



**SIGMA**

**Support for Improvement in Governance and Management**

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# **ASSESSMENT**

## **SERBIA**

### **2010**

## **INTEGRITY**

### ***Main Developments since the Last Assessment***

Corruption is still one of the most pressing problems in Serbia<sup>1</sup>, although there has been some improvement in comparison to previous years<sup>2</sup>, due to both legislative activities and better implementation of anti-corruption measures.

Since 1 January 2010 the Law on the Anti-Corruption Agency (LACA)<sup>3</sup> is operative. This law has broadened the definition of the concept “public official” by subjecting judges and prosecutors to the conflict-of-interest regulations. Another improvement is that the LACA now prohibits MPs to concurrently hold two or more public offices. Another enhancement of the legal framework on the prevention of corruption has been the general prohibition of movement of personnel between the public and the private sectors<sup>4</sup> for members of the government and other public officials. Finally, the law regulates the establishment, responsibilities and activities of the Anti-Corruption Agency (ACA).

The new ACA holds a wide variety of responsibilities that had previously been performed by several bodies. Two key responsibilities of the ACA are monitoring the implementation of the National Anti-Corruption Strategy and its Action Plan and co-ordinating the work of state institutions in fighting corruption. Furthermore, the ACA has responsibility for the prevention of conflicts of interest, a task taken over from the Board for Resolution of Conflict of Interest (as from 1 January 2010), the supervision of financing of political parties, taken over from the Parliamentary Finance Committee, and the supervision of electoral campaigns, which was previously the task of the Republican Electoral Commission (the latter two tasks as from 1 October 2009).

Although the National Assembly elected the executive board of the ACA in April 2009, the Agency did not undertake any preparatory activities prior to 1 January 2010, when the new LACA fully entered into force. The ACA started in January with 13 staff who had previously worked on the Board for Resolution of Conflict of Interest. Two of the members of the ACA Governing Board had served as members of the Board for Resolution of Conflict of Interest, which has ensured a degree of continuity of the work to prevent conflicts of interest. However, at least two-thirds of ACA’s 60 positions were still vacant in April 2010, which means that the Agency is still far from being fully operational.

After taking over the supervision of the financing of electoral campaigns from the Republican Electoral Commission in October 2009, the ACA faced difficulties in ensuring compliance of such financing with the legal requirements. After local elections in the municipality of Odzaci in Vojvodina in January 2010, only three political parties out of the ten that had taken part in the elections submitted campaign accounts to the ACA by the prescribed deadline of ten days after the elections. Two of the three parties that had submitted their reports on time claimed that they had not collected or spent any money for the electoral campaign. Seven parties had still not submitted their accounts 30 days after the elections. The Director of ACA indicated that the Agency would use all legal means to remedy this situation, but the outcome remains to be seen.

Amendments to the Civil Service Law and to the Law on Free Access to Information (adopted in both cases on 11 December 2009) now explicitly and clearly regulate civil servants’ obligation to report corruption. However, whistleblowers’ protection has not been elaborated very clearly, which to some extent diminishes the likelihood of implementing the obligation to report on corrupt practices.

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<sup>1</sup> Cf. TNS Media Gallup (October 2009), *Serbia Corruption Benchmark Survey, Analytical Report* (The United Nations System in Serbia). Of the 1,000 Serbians who were surveyed in mid-October 2009, 15% indicated that they had paid a bribe during the previous three-month period, the most often in order to secure access to public services to which they were entitled. The health system (78%) and political parties (76%) were perceived as the most corrupt, followed by customs officials and judges.

<sup>2</sup> Transparency International’s Corruption Perception Index (CPI) for 2009 ranked Serbia as 83rd out of 180 countries, with a rating score of 3.5 on a scale of 0 to 10. The Serbian rating in 2000 was 1.3 (with a ranking of 89 out of 90), while in 2003 the rating was 2.3 (with a ranking of 106 out of 133).

<sup>3</sup> The LACA was adopted in December 2008.

<sup>4</sup> Also known as the “revolving door” process, or “*pantouflage*”

The 2009 amendments to the Criminal Procedure Code (adopted on 31 August 2009) place corruption-related offences under a special chapter of the code, "Special Provisions on the Criminal Offences of Organised Crime". These special provisions provide the competent authorities with a number of special investigative techniques and measures. How successful the implementation of these instruments will be in practice remains to be seen.

The new Law on Political Parties (adopted on 11 May 2009) requires 10,000 signatures for the registration of a political party, in contrast to the previous Law on Political Organisations<sup>5</sup>, which required only 100 signatures. Political parties have been obliged to re-register, in line with the requirements of the new law. By March 2010 only 60 political parties had been re-registered and around 10 parties were still awaiting re-registration; in 2009 the number of political parties in Serbia was around 600. The significant reduction in the number of registered political parties brought about by the new Law on Political Parties should facilitate the control of the financing of political parties and electoral campaigns.

The process of reappointment of all judges and prosecutors in 2009 was one of the main burning issues in Serbia this past year. The High Court Council was in charge of this process. The tenure of approximately 27% of judges and 30% of prosecutors was terminated on 17 December 2009.<sup>6</sup> The reappointment procedure showed important shortcomings in terms of the composition of the High Court Council and the State Prosecutorial Council, the application of objective criteria, and the transparency and reliability of the overall process.<sup>7</sup> Almost all of the judges and prosecutors who were not reappointed have filed constitutional appeals to the Constitutional Court. Moreover, in April 2010 the Judges' Association announced that it was bringing criminal charges against the High Court Council members on the grounds that they had falsified official data (statistics) on the performance of the judges who were not reappointed.

### **Main Characteristics**

It is still too early to reach a final conclusion as to whether the system of public integrity has improved by creating the ACA as a central anti-corruption body. Doubts in this regard are justified for three major reasons.

First of all, the advisability of concentrating so many responsibilities in a single institution could be questioned. International experience has shown that in governance environments where checks and balances are defective, anti-corruption agencies often lack credibility, risk being captured by vested interests, and are generally ineffective. The ACA is to have rather strong powers in several anti-corruption areas (financing of political parties, conflict of interest, asset declarations, etc.), but its accountability set-up is unclear. In conclusion, despite some positive aspects introduced by the Law on the Anti-Corruption Agency, the ACA's legal design raises doubts about its appropriateness.

Secondly, the halting start of ACA's work has not demonstrated a strong will to make the system fully operational in the near future. The period between April 2009, when the board of the ACA was elected, and January 2010, when the LACA entered into force, was not used for preparatory activities, e.g. for the recruitment of staff. The current number of vacancies (approximately 40) means that it will be impossible for the ACA to carry out all of its assigned tasks any time soon.

Finally, it is very likely that for a certain period of time the reform of anti-corruption institutional structures will weaken the effectiveness of the public integrity system. The Board for Resolution of Conflict of Interest, for

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<sup>5</sup> Law on Political Organisations, adopted in 1990, *Official Gazette of the Republic of Serbia*, Nos. 37/90 and 30/92

<sup>6</sup> Prior to the process of re-election, 3149 judges were in office, of whom 770 were misdemeanor judges. The High Court Council passed a Decision on 1 June 2009 on the number of judges (*Official Gazette*, nos. 43/09 and 91/09), and the overall number of judges was reduced to 2453, of whom 615 were misdemeanor judges.

<sup>7</sup> The whole process was strongly criticised by Serbian and international institutions and organisations. See the letter of 22 April 2010 sent by the President of the European Commission to the President of the Judges' Association and the President of the Prosecutors' Association of Serbia.

example, was abolished at the same time that the ACA was being established. It is obvious that the new ACA will not be able to function soon as effectively as did its predecessor; it takes a significant amount of time and effort for newly-established anti-corruption institutions to be considered as credible authorities.

The way in which the highest authority of the judicial system has executed and followed up the process of reappointment of judges and prosecutors has not been at all conducive to convincing the Serbian public that all top-level institutions of the state respect the values of democracy and the rule of law.

The controlling role of parliament related to the public integrity system is weak. This is a result, *inter alia*, of the lack of independence of members of parliament from the executive branch and, in particular, from the political party to which they belong.<sup>8</sup>

### **Reform Capacity**

When the current government took office in June 2008, it proclaimed the fight against corruption as one of its key priorities. Legislative activities related to anti-corruption and the establishment of the ACA in 2009 could indicate the political will to put this statement of intent into effect. However, it appears that the political will is mainly driven by international demands and obligations and not by the genuine motivation to improve citizens' everyday living conditions by establishing well-functioning public integrity institutions.

Due to the fairly short period since the establishment of the ACA, it is still too early to judge the Agency's performance in developing and implementing anti-corruption activities. There are doubts concerning the soundness of giving responsibility for the implementation of an important range of anti-corruption measures to a single institution. Nevertheless, the first precondition for a successful function of the ACA is a sufficient number of staff. The current situation, where two-thirds of the positions are vacant, is not very promising.

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<sup>8</sup> For details on the role of parliament within the state, see Sigma's 2010 assessment report on Civil Service and Administrative Law.