we-measure/#>.

- Serbia has harmonized domestic legislation with international standards in the field of preventing money laundering/terrorist financing.
- There is a special FIU established – the APML, and it effectively cooperates with other state authorities and its international counterparts.
- Serbia has been ranked 110th in the FSI rankings, which means that it is a minor contributor to global financial secrecy.

Deficiencies

- The APML is an administrative body within the MoF, therefore its independence is questionable. The APML director is in acting status since December 2015. This undermines the independence of the authority since according to legislation, the acting status must not last longer than six months
- Serbia was on the FATF grey list from February 2018 to June 2019, because of deficiencies in its AML/CFT system.
- In July 2020, the APML requested the financial data of 20 individuals and 37 NGOs and associations from banks. This move by the APML caused a negative reaction from both the domestic and international public, who saw it as a targeting of anti-corruption activists.

4.2 Chapter V

4.2.1 Art. 52 and 58 – Anti-Money Laundering

As mentioned in the previous chapter, the main law related to AML in Serbia is the Law on the Prevention of Money Laundering and the Financing of Terrorism (LAML).³³⁷ Since this topic was also covered by the review of Article 14 of UNCAC, review of Articles (52 and 58) will be complementary.

Serbia conducted the National ML/TF Risk Assessment in 2021,³³⁸ representing an update to the two previous risk assessments conducted in 2013 and 2018. As identified in the NRA on ML/TF, in the financial part of the system, the most vulnerable institutions are banks, other payment service providers and issuers of electronic money and money changers.³³⁹ The most vulnerable sectors in the non-financial part of the system are the real estate sector, games of chance (betting) providers and accounting agencies. By comparing the LAML and identified risks, it can be concluded that they are covered by the legal framework governing the ML area.

Following the Fourth Enhanced Follow-Up Report on Mutual Evaluation Report, Serbia has been evaluated as largely compliant for 34 out of 40 recommendations of FATF, partially compliant for one and compliant for the remaining four.³⁴⁰ Among others, the recommendations for which the evaluation was only compliant refer to politically exposed persons (R12), reporting of suspicious transactions and tipping-off and confidentiality (R20 and R21), which are some of the recommendations highly relevant to the provisions of UNCAC. It should be noted that Serbia was on the FATF grey list from February 2018 to June 2019, because of deficiencies in its AML/CFT system.³⁴¹

The LAML contains both regulatory and supervisory provisions. Among other things, this law defines the concept of money laundering, obliged entities of the law, the actions and measures taken by obliged entities, the method of data storage and record keeping of gathered information, the cooperation between competent authorities, the method of international cooperation, the competences of the APML, and prescribes penal provisions.

Article 104 of the LAML provides for a list of authorities³⁴² which are competent and required to conduct the supervision of compliance with the LAML by the obliged entities, lawyers and public notaries. These authorities must apply a risk-based approach in the course of

³³⁷ Available at: <http://www.apml.gov.rs/english/legislation>.

³³⁸ Available at:

<http://www.apml.gov.rs/uploads/useruploads/Documents/NRA%20novo%20skracena%20verzija-ENG%20FINAL.pdf>, accessed on 5 May 2023.

³³⁹ Ibid, Page 18.

³⁴⁰ MONEYVAL (November 2021) 4th Enhanced Follow-up Report & Technical Compliance Re-Rating, Page 10, accessed on 5 May 2023.

³⁴¹ See: https://www.coe.int/en/web/moneyval/home/newsroom/-/asset_publisher/zTE3FjHi4YJ7/content/moneyval-congratulates-serbia-for-removal-from-fatf-s-grey-list-, accessed on 5 May 2023.

³⁴² These authorities are: APML, NBS, Securities Commission, authority competent for supervision in the area of tax advisory services, authority competent for supervision in the area of games of chance, Ministry competent for supervisory inspection in the area of trade, Bar Association of Serbia, Ministry competent for postal communication and Chamber of public notaries.

supervision, and if they find irregularities, they are obliged to take one of the prescribed measures, which may go as far as prohibiting on a temporary or permanent basis the operation of an obliged entity or in revoking an obliged entity's operating licence or approval, in particularly justified cases.

A list of obliged entities of the LAML provisions is listed in Article 4. Alongside banks, this list includes other financial institutions and entities such as authorised bureaux de change, payment institutions, tax advisors and digital asset service providers. Since the adoption of the amendments of the LAML in 2020, obliged entities also include lawyers and notaries while performing specific services and transactions within their professional activities, which eliminated the deficiencies identified in the 2nd Enhanced Follow-up Report.³⁴³

All obliged entities must perform customer due diligence (CDD) actions and measures. When establishing a business relationship, CDD rules also apply in other situations when carrying out transactions and money transfers above a certain limit, when there are reasons for suspicion of money laundering or terrorism financing and when there are doubts as to the veracity or credibility of the obtained data about a customer or beneficial owner.³⁴⁴

The obliged entity, as a CDD, must identify the customer, verify its identity and identify and verify the beneficial owner, as well as perform other actions prescribed in Article 7 of the LAML. When the obliged entity is unable to apply these actions and measures, it must refuse the offer to establish a business relationship and in case a business relationship has already been established, it must terminate it. Prohibition of business transactions with shell banks is also prescribed, and the violation of this prohibition entails responsibility for economic crimes.

The obliged entity shall make an official note in writing, consider whether there are reasons for suspicion of money laundering or financing of terrorism. The obliged entity must furnish the APML, before the transaction is executed, whenever there are reasons for suspicion of money laundering or terrorist financing with respect to the transaction or customer, and shall indicate in its report at the time when the transaction is to be carried out.³⁴⁵ If conducting CDD would raise suspicions with the customer that the obliged entity is conducting CDD in order to submit data to the APML, the obliged entity must cease the conduct of CDD, make an official note and send it to the APML.

According to Article 95 of the LAML, the obliged entity must keep the data and documentation in relation to a customer, business relationship established with a customer, a conducted risk analysis and a conducted transaction for at least 10 years.

The obliged entity must identify the beneficial owner behind the customer by inspecting the original or a certified photocopy of the documentation from a register maintained by the country where the customer has a registered office, which may not be older than six months from the date of its issue.³⁴⁶ If a customer or the beneficial owner of a customer is an official, the obliged entity is obliged to take additional actions and measures, and also apply it to close

³⁴³ MONEYVAL (November 2021) 4th Enhanced Follow-up Report & Technical Compliance Re-Rating, Page 3.

³⁴⁴ Article 8 of the LAML.

³⁴⁵ Article 47 of the LAML.

³⁴⁶ Article 25 of the LAML.

family members and/or close associates of the official.³⁴⁷ In terms of the LAML, the term ‘official’ refers to an official of the Republic of Serbia, official of a foreign country or international organisation who holds or who has held in the last four years a high-level public office in a foreign country or international organisation.

According to the LPC, public officials must declare assets for themselves and family members in the national country as well as abroad.³⁴⁸ In addition to that, Serbian citizens are forbidden from holding bank accounts abroad, unless the opening of such an account is approved in a concrete case and for a specific reason (e.g., medical treatment). A detailed review of the declaration of assets of public officials is presented in other parts of this report, such as the one referring to Article 8.

It was already emphasised that the APML is the FIU in Serbia. It collects, processes, analyses and forwards information about suspicious transaction reports (STR) to other competent authorities. The level of its independence is not fully adequate, as it is a directorate within the MoF, and not the independent regulator, nor separate administrative organisation within the Executive. The APML has published a series of guidelines and recommendations addressed to obliged entities, namely for STR reporting and ML/TF risk assessment.³⁴⁹ In 2022, courts delivered 14 judgments to the APML in which they imposed fines due to established irregularities in the direct supervision procedure based on the LAML.³⁵⁰

In practice, the independence of the APML’s actions was challenged due to the alleged misuse of the APML’s data for smear campaigns against watchdog NGOs and individuals (explained in more detail in the article on Measures to Prevent Money Laundering in this report, above). Furthermore, the AMPL failed to react publicly after several investigative journalists’ reports revealed leaked documents on individuals worldwide, including Serbian nationals possessing bank accounts or companies established in tax havens.³⁵¹

The public was also deprived of explanations when there were suspicions of cases of money laundering related to politicians who held high executive positions. In July 2014 the APC (formerly known as the Anti-Corruption Agency) initiated the procedure with the aim to monitor the assets of the then minister of the Interior and asked him to explain how he financed the purchase of an apartment.³⁵² The Minister changed his statements several times and finally stated to the APC that his wife’s aunt from Canada lent the couple more than €200,000 to buy their Belgrade apartment, but submitted unconvincing evidence for his claim.³⁵³ It was also stated that he bought the apartment with cash.³⁵⁴ However, this large amount of money couldn’t have passed international borders without being declared to customs and without an explanation of its origins. According to the LAML, there is an obligation in place to report

³⁴⁷ Article 36 of the LAML.

³⁴⁸ Article 71 of the LPC.

³⁴⁹ Available at: <http://www.apml.gov.rs/english/guidelines-and-recommendations>, accessed on 5 May 2023.

³⁵⁰ Annual Report of the APML for 2022, Page 17.

³⁵¹ KRIK, April 2016, Most famous Serbs who appeared in Panama Papers, <https://www.krik.rs/najpoznatiji-srbi-koji-se-pojavljuju-u-panama-papers/>, accessed on 5 May 2023.

³⁵² KRIK, May 2018, Timeline of the “Aunt from Canada” case, <https://www.krik.rs/hronologija-slucaja-tetka-iz-kanade/>, accessed on 5 May 2023.

³⁵³ KRIK, September 2017, Defense Minister Vulin Can’t Explain Origins of More Than €200,000 in Cash, <https://www.krik.rs/en/defense-minister-vulin-cant-explain-origins-e200000-cash/>, accessed on 5 May 2023.

³⁵⁴ Ibid.

more than €10,000 in cash when crossing the borders. When asked by one journalist whether this was the way in which the Minister brought the money into Serbia, he responded positively and stated that he crossed the border multiple times carrying amounts smaller than €10,000.³⁵⁵ The APC has submitted the asset declarations report to the Prosecutor's Office for Organized Crime as well as to other prosecutors' offices, but they determined that there were no grounds for initiating criminal proceedings.³⁵⁶

Statistics about money laundering and suspicious transaction reports are available in section 4.3 of this report, below.

Good practices

- Serbia has a comprehensive National ML/TF Assessment and the LAML contains both regulatory and supervisory provisions.
- The LAML provides for an extensive list of obliged entities who must comply with CDD actions and measures.
- Serbia has been evaluated as largely compliant for 34 out of 40 recommendations of FATF.

Deficiencies

- The level of APML (Serbia's FIU) independence is not fully adequate, as it is an administrative body within the MoF, and not the independent regulator, nor separate administrative organisation within the Executive.
- The independence of APML actions has been challenged due to the alleged misuse of the APML's data for smear campaigns against watchdog NGOs and individuals.
- The prosecution of politicians in high ranks due to suspected money laundering has not taken place, even after investigations shed light on several political figures, such as former government Ministers.

4.2.2 Art. 53 and 56 – Measures for Direct Recovery of Property; Art. 54 – Confiscation Tools; Art. 51, 54, 55, 56 and 59 – International Cooperation for the Purpose of Confiscation; Art. 57 – The Return and Disposal of Confiscated Property

Due to the close connection of the provisions of above-mentioned articles of the UNCAC, the authors of this report believe that it is more expedient that they be presented as a whole, and not individually.

The legal framework that is important for asset recovery consists of a series of laws and regulations. Those are the CC, CPC, The Law on the Confiscation of Proceeds of Crime, the Law on Mutual Legal Assistance in Criminal Matters, the LAML as well as concluded bilateral agreements and international conventions.

The basic legal framework regulating the seizure and confiscation of the proceeds of crime in Serbia is contained within the CC and CPC. There is also a *lex specialis* in this area, the Law

³⁵⁵ KRIK, September 2017, Vulin: I was bringing in 9,000 euros by 9,000 euros, <https://www.krik.rs/vulin-uneo-sam-9-000-po-9-000-evra/>, accessed on 5 May 2023.

³⁵⁶ KRIK, Bojana Pavlović, January 2018, No one is in charge 76 fan aunt from Canada <https://www.krik.rs/niko-nije-nadlezan-za-tetku-iz-kanade/>, accessed on 5 May 2023.

on the Confiscation of Proceeds of Crime (LCPC),³⁵⁷ which regulates the conditions, procedures and authorities responsible for the discovery, confiscation and management of the property of natural and legal persons resulting from a criminal act. It was adopted in 2013 (last amended in 2019), thus replacing the previous LCPC which was adopted in 2008, and was in force since March 2009. This law was seen as revolutionary at the time, because it enabled the temporary or permanent confiscation of property that is not directly related to the criminal offense for which the person was accused.³⁵⁸ In context of this law, the burden of proof is placed on the defendant, and s/he must prove that he acquired the property in a legal manner. The justification for this legal construction was found in the exclusivity of the law, that is, in the range of the most serious criminal offenses for which it is possible to apply this law.³⁵⁹ This stance has also been confirmed in the judgment of the European Court of Justice, Ulemek vs. Serbia.³⁶⁰ However, the number of criminal offences for which the LCPC can be applied has been increasing, which is a bad practice given the essence of this law which is exclusivity.

Article 2 of the LCPC prescribes a list of criminal offences for which the provision of the LCPC can apply. This list is quite exhaustive, and it is not limited only to the criminal offences prescribed in the UNCAC. In general, the provisions of the LCPC are applied if the assets were obtained through a criminal act, i.e., the value of the asset of the criminal act exceeds the amount of RSD 1.5 million (approx. USD \$13,700).

In order to understand the application of the provision of the LCPC, it is necessary to present the meaning of certain terms that are used in the application of the LCPC. The ‘proceeds from crime’ are considered to be the owner's property that is clearly disproportionate to his legal income. The ‘owner’ of the assets which can be confiscated is also considered a ‘bequeather’ and a legal successor. The ‘bequeather’ is considered to be a person against whom, as a result of death, criminal proceedings have not been initiated or have been suspended, while in the criminal proceedings conducted against other persons it has been established that he, together with those persons, committed the criminal offence listed in Article 2 of the LCPC. The ‘legal successor’ shall mean an inheritor of a convicted person, cooperative witness, bequeather or inheritors thereof. Assets that can be confiscated are assets of any kind in the Republic of Serbia or abroad, according to Article 3 of LCPC.

Serbia’s legal framework provides for non-conviction based (NCB) confiscation, not only in criminal proceedings. Based on Article 23 of the LCPC, it is possible to temporarily confiscate assets if there is a reasonable suspicion that it was the result of a criminal offence even when there is no conviction. The Public Prosecutor submits a request for temporary confiscation of assets to the court when there is a probability that later confiscation of assets resulting from a criminal offence would be difficult or impossible. If there is a probability that the owner will dispose of the proceeds of crime before the court decides on this request, the Public Prosecutor

³⁵⁷ Law on the Confiscation of Proceeds of Crime, 2013, https://www.paragraf.rs/propisi/zakon_o_oduzimanju_imovine_proistekle_iz_krivicnog_dela.html, accessed on 5 May 2023.

³⁵⁸ Information obtained in an interview with retired judge Radmila Dragičević Dičić. 4 May 2023.

³⁵⁹ Ibid.

³⁶⁰ European Court of Justice, Ulemek against Serbia, <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-208855&filename=ULEMEK%20v.%20SERBIA.pdf&logEvent=>, accessed on 5 May 2023.

may issue an order prohibiting the disposal of the property (freezing assets) and the temporary confiscation of movable assets.³⁶¹ According to Article 44 of the LPC, the permanent confiscation of proceeds of crime happens when the public prosecutor submits a request to court within six months from the date of delivery of the legally binding verdict establishing that the criminal offence referred to in Article 2 of the LCPC has been committed. NCB confiscations other than in criminal proceedings can be issued based on the Law on Determining the Origin of Property and Special Tax.³⁶²

The Financial Investigation Unit, established within the framework of the LCPC, currently functions as the national Asset Recovery Office. This unit operates under the Ministry of Internal Affairs, as a separate organisational unit. In the majority of cases and on the order of the relevant Public Prosecutor, the unit conducts financial investigations to trace and identify assets and collect evidence on the lawful income, lifestyle and living expenses of defendants, co-defendants or bequeathers. This unit also performs house searches, seizes objects and cooperates with other state authorities.³⁶³

The LCPC established the Directorate for the Management of Confiscated Assets (the Directorate), which is an administrative body within the MoJ, in charge of managing temporarily and permanently confiscated assets. The Directorate also participates in the providing of mutual legal assistance (MLA) and manages assets resulting from a criminal offence confiscated on the basis of a decision of a foreign authority.

The Directorate is obliged to keep records of the property it manages and the court proceedings in which it was decided to confiscate property resulting from the criminal offence. There is no available information on the Directorate's website about the number and value of the confiscated assets.³⁶⁴

However, in the 2021 NRA ML/TF, there is published data on the value of confiscated and frozen assets. As stated in the report, according to the Directorate the value of income confiscated or frozen under temporary confiscation orders, totals EUR 14,309,306 (approx. USD \$15 million), while the amount of income permanently confiscated is EUR 3,131,000 (approx. USD \$3.3 million).³⁶⁵ These amounts refer only to confiscated assets related to ML and predicate offences. There are no statistical data on the cases of confiscation based on foreign corruption related money-laundering offences.

³⁶¹ Article 24 of the LCPC.

³⁶² Law on Determining the Origin of Property and Special Tax, 2020, <https://www.paragraf.rs/propisi/zakon-otvrdjivanju-porekla-imovine-i-posebnom-porezu.html>, accessed on 5 May 2023.

³⁶³ The AIRE Centre and Regional Anticorruption Initiative (2021) Combating Corruption in the Western Balkans: strengthening regional cooperation in the field of asset recovery, Page 70, https://www.raisee.org/php_sets/uploads/2021/02/2nd-edition-AR-Report-WB-EN-final.pdf, accessed on 5 May 2023.

³⁶⁴ <https://direkcija.mpravde.gov.rs/sekcija/4/o-nama.php>, accessed on 5 May 2023.

³⁶⁵ NRA ML/TF, Page 74, <http://www.apml.gov.rs/uploads/useruploads/Documents/NRA%20novo%20skracena%20verzija-ENG%20FINAL.pdf>, accessed on 5 May 2023.

International legal assistance, in accordance with the Law on International Legal Assistance in Criminal Matters,³⁶⁶ is provided by competent courts and public prosecutor's offices, and letters rogatory are submitted through the central authority - the MoJ - but also directly to the competent judicial authorities, i.e., in emergencies to Interpol, in accordance with the principle of reciprocity.

MLA in order to confiscate proceeds of crime is achieved on the basis of an international agreement or based on the principle of reciprocity, as prescribed in Article 64 of the LCPC. MLA includes extending assistance in tracing the proceeds from crime, ban on disposal, and temporary or permanent confiscation of assets. It is not necessary for there to be a legally binding foreign court verdict, for a letter rogatory for temporary confiscation of assets. If the letter rogatory is accepted, and assets are temporarily or permanently confiscated, the Directorate is responsible for the management of the confiscated assets.

The letter rogatory for MLA in the confiscation of proceeds of crime submitted by a foreign authority must be transmitted to a domestic public authority via the MoJ (and *vice versa*). Serbia has signed a series of bilateral and multilateral agreements both for criminal and civil matters, notably the UN Treaty against Organised Crime,³⁶⁷ the MLA Convention,³⁶⁸ and the CoE Warsaw Convention.³⁶⁹

The available data on letters rogatory related to the crime of ML can be found in the NRA MR/TF, where it was stated that for the period 2018 to 2020 the MoJ identified a total of 152 cases related to the crime of ML, of which a significant number were incoming letters rogatory (118).³⁷⁰ More recent data could not be found in the reports of the MoJ. Information about the confiscated data for 2018 and 2019 in Serbia can be found in one publication dated 2020.³⁷¹

The APML is a member of the EGMONT group and it exchanges information with its counterpart FIUs through the Egmont Secure Web. According to the 2021 APML Annual Report, in 2021, it responded to 142 requests from partner services. The requests were mainly related to citizens of Serbia with accounts abroad that are linked to criminal groups or criminal activities, as well as to foreign citizens who have accounts in commercial banks in Serbia or are participants in criminal activities in Serbia. The APML sent a total of 175 requests to foreign partner services. The requests were mostly related to non-residents who have accounts or business activities in Serbia, and because of suspicions about the origin of the funds or their

³⁶⁶ Law on International Legal Assistance in Criminal Matters, 2009, https://www.paragraf.rs/propisi/zakon_o_medjunarodnoj_pravnoj_pomoci_u_kvivicnim_stvarima.html, accessed on 5 May 2023.

³⁶⁷ United Nations Convention against Organised Crime, 2000, <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>, accessed on 5 May 2023.

³⁶⁸ European Convention on Mutual Assistance in Criminal Matters, 1962, <https://www.coe.int/en/web/transnational-criminal-justice-pcoc/MLA-council-of-europe-standards>, accessed on 5 May 2023.

³⁶⁹ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005, <https://rm.coe.int/168008371f>, accessed on 5 May 2023

³⁷⁰ NRA ML/TF, Page 79.

³⁷¹ The AIRE Centre and Regional Anticorruption Initiative (May 2021) Effective Implementation of Asset Recovery Measures in the Western Balkans, Page 39, 40 and 41, https://www.rai-see.org/php_sets/uploads/2020/06/regional-monitoring-methodology_updated.pdf, accessed on 5 May 2023.

operations. Also, part of the request was sent to foreign partner services in order to identify the assets of domestic persons abroad.³⁷²

Regarding the disposal of confiscated property, the LCPC prescribes several possibilities.³⁷³ The Directorate bears the costs of keeping, maintaining and managing seized proceeds of crime from the day of enforcement of the court's decision on temporary confiscation of property. If an immovable property is seized, the Directorate can conclude a lease contract for that asset. Primarily, the contract will be concluded by market values with the existing tenants or with the owner of the property if s/he requests it.

According to the Article 56 of the LCPC, in order to preserve the value of temporarily confiscated property, the Directorate can sell movable property and securities. Movable property that is not sold within a year can be donated for humanitarian purposes or destroyed. The property is destroyed under the supervision of the Directorate, and the costs of destruction are borne by the Directorate. Funds obtained from the management of temporarily confiscated property are kept in special accounts of the Directorate.

Property and funds obtained from the sale of property become the property of the Republic of Serbia when the decision on the permanent confiscation of property becomes legally binding. After deducting the costs of managing the confiscated property and settling the property claim of the injured party, the funds obtained from the sale of the permanently confiscated property are paid into the budget of the Republic of Serbia. According to Article of 63 of the LCPC, an amount of 30% of these funds is used to finance social and health needs in accordance with the Government's decision. These funds are in practice indeed used for these purposes, however, the process of decision and priority making related to their distribution is not transparent.³⁷⁴

With respect to an owner of temporarily confiscated property which has been determined not to originate from a criminal offence, confiscated assets or funds obtained from the sale of property shall be returned without delay. If the Directorate did not manage the seized property as a 'good steward', the owner to whom the funds were returned can, within 30 days from the day of the return of the funds, submit to the Directorate a request for compensation for the damage caused by the seizure of the property. If the request for compensation is not accepted or the Directorate does not make a decision on it within three months from the date of submission of the request, the owner can file a claim for compensation with the competent court. If the request is only partially accepted, the owner can file a lawsuit against the remaining part of the request.³⁷⁵ According to the information gathered in an interview with an ex-judge, there haven't been cases of this in practice.³⁷⁶

Good practices

³⁷² APMML Annual Report, 2021,

<http://www.apml.gov.rs/uploads/useruploads/Documents/Godisnji%20izvestaj%20Uprave%20160322.pdf>.

³⁷³ Articles 49 to 63, LCPC.

³⁷⁴ Information obtained in an interview with retired judge Radmila Dragičević Dičić, 4 May 2023.

³⁷⁵ Article 61 and 62 LCPC.

³⁷⁶ Information obtained in an interview with retired judge Radmila Dragičević Dičić, 4 May 2023.

- There is a *lex specialis* in asset recovery area in Serbia, the LCPC. This law enables temporary or permanent confiscation of property that is not directly related to the criminal offense for which the person was accused.
- Serbia's legal framework provides for non-conviction-based confiscation and not only in criminal proceedings. It is also possible to confiscate proceeds of crime from a 'bequeather' and a legal successor.
- Mutual legal assistance is being provided through signed bilateral and multilateral conventions and the cooperation between FIUs is enhanced through Egmont Secure Web.
- There is a special body within the MoJ in charge of managing temporarily and permanently confiscated assets – the Directorate.
- Part of permanently confiscated assets must be used to finance social and health needs.
- Through held trainings and seminars, the awareness of judges and prosecutors is increased, especially in regard to the criminal offence money laundering and the legal institute of confiscation of proceeds of crime.

Deficiencies

- There is no publicly available, transparent data on how the confiscated assets are managed or how a part of the permanently confiscated assets has been distributed to health and social needs.
- The number of criminal offences for which the LCPC can be applied has been increasing, which is a bad practice given the essence of this law, which is exclusivity.
- There is a need to establish a prosecuting police force.

4.3 Statistics

Money Laundering³⁷⁷

Reporting/Intelligence Phase	Year: 2022	Year: 2021	Year: 2020
Number of Suspicious Transaction Reports (STRs) filed by each category of obliged entities:			
- Banks and financial institutions	782	866	1026
- Non-financial businesses and professions (NFBPs)	7	13	11
Number of postponement orders adopted on reported transactions	4	4	1
Number of money laundering investigations carried out independently by law enforcement agencies (without a prior STR)	69	60	94

³⁷⁷ Sources are: Annual reports of RPPO – <http://www.rjt.gov.rs/sr/informacije-o-radu/godi%C5%A1nji-izve%C5%A1taj-o-radu-javnih-tu%C5%BEila%C5%A1tava> ; and APML – <http://www.apml.gov.rs/english/annual-reports> ; Responses to the free access to information requests that authors of this report sent – Response from RPPO – https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Odgovor_RJT_-_Statistika.pdf ; Response from APML – https://transparentnost.org.rs/images/dokumenti_uz_vesti/Uprava_za_spre%C4%8Davanje_pranja_novca_odgovor_M-5-22.pdf.

Number of suspicious cash activities at the border reported to the FIU (including those based on declarations and smuggling)	6	29	19
Number of STRs sent to law enforcement and on which further analysis was made	41	12	8
Number of staff dedicated full-time (or full-time equivalent) to money laundering in the FIU	n/a	n/a	n/a

Investigation Phase	Year: 2022	Year: 2021	Year: 2020
Number of cases initiated by law enforcement agencies on the basis of STRs sent by the FIU	n/a	n/a	n/a
Number of staff dedicated full-time (or full-time equivalent) to money laundering in law enforcement agencies	n/a	n/a	n/a
Number of cases brought to prosecution: originating from STRs, CTRs and independent law enforcement investigations	233	231	212

Judicial Phase	Year: 2022	Year: 2021	Year: 2010
Number of staff dedicated full-time (or full-time equivalent) to investigating money laundering in the judiciary	n/a	n/a	n/a
Number of persons/legal entities convicted for money laundering offences	n/a	n/a	n/a
Number of convictions for laundering proceeds of crimes committed abroad	n/a	n/a	n/a
Number of convictions for crimes other than money laundering originating from STRs	n/a	n/a	n/a
Number of sentences by type for money laundering offences	31/0/38 ³⁷⁸	47/1/8	21/0/20
Number of unsuspended custodial sentences by length (as principal offence, as predicate offence)	n/a	n/a	n/a

4.4 Short analysis

In the statistics presented above, the information on the number of judgments for the criminal offense of money laundering can be highlighted. The increase in the annual number of convictions can be attributed to the increased awareness of judges and prosecutors when it comes to money laundering. In previous years, a large number of seminars and trainings on the subject of money laundering were held, organized by the Judicial Academy, but also by

³⁷⁸ As main sanctions – Prison / Fine / Conditional sentence.

international organizations, such as Advice on Individual Rights in Europe Centre (AIRE).³⁷⁹ These trainings can serve as a good example for other areas when it comes to the fight against corruption.

4.5 Information on asset recovery cases

There are no asset recovery cases regarding Serbia included in the StAR Asset Recovery Watch Database.³⁸⁰

³⁷⁹ AIRE Centre, RAI and the Montenegro Ministry of Justice host the Western Balkans regional experts conference on asset recovery, October 2022, <https://www.airecentre.org/news/aire-centre-rai-and-the-montenegro-ministry-of-justice-host-the-western-balkans-regional-experts-conference-on-asset-recovery>, accessed on 5 May 2023.

³⁸⁰ StAR Initiative: StAR Asset Recovery Watch, <https://star.worldbank.org/asset-recovery-watch-database>.

V. Recent Developments

The most significant recent development regarding anti-corruption in Serbia is the beginning of the drafting of the National Anti-Corruption Strategy (NACS). It was planned that it would be valid as of January 2023, but its adoption was delayed. The working group has started its work in March 2023, and according to the statements of the Prime Minister, the NACS should be finished in June 2023. This deadline seems unrealistic bearing in mind the development of events so far.

A significant impact on planning the fight against corruption in Serbia is the process of European integration. The EU monitors the fight against corruption within the negotiations Chapter 23 (Judiciary and Fundamental rights), where the Revised Action Plan was adopted in 2020. This AP23 does not contain the necessary measures in all areas of importance for the fight against corruption, but only in those areas that were identified as a priority in the screening process. The implementation of many measures and activities from the AP23 has also been delayed. Evaluations and effects of measures are not adequately monitored because of the two-track monitoring.

International institutions have a very important role in anti-corruption reforms in Serbia, so many of those reforms were undertaken following the recommendations of Group of States against Corruption (GRECO), Office for Democratic Institutions and Human Rights (ODIHR), the Venice Commission and other relevant organizations. When it comes to the legal framework for the fight against corruption, it can be said that Serbia has all the regulations that are usually considered important for this matter, but many of them need to be improved in order for the fight against corruption to be effective.

Serbia has made significant changes in its legal framework for the prevention of corruption based on the recommendations from the Fourth Round of the GRECO Evaluation. In this way, the Law on Prevention of Corruption (LPC) was adopted in 2019, and then amended several times, and its provisions were also the subject of authentic interpretation before the National Assembly.

Another law that was amended due to the recommendations of international organizations is the Law on Financing Political Activities (LFPA). It was adopted in February 2022 and it is in fact the previous LFPA on which amendments were adopted for a significant number of articles, which is why it is formally marked as new law. The recommendations of the ODIHR and GRECO had a significant impact on these amendments to the law – it will soon need to be amended again in order to respond to the additional recommendations as well as those which were not fulfilled.

The reform of the judiciary, which included changes to the Constitution and the adoption of a new set of judicial laws, has been completed. The Constitution was amended in February 2022 and this reform is expected to bring greater independence to public prosecutors, which can have a positive effect on the fight against corruption in Serbia. Through this reform, the possibility

of political influence on the election and dismissal of judges and prosecutors will be reduced, but there are fears that these risks will resurface elsewhere.

The amendment to the Constitution was also one of the commitments that Serbia had made at the Summit for Democracy, held in December 2021.³⁸¹ Serbia has committed to include changes to its regulatory framework in the field of the fight against corruption and to harmonize its normative framework in order to fulfil recommendations from the Fourth Evaluation Round Report of GRECO.

Serbia is now facing a new round of regulatory changes based on the fifth round of GRECO evaluation, which refers to most areas covered in this report. Serbia should submit a report on the measures taken to implement the recommendations by 30 September 2023, therefore, a great deal of legislative activity is needed to implement all the recommendations.

The news that the Law on Civil Servants (LCS) was amended in December 2022 went almost unnoticed. In essence, it did not undergo any changes, but was only amended in a way that the obligation prescribing open competitions for fixed-term employment has been postponed until 2025.

The Law on Free Access to Information of Public Importance was amended in 2021. Although some positive changes were introduced, such as expanding the circle of authorities to which the law applies or erasing the provision which enabled authorities to claim ‘abuse of rights’, key obstacles remained and some norms even reduced the right to access information.

Work on amendments to the Criminal Code has begun, but it is uncertain when this will be completed. Amendments to the Criminal Code are significant because there is a need to improve the definitions of certain criminal acts and to review the current division of competences of authorities in charge of corrupt criminal acts.

Although in Europe the protection of whistleblowers and the harmonization of the national legislation with the EU Directive on Whistleblowing³⁸² is currently a highly debated topic, in Serbia there has been no news about changes to the Law on Whistleblowers Protection, which was adopted in 2014.

In June 2021, high government representatives from the so-called Western Balkans (including Serbia) met in Ohrid, North Macedonia, and adopted the Regional Roadmap on Anti-Corruption and Illicit Finance Flows to fast-track the implementation of the United Nations Convention against Corruption (UNCAC) in support of the achievement of Sustainable

³⁸¹ Serbia’s commitment at the Summit for Democracy: <https://www.state.gov/wp-content/uploads/2022/07/Summit-for-Democracy-Pledges-Serbia.pdf>, accessed on 5 May 2023.

³⁸² DIRECTIVE (EU) 2019/1937, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937&from=EN>, accessed on 5 May 2023

Development Goal 16 in the Western Balkans jurisdictions.³⁸³ The roadmap focuses on three shared priority areas and goals which are: preventing and countering corruption in public procurement; further strengthening conflict of interest and asset declaration systems; enhancing criminal justice responses to corruption and economic crime through the creation of a regional network of specialized prosecutors, law enforcement and financial intelligence units in the Western Balkans jurisdictions. The roadmap envisages the inclusion of civil society in the process and activities within the roadmap should be implemented in the period from 2021-2024.

In 2022, Serbia fell five places on Transparency International's Corruption Perception Index (CPI) list, with an overall index of 36 – Serbia fell to the 101st position in the most significant global ranking of countries according to the perception of corruption in the public sector.³⁸⁴ In the previous two years, Serbia had a corruption perception index of 38 and was in the 94th and 96th place, respectively. The 2022 rating is the worst in the last 11 years since the current methodology and scale from 0–100 has been applied. After years of stagnation, the deterioration in the perception of corruption indirectly indicates that the problem is not only in perceptions *per se* but that there is no substantial progress.³⁸⁵

³⁸³ Regional Roadmap on Anti-Corruption and Illicit Finance Flows, 2021, https://www.unodc.org/documents/southeasterneurope/AC_and_Illicit_Finance_Roadmap_Full_25.06_PDF.pdf, accessed on 5 May 2023.

³⁸⁴ Corruption Perception Index (CPI) 2022, <https://www.transparency.org/en/cpi/2022>, accessed on 5 May 2023.

³⁸⁵ See: <https://transparentnost.org.rs/en/ts-and-media/press-issues/12426-serbia-fell-below-the-hundredth-place-in-the-world-list-of-transparency-international-s-index-of-corruption-perceptions>, accessed on 5 May 2023.

VI. Recommendations

The authors of this report recommend the following priority actions in areas covered by this report to the government of Serbia:

1. Adopt the National Anti-Corruption Strategy which will be a comprehensive strategic document containing preventive anti-corruption measures as soon as possible;
2. Ensure uniformity in the assessment of progress in the implementation of the Action Plan for Chapter 23 (subchapter Fight against Corruption), which is performed by the Coordinating Body and the Agency for the Prevention of Corruption. Their reports should be considered by both the government and the National Assembly;
3. Strengthen the Agency for Prevention of Corruption's staff capacity so that it can perform all assigned tasks and specify some of its responsibilities;
4. Regularly consider reports and recommendations from the Anti-Corruption Council and take steps to address the issues identified. The government should inform the public about actions taken to verify facts or address systemic and individual problems. The government should also provide other conditions necessary for the work of the Council (appointment of new members, inclusion in working groups);
5. Stop the widespread practice of employment on temporary and fixed-term contracts in the public sector, thus avoiding public competitions;
6. Ensure full implementation of the existing public employment rules, in particular by legally appointing managers of public enterprises, public administration and public services. The government should also organise meaningful public debates and conduct corruption risk assessments for all regulations, and ensure compliance with final decisions by the Commissioner for Information of Public Importance and Personal Data Protection;
7. Include individuals with potential high influence in designing government policies such as public officials (advisors to the president, prime-minister and minister, heads of cabinets), so that they have to be subject to conflict of interest and asset declaration rules;
8. Inform the public about the enforcement of the Law on Determining the Origin of Property and the Special Tax; whether the monitoring of public officials and civil servants was carried out, and whether this capacity has been taken into account while drafting plans. The Constitutional Court should review the provisions of said Law, while government officials should refrain from making statements that could affect its application;
9. Amend the Law on Whistleblowers Protection in order to appropriately penalize all forms of retaliation and to place one authority in charge of general and comprehensive oversight of the law's implementation;
10. Introduce election campaign expenditure limits and put an end to the ever-increasing use of public funds for elections;
11. Abandon the practice of contracting the most valuable projects through interstate agreements and special laws, thereby avoiding the application of the Law on Public Procurement;

12. Increase transparency in the process of preparation of the national budget and organize public hearings about the budget;
13. Ensure the enforcement of the decisions of the Commissioner for Information of Public Importance and Personal Data Protection;
14. Enhance participation of society in decision-making processes and prevent the targeting of civil society activists and journalists reporting on corruption;
15. Ensure changes to the legal framework that would prevent the filing of SLAPP lawsuits, and become actively involved in the fight against this type of lawsuit following the example of the EU;
16. Increase transparency in the government's work by regularly publishing explanations of bylaws, non-confidential conclusions, signed contracts, information on advisors and lobbying, as well as findings obtained through monitoring the work of other state authorities;
17. Be proactive regarding corrupt criminal acts, especially when there is information in the media that indicates potential corrupt behaviour;
18. Improve the Criminal Code to provide a more effective legislative framework for combating corruption, by amending the criminal offences involving bribery, giving and receiving a bribe in connection with voting, criminal offences related to non-reporting of property of public officials, abuse of public procurement and unlawful funding of political parties, and by criminalising retaliation against whistleblowers and illicit enrichment within the scope of Article 20 of the UNCAC;
19. Provide special anti-corruption prosecution units with the necessary resources and staff. The list of crimes they are dealing with should be revised and the transparency of their work should be increased. The High Prosecutors Council should ensure that prosecutors who fail to proactively investigate corruption crimes are held accountable;
20. Introduce the obligation for the institutions in charge of overseeing the application of accounting and auditing rules to provide information about their findings, which should significantly increase transparency;
21. Provide the APML with the necessary level of independence, so that it can perform its duties without political influence;
22. Enable better international cooperation for the purpose of confiscation and return of stolen assets;
23. Organize trainings for judges and prosecutors on the topics of asset recovery and confiscation of proceeds of crime.

VII. Annex

7.1 Table on Freedom of information requests

Identification number	Institution	Date of request	Date of answer	Information requested	Information provided
P – 209/2022	National Assembly	8 July 2022	26 July 2022	Annual Report on the Implementation of the Code of Conduct for Members of Parliament for 2021	Request Response 1 - delay Additional letter Response 2 - rejection
M – 4/22	Republic Commission for Protection of Rights in Public Procurement Procedure	15 July 2022	25 July 2022	Statistical data on the decisions of the Republic Commission on requests for the protection of rights	Request Response - Information provided
M – 7/22	Directorate for the Administration of Seized Assets	27 July 2022	n/a	Statistical data about asset recovery	Request - No response
P – 212/2022	Human Resource Management Service	25 August 2022	8 September 2022	Information about the appointed positions by the Government	Request Response Attachment Attachment Attachment
M – 6/22	Republic Public Prosecutors Office	19 July 2022	25 July 2022	Information about the money laundering criminal offence	Request Response
M – 5/22	Administration for the Prevention of Money Laundering	19 July 2022	1 August 2022	Information and statistical data about suspicious transaction reports	Request Response
M – 1/22	Commissioner for information of public importance and protection of personal data	1 July 2022	5 July 2022	Annual reports of the public authorities on actions taken in order to implement the Law on Free Access to Information of Public Importance	Request Response Attachment
M – 12/23	Ministry of Justice	7 March 2023	20 March 2023	Information about the review process and the visit of peer reviewers	Request Response Attachment

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